

CONSTITUTIONAL LAW 1A*Finals, 1S 24-25*

Consolidated codal, case law and commentary

Codal

Commentary

Case law

**ARTICLE VII.
The Executive Department****§1**

The executive power shall be vested in the President of the Philippines.

*Extent of executive power***Marcos v. Manglapus, G.R. 88211, September 15, 1989 ♥**

The constitution enumerates the powers of the president and its limits, but it nonetheless maintains intact the "traditionally considered as within the scope of 'executive power.'"

The president has a duty to do anything not forbidden by the constitution or the laws that the needs of the nation demand. It is a power implicit in the president's duty to take care that the laws are faithfully executed.

*Valid exercises of executive power***Webb v. De Leon, G.R. 121234, August 23, 1995**

The **prosecution of crimes** appertains to the executive department of the government whose principal power and responsibility is to see that our laws are faithfully executed.

The right to prosecute vests the prosecutor with a wide range of discretion—the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors (*prosecutorial discretion*).

Djumanatan v. Domingo, G.R. 99358, January 30, 1995

Generally, the right of the president to **expel or deport aliens** whose presence is deemed inimical to the public interest is as absolute and unqualified as the right to prohibit and prevent their entry into the country.

Pontejos v. Ombudsman, G.R. 158613-14, February 22, 2006

The prosecutorial powers include the **discretion of granting an immunity** to an accused in exchange for testimony against another. The power to choose who to discharge as a state witness is an executive function, not a judicial prerogative.

Banda v. Ermita, G.R. 166620, April 20, 2010

The president has the **power to reorganize the offices and agencies in the executive department** in line with the president's constitutionally granted power of control over executive offices and by virtue of previous delegation of the legislative power to reorganize executive offices under existing statutes.

Biraogo v. Philippine Truth Commission, G.R. 192935, December 7, 2010

The president's **power to conduct investigations** to aid him in ensuring the faithful execution of laws—in this case, fundamental laws on public accountability and transparency—is inherent in the president's powers as chief executive (*see also* CONST. art. VII, §17).

*Invalid exercises of executive power***Laurel v. Garcia, G.R. 92013, July 25, 1990**

It is not for the president to **convey valuable real property** of the government on her own sole will. It must be authorized and approved by a law enacted by Congress. It requires executive and legislative concurrence.

Review Center v. Ermita, G.R. 180046, April 2, 2009

The exercise of the president's residual powers under ADMIN. CODE bk. III, tit. I, ch. 7, §20 requires legislation.

SECTION 20. Residual Powers. — Unless Congress provides otherwise, the President shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law.

*Privileging the executive—executive privilege revisited***Senate v. Ermita, G.R. 169777, April 20, 2006**



Executive privilege is asserted on a case-to-case basis. An implied assertion renders it invalid per se. A claim of privilege must therefore be clearly asserted. There will be no way of assessing the validity of a claim of executive privilege without stating the specific basis.

- It must be asserted by the president himself, or the executive secretary on his behalf.

US v. Nixon, 73-1766, July 24, 1974



When the ground for asserting the privilege as to subpoenaed materials, sought for use in a **criminal trial**, is based solely on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice.

Neri v. Senate, G.R. 180643, Mar. 25, 2008



The presumption of privilege can only be overturned by a showing of **compelling need for disclosure** of the information covered by executive privilege.

Almonte v. Vasquez, G.R. 95367, May 23, 1995



There are **statutorily-created privileges** such as the government's privilege to withhold the identity of persons who furnish information of violations of laws. However, no such privilege covers the subpoenaed documents.

Chavez v. PEA, G.R. 133250, July 9, 2002 ♥



The constitutional right to information includes official information on ongoing negotiations before a final contract. The information, however, must constitute **definite propositions** by the government and should not cover recognized exceptions like privileged information, military and diplomatic secrets and similar matters affecting national security and public order.

AKBAYAN v. Aquino, G.R. 170516, July 16, 2018



Clarifying the holding in *Chavez v. PEA*, the court held that even definite propositions may not be disclosed if they fall under "recognized exceptions." **Diplomatic negotiations** privilege belong to those recognized exceptions.

Executive immunity from suit

Soliven v. Makasiar, G.R. 82585, November 14, 1988



The reason for the presidential immunity from suit is to assure that the exercise of presidential duties and functions is free from any hindrance or

distraction. The presidency demands undivided attention.

This privilege of immunity from suit pertains to the president by virtue of the office and may be invoked only by her.

Estrada v. Desierto, G.R. 146738, March 2, 2001 & April 3, 2001



Incumbent presidents are immune from suit or from being brought to court during the period of their incumbency and tenure but not beyond.

Clinton v. Jones, 95-1853, May 27, 1997



The US constitution does not protect the president from federal civil litigation involving actions committed before entering office. There is no requirement to stay the case until the president leaves office.

Gloria v. CA, G.R. 119903, August 15, 2000



Cabinet members do not enjoy immunity from suit.

De Lima v. Duterte, G.R. 227635, October 15, 2019



The concept of presidential immunity under our governmental and constitutional system does not distinguish whether or not the suit pertains to an official act of the president.

- In fact, a suit must be dismissed outright without the president invoking the executive immunity.

Nepomuceno v. Duterte, UDK 16838, May 11, 2021



Presidential immunity applies to the president regardless of the nature of the suit filed against him for as long as he sits as the president.

Qualifications of the president and vice-president

§2 ★

No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

§3

There shall be a Vice-President who shall have the same qualifications and term of office and be elected with, and in the same manner, as the President. He may be removed from office in the same manner as the President.

The Vice-President may be appointed as a Member of the Cabinet. Such

appointment requires no confirmation.

What are the **qualifications** of the president and vice-president?

1. Natural-born citizen
2. A registered voter
3. Able to read and write
4. 40 years of age
5. Resident for at least 10 years

Impeachment is the manner for removal from office of the president and the vice president.

The president has the option to appoint the vice-president in his cabinet. And the vice-president need not be confirmed by the Commission on Appointments.

Poe-Llamanzares v. COMELEC, G.R. 221697, March 8, 216

A foundling is a natural-born citizen. 🤔

§4

The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the

Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

Term of office of the president and vice-president

1. Elected by direct vote (plurality) on the second Monday of May every six years.
2. Term begins at noon of June 30, and ends at noon of June 30, six years later.
3. No reelection, except that a person who succeeded to the presidency and served for less than four years may run again.
4. The vice-president may serve up to two consecutive terms.
5. Voluntary renunciation (e.g. resignation) of the office shall not be considered to interrupt the term limits.

Canvassing the votes—it's Congress's duty

1. The returns shall be transmitted to Congress through the senate president.
2. Not later than 30 days after the election, the senate president shall open all the certificates—
 - a. In the presence of Senate and the House of Representatives
 - b. In joint public session
3. Congress, upon determination of the authenticity and due execution in the manner provided by law, shall canvass the votes.
4. The person having the highest number of votes shall be proclaimed elected.
 - a. In case of a tie: Congress shall choose the winner, voting separately.
5. Congress shall promulgate its rules for the canvassing of the certificates.

Pimentel v. Joint Committee, G.R. 163783, June 22, 2004

Despite the adjournment *sine die* of Congress, there is no legal impediment to the Joint Committee completing the tasks assigned to it and transmitting its report for approval of the joint public session of both houses of Congress, which may reconvene without need of call by the president to a special session.

Lopez v. Senate, G.R. 163556, June 8, 2004



The creation of the joint committee for canvassing does not constitute grave abuse of discretion and cannot be said to have deprived members of Congress of their congressional prerogatives because the rules of the committee state that the decisions of the committee shall be subject to the approval of the joint session of both houses of Congress, voting separately.

The PET

1. The Supreme Court en banc shall be the Presidential Electoral Tribunal (PET).
2. It shall be the sole judge of all contests relating to the election, returns, and qualifications of the president or vice-president.
3. The PET may promulgate its rules for the purpose.

Tecson v. COMELEC, G.R. 161434, March 3, 2004



The PET only assumes jurisdiction in a post-election scenario.

Macalintal v. PET, G.R. 191618, November 23, 2010



The adoption of a separate seal, as well as the change in the nomenclature of the chief justice and the associate justices into chairman and members of the tribunal, respectively, was designed simply to highlight the singularity and exclusivity of the tribunal's functions as a special electoral court.

§5

Before they enter on the execution of their office, the President, the Vice-President, or the Acting President shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God." (In case of affirmation, last sentence will be omitted.)

§6

The President shall have an official residence. The salaries of the President and Vice-President shall be determined by law and shall not be decreased during their tenure. No increase in said compensation shall take effect until after the expiration of the term of the incumbent during which such increase was approved. They shall not receive during their tenure any other emolument from the Government or any other source.

The salaries of the president and vice-president are determined by law (Salary Standardization Law).

- It shall not be decreased during their tenure.
- Any increase will only take effect after the expiration of the term of the incumbent.

The president and vice-president shall not receive any other emolument from the government or any other source.

- This is an absolute prohibition from other incomes (CCC, p. 108).

Filling vacancies at the start of the term

§7

The President-elect and the Vice President-elect shall assume office at the beginning of their terms.

If the president fails to qualify, the Vice President-elect shall act as President until the President-elect shall have qualified.

If a President shall not have been chosen, the Vice President-elect shall act as President until a President shall have been chosen and qualified.

If at the beginning of the term of the President, the President-elect shall have died or shall have become permanently disabled, the Vice President-elect shall become President.

Where no President and Vice-President shall have been chosen or shall have qualified, or where both shall have died or become permanently disabled, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall act as President until a President or a Vice-President shall have been chosen and qualified.

The Congress shall, by law, provide for the manner in which one who is to act as President shall be selected until a President or a Vice-President shall have qualified, in case of death, permanent disability, or inability of the officials mentioned in the next preceding paragraph.

Case 1: President-elect fails to qualify.

→ Vice-president elect becomes Acting President until the President-elect shall have qualified.

Case 2: President-elect has not been chosen.

→ Vice-president elect becomes Acting President until a President-elect has been chosen and qualified.

Case 3: President-elect dies or becomes permanently disabled.

→ Vice president-elect becomes President.

Case 4: Both the president and vice-president have not been chosen.

→ Senate president becomes Acting President. In his inability, the House Speaker becomes Acting President. This, until a president or a vice-president has been chosen and qualified.

Case 5: The president-elect, vice president-elect, senate president and house speaker have all died, became disabled, or unable to assume office.

→ Congress shall provide, by law, the succession (no law yet!).

*Intra-term vacancy in the presidency***§8**

In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice-President, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall then act as President until the President or Vice-President shall have been elected and qualified.

The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President.

Case 1: President dies, becomes disabled, removed, or resigns.

→ Vice-President becomes President until the end of the term.

Case 2: Both the president and vice-president die, become disabled, removed, or resign.

→ Senate president or house speaker becomes Acting President until a President or Vice-President has been elected and qualified.

Case 3: The president, vice-president, senate president and house speaker have all died, became disabled, or resigned.

→ Congress shall provide, by law, the succession (no law yet!).

*Intra-term vacancy in the OVP***§9**

Whenever there is a vacancy in the Office of the Vice-President during the term for which he was elected, the President shall nominate from among the Members of the Senate and the House of Representatives who shall assume office upon confirmation by a majority vote of all the Members of both House of the Congress, voting separately.

How to fill up vacancy in the OVP:

1. The president shall nominate either a senator or representative.
2. Congress, voting separately and by a simple majority, will confirm the appointment.
3. After confirmation, the nominee becomes the vice-president for the remainder of the term.

§10

The Congress shall, at ten o'clock in the morning of the third day after the vacancy in the offices of the President and Vice-President occurs, convene in accordance with its rules without need of a call and within seven days, enact a law calling for a special election to elect a President and a Vice-President to be held not earlier than forty-five days nor later than sixty days from the time of such call. The bill calling such special election shall be deemed certified under paragraph 2, Section 26, Article VI of this Constitution and shall become law upon its approval on third reading by the Congress. Appropriations for the special election shall be charged against any current appropriations and shall be exempt from the requirements of paragraph 4, Section 25, Article VI of this Constitution. The convening of the Congress cannot be suspended nor the special election postponed. No special election shall be called if the vacancy occurs within eighteen months before the date of the next presidential election.

Calling for the special elections for the presidency and vice-presidency**Requisites:**

1. OP and OVP are both vacant
2. The vacancy is more than 18 months before the next presidential election (i.e. no later than November 8, 2026)

Procedure:

1. Congress convenes at 10 a.m., 3 days after the vacancy.
 - a. This is automatic—without a call
 - b. This cannot be suspended
2. Within 7 days from convening, it shall pass a law calling for the special election
 - a. The special election should not be earlier than 45 days nor later than 60 days after the vacancy occurred
 - b. The special election cannot be postponed
3. The bill shall be deemed certified (waiving the 3-day rule, and printing requirement), and shall become law after 3rd reading (no need for presidential signature).
4. The funding for the special election does not require a specific appropriations law and shall be charged against any available appropriations.

§11

Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

Whenever a majority of all the Members of the Cabinet transmit to the President of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

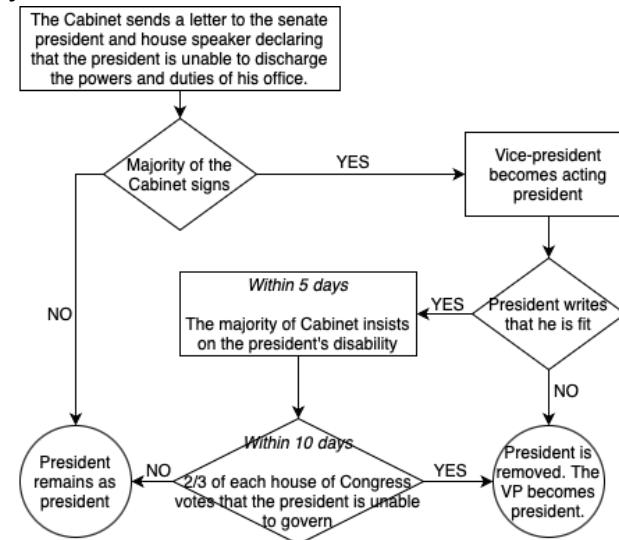
Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall reassume the powers and duties of the office. Meanwhile, should a majority of all the Members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives, their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue. For that purpose, the Congress shall convene, if it is not in session, within forty-eight hours, in accordance with its rules and without need of call.

If the Congress, within ten days after receipt of the last written declaration, or, if not in session, determines by a two-thirds vote of both Houses, voting separately, that the President is unable to discharge the powers and duties of his office, the Vice-President shall act as President; otherwise, the President shall continue exercising the powers and duties of his office.

25th amendment, PH ver.

Case 1: President tells the senate president and house speaker that he's unable to discharge the powers and duties of the office.
→ Vice-president becomes Acting President until the president sends another notice that he's already fine.

Case 2 (messy version):

**§12**

In case of serious illness of the President, the public shall be informed of the state of his health. The members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines, shall not be denied access to the President during such illness.

De Leon v. Duterte, G.R. 252118, May 8, 2020

A writ of Mandamus will not lie to compel the president to disclose his medical or health records.

The framers intended that "the state of health or analysis as to the actual condition of the President should be left to the President and his doctor" and that "the burden [is left] to the Office of the President to choose the appropriate means of releasing information to the public."

Prohibitions on conflicts-of-interest

§13 ★

The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

¶1: Prohibitions on the “official family”**Covered:**

1. President
2. Vice president
3. Cabinet members
4. Undersecretaries
5. Assistant secretaries

Prohibitions:

1. Not to hold any other office or employment during their tenure.
2. Not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality, or GOCCs.

⚠ Read with CONST. art. IX-B, §7.

CLU v. Executive Secretary, G.R. 83896, February 22, 1991 ♥

While all other appointive officials in the civil service are allowed to hold other office or employment in the government when allowed by law or their primary functions, members of the cabinet, their deputies and assistants may only do so when expressly authorized by the constitution itself:

1. Vice president as a cabinet secretary, and

2. Secretary of justice as an ex-officio member of the Judicial and Bar Council (JBC).

The prohibition in §13, however, does not apply in an ex-officio capacity.

- Ex-officio means "from office" or "by virtue of office."
- It refers to an authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position.

Funa v. Ermita, G.R. 184740, February 11, 2010

The additional position (in an ex-officio capacity) must be shown that it is required by the primary functions of the first position.

- DOTC Usec. Bautista failed to clearly demonstrate that her designation as MARINA OIC was in an ex-officio capacity as required by the primary functions of her office as DOTC undersecretary.

Funa v. Agra, G.R. 191644, February 19, 2010

The prohibition against dual or multiple offices being held by one official must be construed as to apply to all appointments or designations, whether permanent or temporary.

- Being designated as the acting secretary of justice concurrently with his position of acting solicitor general, Agra was covered by §13.

Espiritu v. Del Rosario, G.R. 204964, October 15, 2014

The acts of a de facto officer whose appointment contravened CONST. art. VII, §13 enjoy the presumption of regularity.

- A **de facto officer** is one who derives his appointment from one having colorable authority to appoint, if the office is an appointive office, and whose appointment is valid on its face.
- The acts of the de facto officer are just as valid for all purposes as those of a de jure officer, insofar as the public or third persons who are interested therein are concerned.

¶2: Prohibitions on the “real family”**Covered:**

1. Spouse
2. Relatives by consanguinity or affinity within the fourth civil degree

Prohibition: They shall not be appointed as–

1. Members of the constitutional commission
2. Members of the Office of the Ombudsman
3. Secretary, undersecretary, chairpersons or heads of bureaus or

offices, including GOCCs and its subsidiaries (CCC, p. 118).

§14

Appointments extended by an Acting President shall remain effective, unless revoked by the elected President within ninety days from his assumption or reassumption of office.

The following are instances in which we can have an Acting President:

1. President-elect fails to qualify
2. President-elect has not been chosen
3. Both the president and vice-president have not been chosen
4. Both the president and vice-president die, become disabled, removed, or resign
5. President tells the senate president and house speaker that he's unable to discharge the powers and duties of the office
6. Majority of the Cabinet writes that the president is unable to govern

The president-president can revoke the acting president's appointments within 90 days from the former's assumption of office.

Ban on midnight appointments

§15

Two months immediately before the next presidential elections and up the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

De Castro v. JBC, G.R. 191002, March 17, 2010



The prohibition under CONST. art. VII, §15 does not apply to appointments to fill a vacancy in the Supreme Court or to other appointments to the judiciary.

The president's appointment powers

§16 ★

The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in this Constitution. He shall also appoint all other

officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.

Sarmiento III v. Mison, G.R. 79974, December 17, 1987 ♥



Under CONST. art. VII, §16, there are four groups whom the president shall appoint:

1. The heads of the executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this constitution (**exclusive list!**)
2. All other officers of the government whose appointments are not otherwise provided for by law
3. Those whom the president may be authorized by law to appoint
4. Officers lower in rank whose appointments the Congress may by law vest in the president alone

The framers of the 1987 Constitution and the people adopting it struck a "middle ground" by **requiring the consent of the ComAppt for the first group and leaving to the president, without such confirmation, the appointment of other officers.**

Velicaria-Garafil v. OP, G.R. 203372, June 16, 2015 ♥



The following elements should always concur in the making of a valid appointment:

1. Authority to appoint and evidence of the exercise of the authority
2. Transmittal of the appointment paper and evidence of the transmittal
3. A vacant position at the time of appointment
4. Receipt of the appointment paper and acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications

Rufino v. Endriga, G.R. 139554, July 21, 2006



CONST. art. VII, §16 authorizes Congress to vest "in the heads of ... boards" the power to appoint lower-ranked officers.

- In a board, the chairperson is the head, and not to their members.
- Likewise, "heads" could only refer to the chief executives or heads of the commissions or boards.

Pimentel v. Ermita, G.R. 164978, October 13, 2005 ♥

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The president may issue acting appointments even while Congress is in session, and these acting appointments do not require the confirmation of Commission on Appointments.

	Ad interim	Acting
When effective?	Upon acceptance	Upon acceptance
When done?	When Congress is not in session	Anytime during a vacancy
Needs confirmation?	Yes	No
When terminated?	Upon recess of Congress or rejection of the ComAppt	One year

A nonexhaustive list of the president's appointees who are not subject to confirmation by the ComAppt

Case	Position
Bautista v. Salonga G.R. 86439, April 13, 1989	Chairman, Commission on Human Rights
Quintos-Deles v. ComAppt G.R. 83216, September 4, 1989	Members of the judiciary; Ombudsman and his deputies
Pobre v. Mendieta G.R. 106677, July 23, 1993	Commissioner, Professional Regulation Commission
Calderon v. Carale G.R. 91636, April 23, 1992	Chairman and commissioners, National Labor Relations Commission
Tarosa v. Singson G.R. 111243 May 25, 1994	Governor, Bangko Sentral ng Pilipinas

§17 ★

The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

Power of control

KMU v. Director-General NEDA, G.R. G.R. 167798, April 19, 2006

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The president's constitutional power of control is self-executing and does not need any implementing legislation.

- The power of control is limited only to the executive branch.

Lacson-Magallanes Co. Inc. v. Paño, G.R. L-27811, November 11, 1967

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The president controls and directs the acts of his cabinet secretaries.

- Implicit then is his authority to go over, confirm, modify or reverse the action taken by his department secretaries.
- The president may delegate to his executive secretary acts which the constitution does not command that he perform in person.
- When the executive secretary acts "by authority of the president," his decision is that of the president's.

Control vs. supervision

Drilon v. Lim, G.R. 112497, August 4, 1994 ♥

1. **Control** – the power of an officer to **alter or modify** or set aside what a subordinate officer had done in the performance of his duties and to **substitute the judgment** of the former for the latter
2. **Supervision** – the power of a superior officer to see to it that lower officers **perform their functions in accordance with law**

Doctrine of qualified political agency

Joson v. Torres, G.R. 131255, May 20, 1998 ♥

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Doctrine of qualified political agency, defined: All executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, **unless disapproved or reprobated by the Chief Executive** **presumptively** the acts of the Chief

Executive.

Villaluz v. Zaldivar, G.R. L-22754, December 31, 1965



Presidential appointees, belonging to the noncompetitive or unclassified service of the government, can only be investigated and removed from office after due hearing by the president under the principle that the power to remove is inherent in the power to appoint.

Ang-Angco v. Castillo, L-17169, November 30, 1963



The power of control of the president may extend to the power to investigate, suspend or remove officers and employees who belong to the executive department if they are presidential appointees or do not belong to the classified service.

- But not with regard to those officers and employees who belong to the classified service (rank-and-file) as to them that inherent power cannot be exercised.

Faithful execution clause 🐼

Almario v. Executive Secretary, G.R. 189023, July 16, 2013



The president's power must be exercised in accordance with existing law, according to the faithful execution clause.

- The faithful execution clause is best construed as an obligation imposed on the president, not a separate grant of power.
- **Discretion** is not a free-spirited *stallion* 🐎 that runs and roams wherever it pleases but is reined in to keep it from straying. In its classic formulation, "discretion is not unconfined and vagrant" but "canalized within banks that keep it from overflowing."

Ocampo v. Enriquez, G.R. 225973, November 8, 2016

#MarcosNotAHero

The mandate, under the faithful execution clause, is self-executory by virtue of its being inherently executive in nature and is intimately related to the other executive functions.

- The clause underscores the rule of law and the principle that the president is not above the laws but is obliged to obey and execute them.

Commander-in-chief powers; Martial law

§18 ★

The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed

forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ of habeas corpus.

The suspension of the privilege of the writ of habeas corpus shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with, invasion.

During the suspension of the privilege of the writ of habeas corpus, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

Commander-in-chief powers

The president's **three commander-in-chief powers** are:

1. Calling out of the armed forces to prevent or suppress lawless violence, invasion or rebellion.
2. Suspension of the *privilege* of the writ of Habeas Corpus
3. Declaration of martial law.

Lagman v. Medialdea, G.R. 231658, July 4, 2017 ♥



While the constitution gives the president a sequence of graduated powers, it only means a hierarchy based on scope and effect—**not a sequence to follow**. Because these powers are conferred with the president, the prerogative to determine which power to use lies with him.

- *Calling out power* – most benign and involves ordinary police action
 - **Extent:** Fully discretionary, subject to constitutional boundaries or in a manner not constituting grave abuse of discretion
- *Suspending the writ of habeas corpus and/or declaring martial law* – involve curtailment and suspension of civil rights and individual freedom
 - **Extent:** Subject to three limits: (1) 60 days only, (2) May be revoked by Congress, and (3) May be reviewed by the Supreme Court.

David v. Arroyo, G.R. 171396, March 5, 2006 ♥



The president could validly declare the existence of a state of national emergency even in the absence of a Congressional enactment.

Under the **calling out power**, the president can only order the military to enforce laws pertinent to its duty to suppress lawless violence.

- Hence, the military may not enforce certain laws, such as customs laws, laws governing family and property relations, laws on obligations and contracts and the like.

The exercise of emergency powers, such as the taking over of privately owned public utility or business affected with public interest requires a delegation from Congress.

- See CONST. art. VI, §23 & art. XII, §17.

Ampatuan v. Puno, G.R. 190259, June 7, 2011



While it is true that the court may inquire into the factual bases for the president's exercise of the above power, it would generally defer to her judgment on the matter. Unless it is shown that such determination was attended by **grave abuse of discretion**, the court will accord respect to the president's judgment.

Kulayan v. Tan, G.R. 187298, July 3, 2012



The calling-out powers contemplated under the constitution is exclusive to the president.

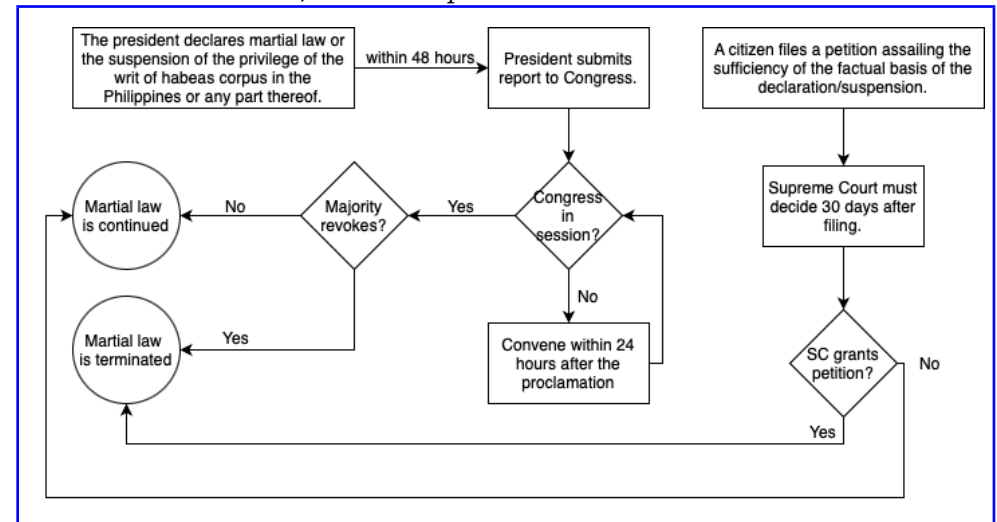
Requisites for the declaration of martial law:

1. Public safety requires it; and
2. In case of actual invasion or rebellion.

Procedure of martial law extension (beyond the 60-day period):

1. That the requisites remain
2. The president requests extension
3. Congress approves extension, for a period it may determine.

Martial law declaration/revocation procedures

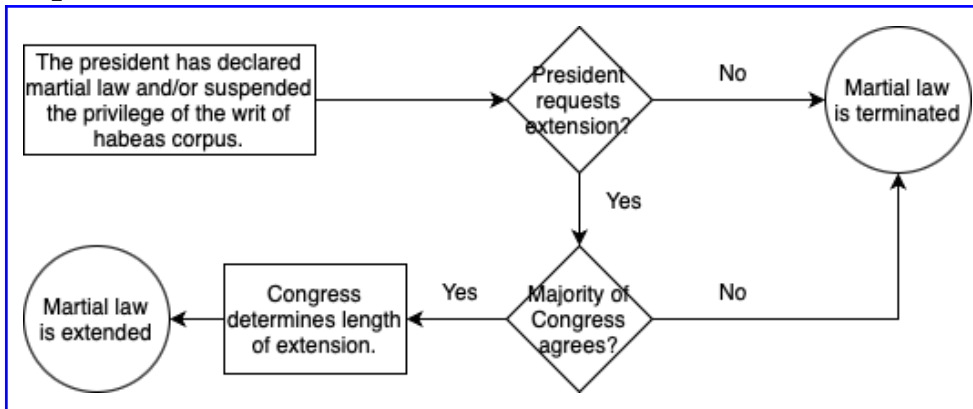


Lagman v. Medialdea, G.R. 243522, February 19, 2019 ♥



The constitution **did not contain a limitation** to Congress's determination of the extension. The framers evidently gave enough flexibility to Congress to determine the duration of the extension.

Martial law extension procedure



Supreme Court's review

Lagman v. Medialdea, G.R. 231658, July 4, 2017 ♥



- An appropriate proceeding is not necessarily a petition for Certiorari contemplated under CONST. art. VIII, §1 or 5 because §18 refers to the review of factual basis.
 - Hence, a §18 petition is sui generis.
- The power of this Court to review is done separately from Congress.
 - Court's role is passive as it is only triggered by a petition.
 - Congress's role is automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension was made.
- **Sufficiency of factual basis** – The court does not need to satisfy itself that the president's decision is correct, rather it only needs to determine whether the president's decision had sufficient factual bases.
 - The determination of the court must be based only on facts/information known by or available to the president **at the time he made the declaration/suspension.**
 - i.e. *Whether the facts in his possession prior to and at the time of the declaration or suspension are sufficient for him to declare martial law or suspend the privilege of the writ of habeas corpus*
- The parameters for review are (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power.
 - **Rebellion** – The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the

Legislature, wholly or partially, of any of their powers or prerogatives (*Revised Penal Code, Art. 134*).

- **Probable cause is the standard of proof.**
 - The president only **needs to convince himself** that there is probable cause or evidence showing that more likely than not, a rebellion was committed or is being committed.

Effects of martial law/suspension of the writ

Martial law does not...

1. Suspend the operation of the Constitution
2. Close the courts
3. Close the Congress and other legislative assemblies
4. Confer jurisdiction on courts martial over civilians
5. Automatically suspend the privilege of the writ of habeas corpus

The suspension privilege of the writ of habeas corpus only applies to persons charged with rebellion or crimes connected to the invasion.

- Those persons must be charged within 3 days after being arrested.

§19 ★

Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after **conviction by final judgment**.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

San Diego v. People, G.R. 176114, April 8, 2015

The exercise of the pardoning power is **discretionary** in the president and may not be controlled by the legislature or reversed by the court, save only when it contravenes the limitations set forth by the constitution–

1. Conviction must be by final judgment.
2. Does not apply to impeachment cases.
3. COMELEC recommendation required for pardon of election law violations.

Llamas v. Orbos, G.R. 99031, October 15, 1991

If the president can grant reprieves, commutations, pardons and remit fines and forfeitures in criminal cases, with much more reason can she grant **executive clemency in administrative cases**, which are clearly less serious

than criminal offenses.

- Only for the executive branch.

Risos-Vidal v. COMELEC, G.R. 206666, January 21, 2015



Any act of Congress by way of statute cannot operate to delimit the pardoning power of the president.

- Hence, Arts. 36 and 41 of the RPC do not abridge or diminish the exclusive power and prerogative of the president to pardon persons convicted of violating penal statutes.

Torres v. Gonzales, G.R. 76872, July 23, 1987

In proceeding against a convict who has been conditionally pardoned and who is alleged to have breached the conditions of his pardon, the president may either proceed against him:

1. Administratively (recommit a conditional pardon violator), or
2. Criminally (Art. 159, RPC).

People v. Casido explains the difference between a pardon and an amnesty.

	Pardon	Amnesty
Authority	Granted by the president	Granted by the president with the concurrence of Congress
Legal nature	Private act; must be pleaded and proved	Public act; courts take judicial notice
Application	Given to individuals after conviction by final judgment	Granted to classes or communities (typically for political offenses)
Timing of grant	After conviction	Before or after prosecution, or even after conviction
Effect on punishment	Relieves offender from consequences of the conviction; abolishes or forgives punishment	Abolishes and puts into oblivion the offense itself
Effect on rights	Does not restore rights (e.g., public office or suffrage) unless expressly stated in	Fully restores the individual's status, as if no offense was committed

	the pardon	
Civil indemnity	Does not exempt the offender from paying civil indemnity imposed by the sentence	No mention of civil indemnity; focuses on political offenses

Trillanes v. Medialdea, G.R. 241941, April 3, 2024



The requirement that a grant of amnesty must be the act of both the executive and the legislative branches also functions as a check and balance.

- Hence, **Congress's concurrence is required to revoke an amnesty.**
- Allowing the president alone to revoke without Congress's concurrence renders futile the participation of the legislature in its grant.

§20

The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the Government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

Sps. Constantino v. Cuisia, G.R. 106064, October 13, 2005 ♥



The decision to contract or guarantee foreign debts is of vital public interest, but only akin to any contractual obligation undertaken by the sovereign, which arises not from any extraordinary incident, but from the established functions of governance.

- In the matter of contracting or guaranteeing foreign loans, the repudiation by the President of the very acts performed in this regard by the alter ego will definitely have binding effects.

Hontiveros v. TRB, G.R. 181293, February 23, 2015



Applying the doctrine of qualified political agency, the approval of the ASTOA by the DOTC secretary had the same effect as approval by the president.

Land Bank v. Atlanta, G.R. 193796, July 2, 2014

A loan agreement may come in the form of an executive agreement, which must be complied with by the government because of *pacta sunt servanda*.

*Transformation doctrine***§21** ★

No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

See CONST. art. II, §2 for the discussion on the transformation doctrine, as well as the dicta in *Pimentel v. Cayetano*.

Vinuya v. Romulo, G.R. 162230, April 28, 2010

From a domestic law perspective, the executive department has the exclusive prerogative to determine whether to espouse petitioners' claims against Japan.

International settlements generally wipe out underlying private claims, thereby terminating any recourse under domestic law.

§22

The President shall submit to the Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

Content of the National Expenditure Program:

1. Budget of expenditures
2. Sources of financing
3. Receipts from existing and proposed revenue measures

Deadline: No later than 30 days after the opening of Congress's regular session.

§23

The President **shall** address the Congress at the opening of its regular session. He may also appear before it at any other time.

a.k.a. the State of the Nation (Union) Address

ARTICLE VIII.
The Judicial Department

§1 ★

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to **settle actual controversies** involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Traditional judicial power – To settle **actual controversies** involving rights which are legally demandable and enforceable

Expanded/power of judicial review – To determine whether or not there has been a **grave abuse of discretion** amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government

Nature of judicial power

Marbury v. Madison, 5 U.S. 137, February 24, 1803



It is emphatically the province and duty of the judicial department to say what the law is.

Santiago v. Bautista, G.R. L-25024, March 30, 1970



Before a tribunal board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought.

SBMA v. COMELEC, G.R. 125416, September 26, 1996



Courts may only decide actual controversies, not hypothetical questions or cases. Hence, a writ of Prohibition cannot issue upon a mere conjecture or possibility.

Judicial power also includes

Radiowealth Inc. v. Agregado, G.R. L-3066, May 22, 1950



The prerogatives of this court include not only the powers to adjudicate causes but all things that are reasonably necessary for the administration of justice. These implied, inherent or incidental powers are as essential to the existence of the court as the powers specifically granted.

In re Borromeo, A.M. 93-7-696-0. February 21, 1995



The institution of charges by the prosecuting officer is not necessary to hold persons guilty of civil or criminal contempt amenable to trial and punishment by the court. All that the law requires is that there be a charge in writing duly filed in court and an opportunity to the person charged to be heard by himself or counsel. The charge may be made by the fiscal, by a judge, or even by a private person.

In re Letter of UP Law Faculty, A.M. 10-10-04-SC, June 7, 2011



When the Supreme Court initiates contempt proceedings and/or disciplinary proceedings against lawyers for intemperate and discourteous language and behavior directed at the courts, the evil sought to be prevented is the same—the degradation of the courts and the loss of trust in the administration of justice.

Echegaray v. Secretary of Justice, G.R. 132601, January 19, 1999



The power to control execution of its decision is an essential aspect of jurisdiction. It cannot be the subject of substantial subtraction as judicial

power is vested in the courts of justice.

During execution of decisions, supervening events may happen. Therefore, courts have been conceded the inherent and necessary power of control of its processes and orders to make them comfortable to law and justice.

... but it does not include ...

Director of Prisons v. Ang Cho Kio, G.R. L-30001, June 23, 1970



It is not within the province of the judiciary to express an opinion, or express a suggestion, that would reflect on the wisdom or propriety of the action of the Chief Executive on matters purely political in nature.

- It may only do so as provided by Art. 5, RPC.

Pichay v. ODES, G.R. 196425, July 24, 2012



Fact-finding is not adjudication and it cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency/office.

Tan v. Matsuura, G.R. 179003, January 9, 2013 ♥



While the determination of probable cause is essentially an executive function lodged with the public prosecutor and justice secretary, equally settled is the rule that courts retain the power to review findings of the prosecutors in preliminary investigations, although in a mere few exceptional cases showing grave abuse of discretion.

Garcia v. Drillon, G.R. 179267, June 25, 2013



The preliminary investigation conducted by the prosecutor is, concededly, an executive, not a judicial, function. The same holds true with the issuance of a barangay protection order under RA 9262.

- This is because the PB will only inquire into the existence of certain facts and to apply the law in order to determine what his official conduct shall be.

Vehicle for assailing the constitutionality of a law

PHAPi v. Medialdea, G.R. 234448, November 6, 2018 ♥



The writs of Certiorari and Prohibition under Rule 65 may be used to assail the constitutionality of a law and enjoin its enforcement, notwithstanding that these governmental actions do not involve the exercise of judicial, quasi-judicial or ministerial functions.

- Branch or instrumentality includes the legislative and executive,

even if they are not exercising judicial, quasi-judicial or ministerial functions.

Legislative-Judiciary interplay

§2

The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.

No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members.

§3

The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

General rule: Congress may legislate to define, prescribe and apportion the jurisdiction of the courts.

But Congress cannot:

1. Deprive the Supreme Court of its jurisdiction in §5.
2. Increase the Supreme Court's appellate jurisdiction without its consent (CONST. art. I, §30).
3. Reorganize the judiciary when it undermines the security of tenure of its members (i.e. to remove judges or shorten their term)
4. Reduce its appropriations from the previous year (fiscal autonomy, §3).
 - a. Hence, the judiciary's budget will always go up.

Likewise, Congress cannot...

Malaga v. Penachos, G.R. 86695, September 3, 1992



The prohibition (in PD 1818) pertained to the issuance of injunctions or restraining orders by courts against administrative acts in controversies involving facts or the exercise of discretion or technical matters.

- Hence, the courts may enjoin government infrastructure projects if it involves compliance with the procedural rules (bidding rules).

Carpio-Morales v. CA, G.R. 217126-27, November 10, 2015 ♥



Necessary to carry its acquired jurisdiction is to issue auxiliary writs (e.g. TRO/WPI). These inherent powers are implied from a general grant of jurisdiction, but are necessary for the court to exercise and maintain its jurisdiction.

- Hence, Congress may not prohibit the courts from staying an investigation by the Ombudsman.

Internal procedure of the Supreme Court

§4

- (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.
- (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.
- (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: *Provided*, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.

Composition of the Supreme Court

1. One chief justice and 14 associate justices.
2. It may sit en banc (15) or in division (currently, in three divisions of five members each).
3. Vacancies must be filled within 90 days from the occurrence thereof.

De Castro v. JBC, G.R. 191002, March 17, 2010



The prohibition under CONST. art. VII, §15 (midnight appointments ban) does not apply to appointments to fill a vacancy in the Supreme Court or to other appointments to the judiciary.

The JBC has no discretion to submit the list to the President after the vacancy occurs, because that shortens the 90-day period for the President to make the appointment.

Cases required to be heard en banc

The following cases must be decided by the court *en banc*:

1. Constitutionality of a treaty, international/executive agreement, or a law
2. All other cases which the Rules of Court provide
3. Division cases where the required vote was not reached
4. When a doctrine or principle of law will be modified or abandoned
5. Administrative cases involving the discipline or dismissal of judges of lower courts (§11)
6. When acting as the PET (Art. VII, §4)

Republic v. Garcia, G.R. 167741, July 12, 2007

The constitution mandates that only the Supreme Court *en banc* may modify or reverse a doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division.

- Hence, lower courts cannot reexamine or reverse doctrines laid by the Supreme Court.

Referral to the en banc

Fortich v. Corona, G.R. 131457, August 19, 1999

Const. art. VIII, §4(3) only requires "cases"--not "matters"--to be referred to the *en banc* when the required vote isn't reached. The word "decided" must refer to "cases," while the word "resolved" must refer to "matters."

- The failure of the division to resolve the motion because of a tie in the voting does not leave the case undecided. If the voting results in a tie, the MR is lost.
- If there is a tie vote in the division over a case, there is no decision. Hence, referral to the *en banc* is necessary.

§5 ★

The Supreme Court shall have the following powers:

- (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari,

prohibition, mandamus, quo warranto, and habeas corpus.

- (2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
 - (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
 - (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
 - (c) All criminal cases in which the penalty imposed is reclusion perpetua or higher.
 - (d) All cases in which only an error or question of law is involved.
- (3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.
- (4) Order a change of venue or place of trial to avoid a miscarriage of justice.
- (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.
- (6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

"Original jurisdiction"

Republic v. Sereno, G.R. 237428, May 11, 2018

CONST. art. VIII § 5 gives the Supreme Court original jurisdiction over quo warranto petitions. While this jurisdiction is shared with the Court of Appeals and the Regional Trial Court and there the doctrine of hierarchy of courts apply, a direct invocation of the Supreme Court is justified considering that a member of the court is the respondent and the issue is of public concern.

Change of venue

People v. Gutierrez, G.R. L-32282-83, November 26, 1970



Judicial power connotes certain incidental and inherent attributes reasonably necessary for an effective administration of justice.

One of these incidental and inherent powers of courts is that of transferring the trial of cases from one court to another of equal rank in a neighboring site, whenever the imperative of securing a fair and impartial trial, or of preventing a miscarriage of justice, so demands.

Rule-making powers

In re PHCCI, A.M. 12-2-03-0, March 13, 2012

Since the payment of legal fees is a vital component of the rules promulgated by this Court concerning pleading, practice and procedure, it cannot be validly annulled, changed or modified by Congress.

- The power to promulgate these Rules is no longer shared by the court with Congress or the executive

In re Cunanan, March 18, 1954

The ultimate power to grant license for the practice of law **belongs exclusively** to the Supreme Court, and the law passed by Congress on the matter is of permissive character, or as other authorities say, merely to fix the minimum conditions for the license.

“Shall not diminish, increase, or modify substantive rights”

Santero v. CFI, G.R. L-61700-03, September 14, 1987

Since the provision of the Civil Code, a substantive law, gives the surviving spouse and to the children the right to receive support during the liquidation of the estate of the deceased, **such right cannot be impaired** by Rule 83, §3, Rules of Court which is a procedural rule.

Damasco v. Laqui, G.R. 81381, September 30, 1988

While it is the rule that an accused who fails to move to quash before pleading, is deemed to waive all objections which are grounds of a motion to quash, yet, this rule cannot apply to the defense of prescription, which under Art. 89 of the RPC extinguishes criminal liability.

Judicial review, outline

Requisites:

1. Actual case or controversy
 - a. Must be ripe for adjudication
 - b. Not moot (there are exceptions)
 - c. Must not be a political question
2. Legal standing (*locus standi*)
 - a. Taxpayer
 - b. Concerned citizen
 - c. Transcendental importance
3. Raised at the earliest opportunity
4. Issue of constitutionality is the very *lis mota* of the case

1 - Actual case or controversy

PACU v. Secretary of Education, G.R. L-5279, October 31, 1955

Courts do not sit to adjudicate mere academic questions to satisfy scholarly interest therein however intellectually solid the problem may be.

- Hence, mere apprehension that the secretary of education might under the law withdraw the permit of one of the petitioners does not constitute a justiciable controversy.

Suplico v. NEDA, G.R. 178830, July 14, 2008

In the absence of actual justiciable controversies or disputes, the court generally opts to refrain from deciding moot issues. Where there is no more live subject of controversy, the court ceases to have a reason to render any ruling or make any pronouncement.

Mootness doctrine

David v. Arroyo, G.R. 171396, May 3, 2006 ♥

The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. The following are exceptions to the mootness doctrine:

1. There is a grave violation of the constitution;
2. The exceptional character of the situation and the paramount public interest is involved;
3. When constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; *and*
4. The case is capable of repetition yet evading review.

Political questions

Torrecampo v. MWSS, G.R. 188296, May 30, 2011

An inquiry that would delve into matters that are exclusively within the wisdom of the executive branch is a political question. The resolution of the question of policy is a matter outside the courts' jurisdiction.

Tañada v. Cuenco, G.R. L-10520, February 28, 1957

Political question – A question of policy.

- A question, under the constitution, is to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislature or executive branch of the government.
- It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.

2 - Legal standing**Galicto v. Aquino, G.R. 193978, February 28, 2012 ♥**

Locus standi – A personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.

- Threshold question: Whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions (*Baker v. Carr*).
- Material interest – A present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest.
 - An injury has to be direct and substantial.

As a general rule, a party is allowed to raise a constitutional question when–

1. He can show that he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government.
2. The injury is fairly traceable to the challenged action.
3. The injury is likely to be redressed by a favorable action.

Anak Mindanao v. Ermita, G.R. 166052, August 29, 2007

A party assailing the constitutionality of a statute must have a direct and personal interest. It must show not only that the law/act is invalid, but also that it sustained/is in immediate danger of sustaining some direct injury due to its enforcement, and not merely that it suffers thereby in some indefinite way (*direct injury test*).

Resident Marine Mammals v. Reyes, G.R. 180771, April 21, 2015

The need to give the Resident Marine Mammals legal standing has been eliminated by the Rules of Procedure for Environmental Cases, which allow any Filipino citizen, as a steward of nature, to bring a suit to enforce our environmental laws.

Board of Optometry v. Colet, G.R. 122241, July 30, 1996

Only natural and juridical persons/entities authorized by law may be parties in a civil action, and every action must be prosecuted or defended in the name of the real party in interest.

Third-party standing**White Light Corp. v. City of Manila, G.R. 122846, January 20, 2009**

In third party-standing, three criteria must be satisfied:

1. The litigant must have suffered an "injury-in-fact," thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute;
2. The litigant must have a close relation to the third party; *and*
3. There must exist some hindrance to the third party's ability to protect his or her own interests.

Taxpayer's suit**Joya v. PCGG**

A taxpayer's suit can only prosper only if the governmental acts being questioned involve disbursement of public funds upon the theory that the expenditure of public funds by an officer of the state for the purpose of administering an unconstitutional act constitutes a misapplication of such funds, which may be enjoined at the request of a taxpayer.

Transcendental importance**Tondo Medical v. CA, G.R. 167324, July 17, 2007**

Even in the cases in which the court declared that the matter of the case was of transcendental importance, the petitioners must be able to assert substantial interest. Present substantial interest, which will enable a party to question the validity of the law, requires that a party sustain or will sustain direct injury as a result of its enforcement.

Gios-Samar v. DOTC, G.R. 21758, March 12, 2019

When a question before the court involves determination of a factual issue indispensable to the resolution of the legal issue, the court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, *such as the transcendental or paramount importance* of the case.

- Direct recourse to the Supreme Court should be allowed only when the issue involved is one of law.

3 - Earliest opportunity

People v. Vera, G.R. L-45685, November 16, 1937

It is true that, as a general rule, the question of constitutionality must be raised at the earliest opportunity, so that if not raised by the pleadings, ordinarily it may not be raised at the trial, and if not raised in the trial court, it will not be considered on appeal.

- **Exception:** Courts, in the exercise of sound discretion, may determine the time when a question affecting the constitutionality of a statute should be presented.
 - Thus, in criminal cases, although there is a very sharp conflict of authorities, it is said that the question may be raised for the first time at any state of the proceedings, either in the trial court or on appeal.

4 - Lis mota

KADAMAY v. Robredo, G.R. 200903, July 22, 2014

If there is some other ground upon which the court may rest its judgment, that course will be adopted and the question of constitutionality should be avoided.

- To justify the nullification of a law, there must be a clear and unequivocal breach of the constitution, and not one that is doubtful, speculative or argumentative.

Doctrine of operative fact

De Agbayani v. PNB, G.R. L-23127, April 29, 1971

The actual existence of a statute, prior to such a determination of unconstitutionality, is an operative fact and may have consequences which cannot justly be ignored.

CIR v. San Roque Power Corp., G.R. 187485, February 12, 2013

For the operative fact doctrine to apply, there must be a "legislative or

executive measure," meaning a law or executive issuance, that is invalidated by the court.

COCOFED v. Republic, G.R. 177857-58, September 4, 2012

The operative fact doctrine will not be applied as an exception when to rule otherwise would be iniquitous and would send a wrong signal that an act may be justified when based on an unconstitutional provision of law.

Sameer v. Cabiles, G.R. 170139, August 5, 2014

When a law or a provision of law is null because it is inconsistent with the constitution, the nullity cannot be cured by reincorporation or reenactment of the same or a similar law or provision.

- A law or provision of law that was already declared unconstitutional remains as such unless circumstances have so changed as to warrant a reverse conclusion.

§6

The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

Maceda v. Vasquez, G.R. 102781, April 22, 1993

In the absence of any administrative action taken against the judge by the Supreme Court, the investigation being conducted by the Ombudsman encroaches into the Supreme Court's power of administrative supervision over all courts and its personnel, in violation of the doctrine of separation of powers.

Ampong v. CSC, G.R. 167916, August 26, 2008

The administrative jurisdiction over a court employee belongs to the Supreme Court, regardless of whether the offense was committed before or after employment in the judiciary.

§7 ★

- (1) No person shall be appointed member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more, a judge of

- a lower court or engaged in the practice of law in the Philippines.
- (2) The Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.
 - (3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

Qualifications of judges

For the Supreme Court

1. A natural-born citizen
2. At least 40 years old
3. Have been for 15 years or more a judge/engaged in the practice of law
4. Proven competence, integrity, probity, and independence

For collegiate courts (CTA, CA, and Sandiganbayan)

1. A natural-born citizen
2. A member of the Philippine Bar
3. Comply with other requirements provided by law
4. Proven competence, integrity, probity, and independence

For lower courts (RTC, MTC, MeTC, MTCC)

1. A Philippine citizen
2. A member of the Philippine Bar
3. Comply with other requirements provided by law
4. Proven competence, integrity, probity, and independence

The JBC

§8

- (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.
- (2) The regular Members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.
- (3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.
- (4) The regular Members of the Council shall receive such emoluments

- as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.
- (5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Composition of the JBC

1. Chief justice, *ex-officio chairman*
2. Justice secretary, *ex-officio member*
3. Representative of Congress, *ex-officio member*
4. Representative of the Integrated Bar
5. A professor of law
6. Retired member of the Supreme Court
7. Representative of the private sector

The regular members shall serve for a **term of four years**, and be confirmed by the Commission on Appointments.

Chavez v. JBC, G.R. 202242, July 17, 2012



Congress must only have one representative. The use of the singular letter "a" preceding "representative of Congress" is unequivocal and leaves no room for any other construction.

The JBC's main function is providing the president a list of recommended appointees to the judiciary.

Scope of the powers of the JBC

Aguinaldo v. Aquino, G.R. 224302, November 29, 2016



Clustering impinges upon the President's power of appointment, as well as restricts the chances for appointment of the qualified nominees because:

1. The president's option for every vacancy is limited to the five to seven nominees in the cluster; and
2. Once the president has appointed from one cluster, then he is proscribed from considering the other nominees in the same cluster for the other vacancies.

Jardeleza v. Sereno, G.R. 213181, August 19, 2014



The fact that the JBC proceedings is *sui generis* and is impressed with discretion, however, does not automatically denigrate an applicant's

entitlement to due process.

Villanueva v. JBC, G.R. 211833, April 7, 2015



The adoption of the five-year requirement policy applied by JBC to the petitioner's case is **necessary and incidental** to the function conferred by the constitution to the JBC.

§9

The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

Content of the shortlist

- At least three nominees for every vacancy
- Again, no clustering is allowed (as in *Aguinaldo*)

Time period for the president to fill the vacancy:

- *For the Supreme Court*: 90 days from the vacancy's occurrence
- *For lower courts*: 90 days from the JBC's submission of the shortlist

§10

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

Justices/judges are taxable

Nitafan v. CIR, G.R. 78780, July 23, 1987

The salaries of justices and judges are properly subject to a general income tax law applicable to all income earners and that payment of such income tax by justices and judges does not fall within the constitutional protection against decrease of their salaries during their continuance in office.

Term of office

§11

The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reached the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Justices and judges mandatorily retire at the age of 70.

- They can opt for early retirement when they become “incapacitated to discharge the duties of their office.”
- Supreme Court justices can be removed from office by impeachment.

Lower court judges are subject to the Supreme Court's disciplinary powers.

- They may be removed from office by a vote of the court en banc.

People v. Gacott, G.R. 116049, July 13, 1995

§11 does not intend that all administrative disciplinary cases should be heard and decided by the en banc since it would result in an absurdity.

- It is only when the penalty imposed does not exceed a suspension >1 year or a fine of >P10,000, or both that an administrative matter may be decided in division.

§12

The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

This also prevents justices from having to rule on cases they've already ruled on.

- **Exception:** Justices are explicitly allowed by the constitution to be designated by the chief justice to the SET/HRET.

§13

The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A

certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Member who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts.

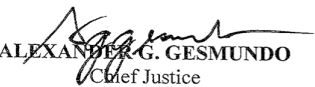
Decision-making process inside the court:

1. The justices deliberate, and after reaching a conclusion, a justice is assigned to write the opinion of the court.
2. Those who took no part, dissented, or abstained from the decision/resolution must state so.
3. Lower courts must follow the same process.

The chief justice issues a certification that this process has been followed, like this:

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice

Form and content of court decisions

§14

No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

Air France v. Carrascoso, G.R. L-21438, September 28, 1966

So long as the decision of the court contains the necessary facts to warrant its conclusions, it is no error for said court to withhold therefrom any specific finding of facts with respect to the evidence for the defense.

- The law only requires that a decision state the **essential ultimate facts**.


Francisco v. Permskul, G.R. 81006, May 12, 1989 ♥

A **memorandum decision** can be welcomed indeed as an acceptable method of dealing expeditiously with the caseload of the courts of justice.

- For the incorporation by reference to be allowed, it must provide for **direct access to the facts and the law being adopted**, which must be contained in a statement attached to the said decision.
 - Any deviation will summon the strict enforcement §14 and strike down the flawed judgment as a lawless disobedience.

Deutsche Bank v. CIR, G.R. 188550, August 28, 2013

A minute resolution is not a binding precedent.


REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila
SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated June 26, 2023 which reads as follows:

“UDK No. 15708 (RUBY F. OCENAR, Petitioner, v. SOCIAL SECURITY SYSTEM [PHILIMARE] SHIPPING, INC.), Respondents).
— Failure to comply with the requirements for filing an appeal is sufficient ground for its dismissal.

	Minute resolution	Signed decisions
§14 applicable?	No	Yes
Who signs?	Clerk of court/division	Justices
Certified as per §13?	No	Yes
Reported?	No	Yes
Binding precedent?	No	Yes
Lays down doctrines?	No	Yes

Transitory provisions

§15

- (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.
- (2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.
- (3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.
- (4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.

Time limit for decisions:

1. Supreme Court: 24 months
2. Lower collegiate courts: 12 months
3. Lower courts: 3 months

The time is reckoned from the case's submission.

Annual report requirement

§16

The Supreme Court shall, within thirty days from the opening of each regular session of the Congress, submit to the President and the Congress an annual report on the operations and activities of the Judiciary.

ARTICLE IX.
Constitutional Commissions

A - Common Provisions

§1

The Constitutional Commissions, which shall be independent, are the Civil

Service Commission, the Commission on Elections, and the Commission on Audit.

The three constitutional commissions are:

1. Civil Service Commission (CSC)
2. Commission on Elections (COMELEC)
3. Commission on Audit (COA)

§2

No Member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

Prohibitions:

1. Cannot hold any other office or employment
2. Engage in the practice of any profession
3. Actively manage or control any business affected by the functions of his office
4. Be financially interested, directly or indirectly, in any contract or any franchise or privilege granted by the government or any of its subdivisions, instrumentalities, or GOCCs.

 *These prohibitions also apply to the Office of the Ombudsman (see CONST. art. XI, §8.)*

Prohibition on double-jobbing

Funa v. Duque, G.R. 191672, November 25, 2014

The CSC chairman cannot be a member of a government entity that is under the control of the president without impairing the independence vested in the CSC by the constitution.

§3

The salary of the Chairman and the Commissioners shall be fixed by law and

shall not be decreased during their tenure.

§4

The Constitutional Commissions shall appoint their officials and employees in accordance with law.

§5

The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

§6

Each Commission en banc may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules however shall not diminish, increase, or modify substantive rights.

Powers of the constitutional commissions:

1. Appoint their officials and employees in accordance with law
2. Have fiscal autonomy
3. Promulgate its own rules, which should not diminish, increase, or modify substantive rights
4. Perform such other functions as may be provided by law

§7 ★

Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

Decision-making and collegiality

- When deciding cases or matters, each commission shall decide by a majority vote of *all* its members (2/3 for COA and CSC; 4/7 for COMELEC).
- Decisions, orders, or rulings of each commission may be brought to the Supreme Court on Certiorari by the aggrieved party within 30

days from receipt of a copy thereof, unless otherwise provided by the constitution or law.

- Those issued under a commission's rule-making powers are not reviewable by certiorari (Rule 43/64), but may be under Rule 65, under the standard of grave abuse of discretion (see *Dela Llana contra Diocese of Bacolod*).
- For COMELEC cases, only en banc decisions (MR) may be raised to the Supreme Court under Rule 64 (again, see *Diocese of Bacolod* for the exception).

Ambil v. COMELEC, G.R. 143398, October 25, 2000

A final decision or resolution becomes binding only after it is promulgated.

- A final decision of resolution of the COMELEC is promulgated on a date previously fixed, notice of which shall be served in advance to the parties.

A member who is no longer a member of the COMELEC at the time of promulgation cannot validly take part in that decision/resolution.

- Much more that he be the ponente of the resolution.
- The resolution/decision of the division must be signed by a majority of its members and duly promulgated.

Mison v. COA, G.R. 91429, July 13, 1990

A single member of a constitutional commission does not have the power to promulgate a decision.

Review of decisions

Dela Llana v. COA Chairperson, G.R. 180989, February 7, 2012

While decisions and orders of the COA are reviewable by the Supreme Court via Certiorari, these refer only to decisions and orders which were rendered by COA in its quasi-judicial capacity.

Diocese of Bacolod v. COMELEC, G.R. 205728, January 21, 2015

Questions "affecting elections" cannot be interpreted to mean that the COMELEC has the exclusive power to decide any and all questions that arise during elections. This must be read with CONST. art. VIII, §5(1) and §1.

- A breach of the fundamental right of expression by COMELEC is grave abuse of discretion. Thus, the court may review the constitutionality of the notice and letter.

§8

Each Commission shall perform such other functions as may be provided by law.

B - Civil Service Commission**§1**

- (1) The Civil Service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, with proven capacity for public administration, and must not have been candidates for any elective position in the elections immediately preceding their appointment.
- (2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, a Commissioner for five years, and another Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

Composition of the CSC:

1. The chairman
2. Two commissioners

Qualifications of a CSC member:

1. A natural-born citizen
2. At least 35 years old
3. With proven capacity for public administration
4. Must not have been a candidate for any elective position in the elections immediately preceding their appointment

Rules on appointments:

1. They need confirmation by the Commission on Appointments
2. They serve for seven years without reappointment
3. Appointment to any vacancy shall be only for the unexpired term
4. The terms are staggered
 - a. First appointments were reckoned from Feb. 2, 1987.
5. Temporary or acting appointments are not allowed

Gaminde v. COA, G.R. 140335, December 13, 2000

The constitution intended a rotational system for the appointment of the members of the constitutional commissions. This system required two conditions:

1. The terms of the first three commissioners should start on a common date, and
2. Any vacancy before the expiration of the term should only be filed only for the unexpired balance of the term.

The appropriate starting point of the terms of office of the first appointees must be on Feb. 2, 1987, the date of the adoption of the 1987 Constitution.

§2 ★

- (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.
- (2) Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination.
- (3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.
- (4) No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political campaign.
- (5) The right to self-organization shall not be denied to government employees.
- (6) Temporary employees of the Government shall be given such protection as may be provided by law.

*Scope of the civil service***PNOC-EDC v. Leogardo, G.R. 58494, July 5, 1989**

The test in determining whether a GOCC is subject to the Civil Service Law is the manner of its creation:

1. GOCC created by special charter -- Covered by Civil Service Law
2. GOCC incorporated under the general corporation law -- Not covered (Labor Code)

*Appointments in the civil service***Two kinds of appointments in the civil service:**

1. **Competitive** – Merit and fitness based on a competitive exam
2. **Noncompetitive**
 - a. Policy-determining
 - b. Primarily confidential
 - c. Highly technical

Delos Santos v. Mallare, G.R. L-3881, August 21, 1951 ♥

A primarily confidential position denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which ensures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state (*proximity rule*).

CSC v. Javier, G.R. 173264, February 22, 2008

Primarily confidential positions–

1. Do not have security of tenure.
2. Coterminous/at pleasure of the appointing authority.
3. May remain beyond the compulsory retirement age of 65.

It is the nature of the position which finally determines whether it is primarily confidential, policy determining or highly technical, and no department in government is better qualified to make such an ultimate finding than the judicial branch.

Security of tenure

1. **Career service** (competitive exam) – Have security of tenure.
 - a. They can only be removed/suspended for cause provided by law existing at the time of the removal/suspension.
2. **Non-career service** – Usually coterminous with the appointing authority, or based on a per project basis, or based on the appointing authority's pleasure.

Ang-Angco v. Castillo, L-17169, November 30, 1963

The president does not have blanket authority to remove any officer or employee of the government, especially those under the career service. This power must still be subject to the law.

CSC v. Pililla Water District, G.R. 190147, March 5, 2013

The tenure of a confidential employee is coterminous with that of the

appointing authority, or is at the latter's pleasure. However, the confidential employee may be appointed or remain in the position even beyond the compulsory retirement age of 65 years.

Roque v. Ericta, G.R. L-30244, September 28, 1975

Abolition of an office implies the removal of the incumbent, except when the abolition is made:

1. In good faith,
2. Not for personal or political reasons, and
3. Not in violation of the law.

Partisan political activities

Coverage of the prohibition:

1. Members of the civil service
2. Career officials holding political offices in an acting capacity
3. Uniformed and active members of the AFP

Allowed to engage in partisan political activities:

1. President and vice-president
2. Members of the Cabinet
3. Other elective public officials, except barangay officials
4. Personal and confidential staff of the said officers
5. Members of the reversed corps of the AFP

Partisan activities involve any form of solicitation of votes in favor of a specific candidate, but it does not include expressing one's views on current political issues or mentioning the names of the candidates they support (COMELEC-CSC jt. cir. no. 1, s. 2016).

Right to self-organization

DBP v. COA, G.R. 210838, July 3, 2018

While civil servants enjoy the constitutional right to bargain collectively, they may only do so for non-economic benefits and those not fixed by law, and may not resort to acts amounting to work stoppages or interruptions.

- No right to strike in the government.

§3

The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy

in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

§4

All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution.

§5

The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions.

Central Bank Employees v. BSP, G.R. 148208, December 15, 2004

 19

The GFIs were exempted from the Salary Standardization Law because of factors common among them, which includes the necessity of hiring/retaining qualified personnel, recognizing that the compensation package is not competitive, among others.

Political lame ducks

§6

No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries.

Lame ducks – Candidates who had just lost any election.

- They aren't allowed to be appointed in any government/GOCC office within a year after losing the election.

Macalino v. COA, G.R. 253199, November 14, 2023

The subject prohibition (CONST. art. IX-B, §6) applies to all losing candidates regardless of the position and the place or jurisdiction of the office in which they will be appointed.

- Hence, JO/COS appointments are covered.

Double-jobbing

§7 ★

No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

Prohibitions on elective officials

General rule: Elective officials are not eligible for appointment/designation in any capacity to any public office or position during their tenure.

Exceptions:

- Vice-president sitting in the cabinet
- Member of Congress sitting as an ex-officio JBC member

Flores v. Drilon, G.R. 104732, June 22, 1993



The exemption allowed to appointive officials in the second paragraph cannot be extended to elective officials who are governed by the first paragraph.

- Hence, Olongapo City Mayor Gordon cannot be appointed as SBMA chairman/administrator without first resigning his elective post (*which he did, btw*).

Prohibitions on appointive officials

General rule: Appointive officials may not hold any other office or employment in the government or any subdivision, agency, or instrumentality, including GOCCs.

Exceptions: They can double-job if allowed

1. By law, or
2. By the primary functions of his position.

Funa v. Agra, G.R. 191644, February 19, 2010

(Read with CONST. art. VII, §13) The powers and functions of the OSG are neither required by the primary functions nor included by the powers of the DOJ and vice-versa. The primary functions of the OSG are not related or necessary to the primary functions of the DOJ.

Double-dipping**§8**

No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

General rule: Elective and appointive officials are not allowed to:

1. Receive additional double, or indirect compensation, **except when allowed by law**; and
2. Accept any present, emolument, office, or title of any kind from any foreign government, **except with the consent of Congress**.

Additional compensation – Compensation for the same office over and above the salary fixed by law, such as a bonus.

- A law must authorize such an additional compensation.

Double compensation – Two sets of compensation for two offices held simultaneously. To be valid, the law must:

1. Allow him to hold the second office
2. Receive salary from that second office
 - a. **But cabinet secretaries, undersecretaries and assistant secretaries are not allowed to receive additional compensation for ex-officio posts** (see CONST. art. VII, §13).

C - Commission on Elections**§1**

- (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the

Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective positions in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years.

- (2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. *Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last members for three years, without reappointment.* Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

Composition of the COMELEC:

1. The chairman
2. Six commissioners

Qualifications of a COMELEC member:

1. A natural-born citizen
2. At least 35 years old
3. Holders of a college degree
4. Must not have been a candidate for any elective position in the elections immediately preceding their appointment.
5. A majority of its members and the chairman must be lawyers who have been practicing law for at least 10 years.

Rules on appointments:

1. They need confirmation by the Commission on Appointments
2. They serve for seven years without reappointment
3. Appointment to any vacancy shall be only for the unexpired term
4. The terms are staggered
 - a. First appointments were reckoned from Feb. 2, 1987.
5. Temporary or acting appointments are not allowed

Cayetano v. Monsod, G.R. 100113, September 3, 1991

The practice of law means to engage in any activity, in and out of court, which requires the application of law, legal procedure, knowledge, training and experience.

- The framers intended to adopt a liberal interpretation of the term "practice of law."

§2 ★

The Commission on Elections shall exercise the following powers and functions:

1. Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.
2. Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.
Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final executory, and not appealable.
3. Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.
4. Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.
5. Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredited citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.
Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.
6. File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.
7. Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidates.
8. Recommend to the President the removal of any officer or employee

it has deputized, or the imposition of any other disciplinary action, for violation of disregard of, or disobedience to, its directive, order, or decision.

9. Submit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

Intra-party dispute

Atienza v. COMELEC, G.R. 188920, February 16, 2010

The COMELEC's powers and functions include "include the ascertainment of the identity of the political party and its legitimate officers responsible for its acts. The COMELEC's power to register political parties necessarily involved the determination of the persons who must act on its behalf.

- Thus, the COMELEC may resolve an intra-party leadership dispute, in a proper case brought before it, as an incident of its power to register political parties.

Prosecution of election offenses

Arroyo v. DOJ, G.R. 199082, September 18, 2012

It is, therefore, not only the power but the duty of both the COMELEC and the DOJ to perform any act necessary to ensure the prompt and fair investigation and prosecution of election offenses.

- The text and intent of the constitution give the COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections (including forming a joint panel with the DOJ to conduct preliminary investigation on election offenses).

Redistricting (Congress's power)

Montejo v. COMELEC, G.R. 118702, March 16, 1995

COMELEC doesn't have the authority to transfer municipalities from one legislative district to another district.

Postponement of elections

Macalintal v. COMELEC, G.R. 263590, June 27, 2023 ♥

The postponement of the elections must be justified by reasons sufficiently important, substantial, or compelling under the circumstances.

1. The postponement must be intended to guarantee the conduct of free, honest, orderly, and safe elections.
2. The postponement must be intended to safeguard the electorate's right of suffrage.
3. The postponement must be intended to safeguard other fundamental rights of the electorate.
4. Such other important, substantial, or compelling reasons that necessitate the postponement of the elections, i.e., necessitated by public emergency, but only if and to the extent strictly required by the exigencies of the situation.
 - a. Reasons such as election fatigue, purported resulting divisiveness, shortness of existing term, and/or other superficial or farcical reasons, alone, may not serve as important, substantial, or compelling reasons to justify the postponement of the elections. To be sufficiently important, the reason for the postponement must primarily be justified by the need to safeguard the right of suffrage or other fundamental rights or required by a public emergency situation.

St. Anthony College v. COMELEC, G.R. 258805, October 10, 2023



The regulation on sizes of campaign materials under the Fair Elections Act, §9 only applies to candidates and political parties (see *Diocese of Bacolod v. COMELEC*).

- Hence, COMELEC may not remove election paraphernalia that are privately funded, privately run initiatives, and displayed by their owners on their own private property.



En banc and division cases

§3

The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.

Division matters – Election cases and exercise of quasi-judicial powers.

- A decision of the COMELEC en banc in the first instance is void.

En banc matters – Motion for reconsideration of a division decision, quasi-legislative and administrative matters.

§4

The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

Election period – 90 days before the day of the election and 30 days thereafter.

- The election period for the May 12, 2025 election is Feb. 11-June 11, 2025.
- During this time, COMELEC has the power to supervise or regulate public utilities, franchises, and the media.

PPI v. COMELEC, G.R. 119694, May 22, 1995



To compel **print** media to donate COMELEC space amounts to taking of private property for public use or purposes.

TELEBAP v. COMELEC, G.R. 132922, April 21, 1998



Broadcast stations may be required to give free air time to candidates in an election.

- Since a franchise is a mere privilege, the exercise of the privilege may reasonably be burdened with the performance by the grantee of some form of public service.

Executive clemency over election offenses

§5

No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the Commission.

Read with CONST. art. VII, §19.

Party system

§6

A free and open party system shall be allowed to evolve according to the free choice of the people, subject to the provisions of this article.

§7

No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution.

§8

Political parties, or organizations or coalitions registered under the party-list system shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies. However, they shall be entitled to appoint poll watches in accordance with law.

Grounds for refusal of registration of political parties (§2(5)):

1. Religious denominations and sects
2. Those who seek to achieve their goals through violence or unlawful means
3. Those who refuse to uphold and adhere to the constitution
4. Those who are supported by any foreign government

Intra-party dispute

Atienza v. COMELEC, G.R. 188920, February 16, 2010

The COMELEC does not have blanket authority to resolve any and all controversies involving political parties. Political parties are generally free to conduct their activities without interference from the state. The COMELEC may intervene in disputes internal to a party only when necessary to the discharge of its constitutional functions.

§9

Unless otherwise fixed by the Commission in special cases, the election period shall commence nine days before the day of the election and shall end thirty days thereafter.

COMELEC can change the election period only in "special cases."

§10

Bona fide candidates for any public official shall be free from any form of harassment and discrimination.

Penera v. COMELEC, G.R. 181613, November 25, 2009

Any person who files his certificate of candidacy within the filing period shall only be considered a candidate at the start of the campaign period for which he filed his certificate of candidacy.

§11

Funds certified by the Commission as necessary to defray the expenses for holding regular and special elections, plebiscites, initiatives, referenda, and recalls, shall be provided in the regular or special appropriations and, once approved, shall be released automatically upon certification by the Chairman of the Commission.

Funds required for elections, etc., must be:

1. In the regular/special appropriations law; and
2. Automatically released upon certification by the COMELEC chair.

D - Commission on Audit

§1

- (1) There shall be a Commission on Audit composed of a Chairman and two Commissioners, who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, Certified Public Accountants with not less than ten years of auditing experience, or members of the Philippine Bar who have been engaged in the practice of law for at least ten years, and must not have been candidates for any elective position in the elections immediately preceding their appointment. At no time shall all Members of the Commission belong to the same profession.
- (2) The Chairman and the commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. *Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Members for three years, without reappointment.* Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

Composition of the COA:

1. The chairman
2. Two commissioners

Qualifications of a COA member:

1. A natural-born citizen
2. At least 35 years old
3. Be either a lawyer with 10 years of law practice, or a CPA with 10 years of auditing experience
4. Must not have been a candidate for any elective position in the elections immediately preceding their appointment.
5. At no time shall all three COA members belong to the same profession. There should always be a lawyer and an accountant.

Rules on appointments:

1. They need confirmation by the Commission on Appointments
2. They serve for seven years without reappointment
3. Appointment to any vacancy shall be only for the unexpired term
4. The terms are staggered
 - a. First appointments were reckoned from Feb. 2, 1987.
5. Temporary or acting appointments are not allowed

Mison v. COA, G.R. 91429, July 13, 1990

The COA, as a collegial body, had the jurisdiction to decide any case brought before it within 60 days from the date of its submission for resolution, subject to review by the Supreme Court on Certiorari.

- The phrase "for the commission" must be taken as entirely accurate, not only because of the familiar presumption of regularity of performance of official functions, but because the records do show Comm. Fernandez's full concurrence with the decision in said endorsement.

Funa v. Villar, G.R. 192791, April 24, 2012

Once the chairman or commissioner shall have served the full term of seven years, then he can no longer be reappointed to either the position of chairman or commissioner.

- However, this does not prohibit a promotional appointment from commissioner to chairman as long as the commissioner has not served the full term of seven years, and that the appointment to any vacancy shall only be for the unexpired portion of the term of the predecessor.

§2 ★

- (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis:
 - (a) Constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;
 - (b) Autonomous state colleges and universities;
 - (c) Other government-owned or controlled corporations and their subsidiaries; and
 - (d) Such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit such audit as a condition of subsidy or equity.

However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and

other supporting papers pertaining thereto.

- (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

Scope of auditing authority

DBP v. COA, G.R. 88435, January 16, 2002



The clear and unmistakable conclusion from a reading of the entire Section 2 is that the COA's power to examine and audit is non-exclusive. On the other hand, the COA's authority to define the scope of its audit, promulgate auditing rules and regulations, and disallow unnecessary expenditures is exclusive.

DBP v. COA, G.R. 107016, March 11, 1994



Regardless of the result of the pre-audit, COA is so empowered to conduct a post-audit (no estoppel).

Almadovar v. Pulido-Tan, G.R. 213330, November 16, 2015



In the event that the need for the legal services of a private lawyer cannot be avoided or is justified under extraordinary or exceptional circumstances, the written conformity and acquiescence of the OGCC and the written concurrence of the COA shall first be secured. The failure to secure the written concurrence makes the engagement of the private lawyer or law firm unauthorized.

Taisei Shimizu Joint. Venture v. COA, G.R. 238671, June 2, 2020



There is nothing in the Constitution, laws, or even the COA rules expressly granting the COA original and exclusive jurisdiction over money claims due from or owing to the government.

1. Once a court or other adjudicative body validly acquires jurisdiction over a money claim against the government, it exercises and retains jurisdiction over the subject matter to the exclusion of all others, including the COA.
2. The COA has no appellate review power over the decisions of any other court or tribunal.
3. The COA is devoid of power to disregard the principle of immutability of final judgments (res judicata sets in).
4. The COA's exercise of discretion in approving or disapproving money

claims that have been determined by final judgment is akin to the power of an execution court.

§3

No law shall be passed exempting any entity of the Government or its subsidiaries in any guise whatsoever, or in any investment of public funds, from the jurisdiction of the Commission on Audit.

Congress cannot pass a law shielding certain funds from being audited.

Reportorial requirement

§4

The Commission shall submit to the President and the Congress, within the time fixed by law, an annual report covering the financial condition and operation of the Government, its subdivisions, agencies, and instrumentalities, including government-owned or controlled corporations, and non-governmental entities subject to its audit, and recommend measures necessary to improve their effectiveness and efficiency. It shall submit such other reports as may be required by law.

AARs should be out by June 30. However, for 2024, COA pushed it to December 1 to give time for agencies to respond, citing §99 of the GAA. 🙄

ARTICLE X. Local Government

General Provisions

§1

The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

§2

The territorial and political subdivisions shall enjoy local autonomy.

Local autonomy means that the LGUs have certain powers granted by the constitution and laws that may not be curtailed by the national government.

Not decentralization of power

Ganzon v. CA, G.R. 95245, August 5, 1991

10

The constitution did not intend for the sake of local autonomy, to deprive the legislature of all authority over municipal corporations, in particular, concerning discipline.

- Autonomy does not, after all, contemplate making mini-states out of local government units.
- The constitution did not intend to divest the legislature of its right, or the president of her prerogative as conferred by existing legislation, to provide administrative sanctions against local officials.

Pimentel v. Ochoa, G.R. 195770, July 17, 2012



The national government is not precluded from taking a direct hand in the formulation and implementation of national development programs especially where it is implemented locally in coordination with the LGUs concerned.

Ordinance power

Magtajas v. Pryce Properties Corp., G.R. 111097, July 20, 1994 ♥



Local councils exercise only delegated legislative powers conferred on them by Congress as the national lawmaking body. Hence, ordinances must conform to the following substantive requirements:

1. It must not contravene the constitution or any statute.
2. It must not be unfair or oppressive.
3. It must not be partial or discriminatory.
4. It must be general and consistent with public policy.
5. It must be unreasonable.

Local autonomy vis-a-vis personnel appointments

San Juan v. CSC, G.R. 92299, April 19, 1991



Where a law is capable of two interpretations, one in favor of centralized power in Malacañang and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy.

- Hence, when the CSC interpreted the recommending power of the Provincial Governor as purely directory, it went against the letter and spirit of the constitutional provisions on local autonomy.

City of General Santos v. COA, G.R. 199439, April 22, 2014



Local autonomy grants local governments the power to streamline and reorganize, as may be inferred from §76 (organizational structure and staffing pattern) and §16 (general welfare) of the LGC.

- These allow an interpretation as granting the city to create its organizational development plan.
- Designing and implementing an LGU's own "organizational structure and staffing pattern" implies the power to revise and reorganize.

§3

The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

That's the Local Government Code of 1991 or RA 7160. The law took effect on Jan. 1, 1992.

§4 ★

The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

Supervision vs. control

Province of Negros Occidental v. COA, G.R. 182574, September 28, 2010



Since LGUs are subject only to the power of general supervision of the President, the president's authority is limited to seeing to it that rules are followed and laws are faithfully executed.

Province of Batangas v. Romulo, G.R. 152774, May 27, 2004

Consistent with the principle of local autonomy, the constitution confines the president's power over the LGUs to one of general supervision. This provision has been interpreted to exclude the power of control.

Taxing power of LGUs

§5 ★

Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

FDCP v. Colon, G.R. 203754, June 16, 2015

By earmarking the amusement taxes imposed by the LGUs in favor of FDCP and film producers, Congress appropriated the LGUs' funds as if it was in control of such under the guise of setting a limitation on the LGUs' exercise of their delegated taxing power.

Just share

§6 ★

Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

Scope of 'just share'

Mandanas v. Ochoa, G.R. 199802, July 3, 2018 ♥

The phrase "national internal revenue taxes" engrafted in Section 284 (LGC) is undoubtedly more restrictive than the term "national taxes" written in Section 6. As such, Congress has actually departed from the letter of the 1987 Constitution stating that national taxes should be the base from which the "just share" of the LGU comes.

- The exclusion of other national taxes like customs duties from the base for determining the just share of the LGUs contravened the

express constitutional edict in §6.

'Automatically released'

ACCORD v. Zamora, G.R. 144256, June 8, 2005

§6 enjoins both the legislative and executive branches of the government from withholding the release of the [national tax allotment (NTA)].

- Hence, Congress is not authorized to hinder/impede the automatic release of the [NTA].
- The only allowable exception to the mandatory automatic release is if the revenue for the current fiscal year is less than 40% of the collections of the preceding third fiscal year.

Villafuerte v. Robredo, G.R. 195390, December 10, 2014

Notwithstanding the local fiscal autonomy being enjoyed by LGUs, they are still under the supervision of the president and may be held accountable for malfeasance or violations of existing laws.

- The supervisory powers of the president are broad enough to embrace the power to require the publication of certain documents as a mechanism of transparency.

Equitable share in the national wealth

§7

Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

Hence, the **LGUs' sources of funds** are:

1. Local taxes, fees, and charges
2. Just share in the national taxes (NTA)
3. Share in the proceeds from natural resources within their areas
4. Other sources of revenues that it may impose under the LGC

§8 ★

The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the

continuity of his service for the full term for which he was elected.

The qualifications of local officials are set by the LGC.

- The term of office is three years.
- The term limit is three consecutive terms.
 - Voluntary renunciation is not considered an interruption.

Foundational doctrines

Borja v. COMELEC, G.R. 133495, September 3, 1998 ♥

Two conditions for the application of the disqualification provisions:

1. That the local official concerned has been elected three consecutive times, and
2. That he has fully served three consecutive terms.

Aldovino v. COMELEC, G.R. 184836, December 23, 2009 ♥

The interruption of a term exempting an elective official from the three-term limit rule is one that involves no less than the involuntary loss of title to office.

- Loss of office by operation of law, being involuntary, is an effective interruption of service.
- An interruption occurs when the term is broken because the office holder lost the right to hold on to his office.

Cases!

Lonzanida v. COMELEC, G.R. 135150, July 28, 1999

Lonzanida was elected twice as mayor. In his third term, he was ousted due to a successful electoral contest. He eventually vacated the office before finishing his third term.

- He may run again. Both requisites are absent.

Adormeo v. COMELEC, G.R. 147927, February 4, 2002

Talaga was elected mayor in two consecutive terms. He ran for a third time and lost. However, a recall election came up for the remaining term of that supposed third term.

- He may run again. Both requisites are absent.

Socrates v. COMELEC, G.R. 154512, November 12, 2002

Hagedorn served three consecutive terms as mayor. However, a recall

election came up during his “break.”

- He may run again. Both requisites are absent.

Ong v. Alegre, G.R. 163295, January 23, 2006

Ong served two full terms. After serving his third term in full, his election was declared invalid.

- He cannot run again despite the invalidation of his third victory. Both requisites are present.

Dizon v. COMELEC, G.R. 182088, January 30, 2009

Dizon served for two terms as mayor. A month before his third term ended, his election was declared invalid.

- He may run again. The 2nd requisite is absent, and his ouster was not a voluntary renunciation of office.

Bolos v. COMELEC, G.R. 184082, March 17, 2009

Bolos was thrice elected as punong barangay (PB). During his third term, he was elected as municipal councilor.

- He may not run again as PB. His election as councilor was a voluntary renunciation of his post as PB.

Montebon v. COMELEC, G.R. 180444, April 8, 2008

Potencioso was elected for three consecutive terms as councilor. During his third term, he succeeded as vice mayor by operation of law.

- He may run again. His assumption as VM was not a voluntary renunciation as it was by operation of law.

Aldovino v. COMELEC, G.R. 184836, December 23, 2009

Aldovino was elected city councilor thrice. During his third term, he was preventively suspended by the Sandiganbayan.

- He may not run again. Both requisites are present.
 - Preventive suspension does not interrupt an elective official's term.

Cityhood

Latasa v. COMELEC, G.R. 154829, December 10, 2003

While the city acquired new corporate existence, this does not mean that the office of the municipal mayor would now be construed as a different post as that of the office of the city mayor.

- Latasa, who already served three terms as mayor of Digos, cannot run

for the fourth time as Digos City mayor.

Redistricting

Naval v. COMELEC, G.R. 207851, July 8, 2014

A Sanggunian member may not run a fourth consecutive term in another district because the three-term limit rule must be strictly implemented.

- This is so because Naval's former second district was simply renamed the third district.

§9

Legislative bodies of local government shall have sectoral representation as may be prescribed by law.

The LGC provides for a sectoral representative for women, workers, indigenous peoples, urban poor, disabled persons, among others.

§10 ★

No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the Local Government Code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

To create a new political unit, the following requisites must concur:

1. Complies with the criteria established in the LGC; and
2. Approved by a majority of the votes cast in the plebiscite in the political units directly affected.

Requisites for cityhood:

1. Locally generated income of P100 million for the last two consecutive years; **and**
2. A population of at least 150,000, **or** a contiguous territory of 100 square kilometers with *contiguity not being a requisite for areas that are on two or more islands*.

Requisites for provincehood:

1. Average annual income of at least P20 million; **and**
2. A population of at least 250,000, **or** a contiguous territory of at least

2,000 square kilometers.

Criteria by the LGC

League of Cities v. COMELEC, G.R. 176951, April 12, 2011

Congress may, in the exercise of its legislative power, exempt municipalities from the income criteria for cityhood.

Navarro v. Ermita, G.R. 180050, April 12, 2011

When the province to be created consists of one or more islands, it is exempt from the land area requirement.

- While this does not appear under §461, LGC (province), there appears neither rhyme nor reason why this exemption should apply to cities and municipalities, but not to provinces. (lol)

Plebiscite requirement

Tan v. COMELEC, G.R. 73155, July 11, 1986 ♥

To satisfy [CONST. art. X, §10] in the creation of a new province, the plebiscite must be conducted both in the mother province and the new province.

Umali v. COMELEC, G.R. 203974, April 22, 2014

Conversion to a highly urbanized city is a substantial alteration of boundaries governed by CONST. art. X, §10.

- Hence, the mother province must be allowed to join the plebiscite.

§11

The Congress may, by law, create special metropolitan political subdivisions, subject to a plebiscite as set forth in Section 10 thereof. The component cities and municipalities shall retain their basic autonomy and shall be entitled to their own local executives and legislative assemblies. The jurisdiction of the metropolitan authority that will hereby be created shall be limited to basic services requiring coordination.

The MMDA

MMDA v. Garin, G.R. 130230, April 15, 2005

The MMDA is not vested with police power. All its functions are administrative in nature.

- MMDA is not an LGU. It is a development authority, an agency whose functions are administrative in nature.

FEJODAP v. Manila, G.R. 209479, July 11, 2023



The MMDA has all the rule-making powers relative to traffic management in Metro Manila.

MMDA has exclusive authority to enforce traffic laws, rules and regulations, and Metro Manila LGUs may participate in such functions only when their enforcers are deputized by the MMDA.

HUC-province relationship

§12

Cities that are highly urbanized, as determined by law, and component cities whose charters prohibit their voters from voting for provincial elective officials, shall be independent of the province. The voters of component cities within a province, whose charters contain no such prohibition, shall not be deprived of their right to vote for elective provincial officials.

The following are independent of the provinces:

1. HUCs
2. Component cities whose charters prohibit voters from voting for provincial elective officials

§13

Local government units may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance with law.

§14

The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region.

Autonomous Region

§15

There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.

§16

The President shall exercise general supervision over autonomous regions to ensure that the laws are faithfully executed.

§17

All powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government.

Autonomous regions must exist within:

1. The framework of the constitution
2. The national sovereignty
3. The territorial integrity

Reserved powers – Powers not granted to the autonomous regions are in the national government.

“Regions”

Ordillo v. COMELEC, G.R. 93054, December 4, 1990

The term "region" in CONST. art. X, §15 means two or more provinces.

- Hence, a single province (Ifugao) may not comprise the Cordillera Autonomous Region.

Tribal courts

Sps. Badua v. CBA, G.R. 92649, February 14, 1991

Tribal courts are not a part of the Philippine judicial system which consists

of the Supreme Court and the lower courts which have been established by law.

Creation of a province, not allowed

Sema v. COMELEC, G.R. 177597, July 18, 2008

The Regional Assembly cannot create new provinces and cities because that means they are entitled to at least one district representative per CONST. art. VI, §5(3). However, only Congress can create legislative districts, and it cannot delegate this to the Regional Assembly.

Territorial integrity

Province of North Cotabato v. GRP, G.R. 183591, October 14, 2008 ♥

The constitution does not contemplate any state in this jurisdiction other than the Philippine State, much less does it provide for a transitory status that aims to prepare any part of Philippine territory for independence.

- Hence, an “associative” entity is not allowed.
 - An association is formed when one state (associate) delegates certain responsibilities to the other (principal) while maintaining its international status as a state.

§18

The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

Majority requirement

Abbas v. COMELEC, G.R. 89651, November 10, 1989

The creation of the autonomous region is made to depend, not on the total majority vote in the plebiscite, but on the will of the majority in each of the constituent units and the provision underscores this.

Amending the Organic Act

Datu Michael Abas Kida v. Senate, G.R. 196271, February 28, 2012

Only those aspects specifically mentioned in the constitution which Congress must provide for in the Organic Act require ratification through a plebiscite.

These amendments are those that relate to:

1. Basic structure of the regional government;
2. The region's judicial system (i.e. special courts with personal, family and property law jurisdiction); and
3. The grant and extent of the legislative powers constitutionally conceded to the regional government under CONST. art. X, §20.

§19

The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.

§20

Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

1. Administrative organization;
2. Creation of sources of revenues;
3. Ancestral domain and natural resources;
4. Personal, family, and property relations;
5. Regional urban and rural planning development;
6. Economic, social, and tourism development;
7. Educational policies;
8. Preservation and development of the cultural heritage; and
9. Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

This is a nonexhaustive list and no. 9 authorizes Congress to delegate more

powers “for the promotion of the general welfare” of the region.

- Such change requires the approval of the region’s voters through a plebiscite (*see Datu Michael Abas Kida*).

§21

The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised, and utilized in accordance with applicable laws. The defense and security of the regions shall be the responsibility of the National Government.

The AFP remains responsible for the defense and security of the autonomous regions.

ARTICLE XI. Accountability of Public Officers

§1 ★

Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

I think this is the most beautiful provision in the constitution.

Carpio-Morales v. CA, G.R. 217126, November 10, 2015



Condonation doctrine is inconsistent with the concept of public office is a public trust and accountability to the people at all times under the 1987 Constitution.

- Election is not a mode of condoning an administrative offense.
- But the president may pardon it (*see Llamas v. Orbos*).

Impeachable officials and grounds

§2 ★

The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Impeachable officials:

1. President
2. Vice president
3. Supreme Court justices
4. Members of the constitutional commissions
5. Ombudsman

⚠ *This is an exclusive list. Other officials may be removed, but not by impeachment.*

Grounds for impeachment:

1. Culpable violation of the constitution
2. Treason
3. Bribery
4. Graft and corruption
5. Other high crimes
6. Betrayal of public trust

Republic v. Sereno, G.R. 237428, May 11, 2018

§2 uses the permissive term “may” which, in statutory construction, denotes discretion and cannot be construed as having mandatory effect. An option to remove by impeachment admits of an alternative mode of effecting the removal (e.g. *quo warranto*).

Impeachment process

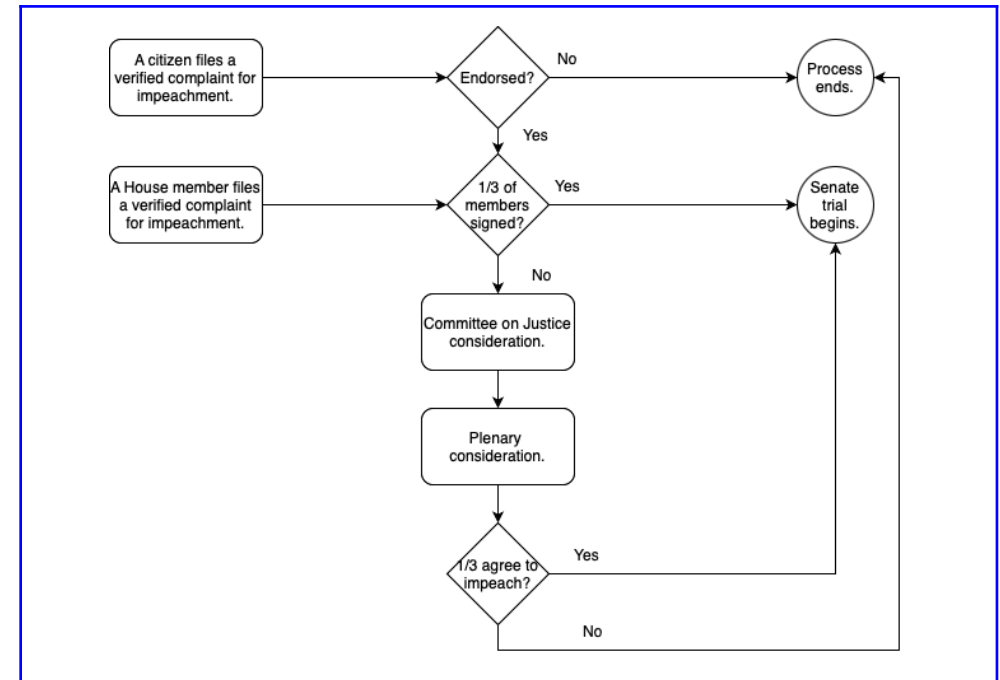
§3 ★

- (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.
- (2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee,

after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

- (3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each member shall be recorded.
- (4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and the trial by the Senate shall forthwith proceed.
- (5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.
- (6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.
- (7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law.
- (8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

Impeachment proceedings in the House of Representatives



One-year bar

Francisco v. House of Representatives, G.R. 160261, November 10, 2003 ♥

“Initiate” refers to the filing of the impeachment complaint coupled with Congress' taking initial action of said complaint. The initial action taken by the House on the complaint is the referral of the complaint to the Committee on Justice.

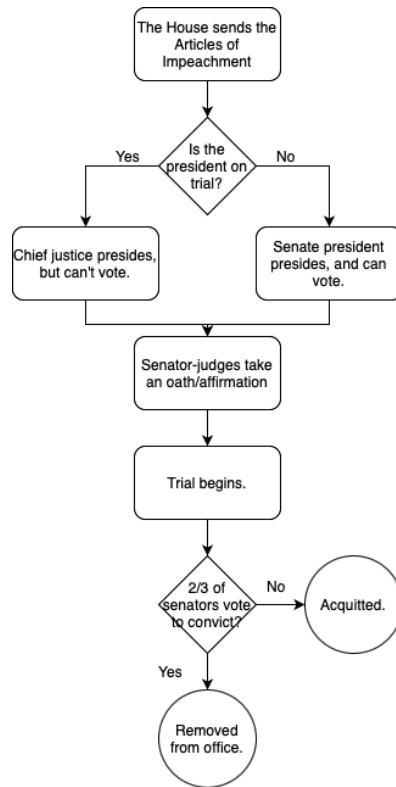
- Initiation = Filing + Referral

Gutierrez v. House Committee on Justice, G.R. 193459, February 15, 2011

Hence, multiple complaints are allowed to be filed so long as they are *simultaneously* referred to the committee.

- This does not violate the one-year bar.

Impeachment trial in the Senate



The Sandiganbayan

§4

The present anti-graft court known as Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereinafter may be provided by law.

The Sandiganbayan was created by PD 1606 in Dec. 1978.

- It is statutorily created.
- Take note that only the Supreme Court is the constitutionally-created court.

Jurisdiction (CCC, pp. 209-210):

- Graft and corrupt practices of public officers and employees
- Offenses or felonies committed by these public officers and

employees in relation to their office

- Over private individuals when they are charged as co-principals, accomplices, or accessories with the public officers.

The Ombudsman

§5

There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

§6

The officials and employees of the Office of the Ombudsman, other than the Deputies, shall be appointed by the Ombudsman, according to the Civil Service Law.

§7

The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

§8

The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and independence, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have, for ten years or more, been a judge or engaged in the practice of law in the Philippines.

During their tenure, they shall be subject to the same disqualifications and prohibitions as provided for in Section 2 of Article IX-A of this Constitution.

§9

The Ombudsman and his Deputies shall be appointed by the President from a list of at least six nominees prepared by the Judicial and Bar Council, and from a list of three nominees for every vacancy thereafter. Such appointments shall require no confirmation. All vacancies shall be filled within three months after they occur.

§10

The Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary which shall not be decreased during their term of office.

§11

The Ombudsman and his Deputies shall serve for a term of seven years without reappointment. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office.

Composition of the Office of the Ombudsman:

1. Ombudsman
2. Deputy ombudsman
 - a. Overall deputy
 - b. Deputy for Luzon
 - c. Deputy for Visayas
 - d. Deputy for Mindanao
 - e. Deputy for military and other law enforcement offices
3. Special prosecutor (SP)
 - a. The SP prosecutes criminal cases within the jurisdiction of the Sandiganbayan.

Qualifications of the Ombudsman:

1. Natural-born citizen
2. At least 40 years old
3. Of recognized probity and independence
4. A lawyer and a judge *or* engaged in the practice of law for at least 10 years
5. Must not have been a candidate for any elective position in the elections immediately preceding their appointment

Rules on appointments:

1. They serve for seven years without reappointment
2. Appointed by the president from a shortlist prepared by the JBC
3. They don't need confirmation by the Commission on Appointments

Ifurung v. Carpio-Morales, G.R. 232131, April 24, 2018

1. The OMB is not a constitutional commission because it is not a collegial body.
 - a. They only have the rank and salary of the constitutional commissions(§10).
2. In any vacancy for the positions of Ombudsman and the deputies,

whether as a result of the expiration of the term or death, resignation, removal, or permanent disability of the predecessor, the successor shall always be appointed for a **full term of seven years**.

- a. The rotation plan in *Gaminde* does not apply.

	Constitutional commissions	Ombudsman
Filling vacancies	Only for the unexpired term	Seven years
Start of term	Reckoned from Feb. 2, 1987	Date of appointment
JBC shortlist required?	No	Yes
Confirmation required?	Yes	No

Independence of the OMB

Gonzales III v. Office of the President, G.R. 196231, January 28, 2014

Subjecting the *deputy ombudsman* to discipline and removal by the President, whose own alter egos and officials in the executive department are subject to the Ombudsman's disciplinary authority, cannot but seriously place at risk the independence of the Office of the Ombudsman itself.

- The president cannot remove the deputy ombudsman from office.

Opinion of Leonen, J. (controlling):

By clear provision of the constitution, it is only the Office of the Ombudsman, which includes her Deputies, that is endowed with constitutional independence.

- The president has the power to remove the *special prosecutor* from office.

Summarizing:

1. **Ombudsman** – May only be removed through impeachment
2. **Deputy ombudsman** – Cannot be removed by the president
3. **Special prosecutor** – May be removed by the president

“Any form” of complaint

§12

The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints **filed in any form or manner** against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

“Any form or manner”

Almonte v. Vasquez, G.R. 95367, May 23, 1995



The Ombudsman can act on complaints that are unsigned and unverified.

- A formal complaint is not really necessary (citing *Diaz v. Sandiganbayan*).

No jurisdiction over the judiciary

Maceda v. Vasquez, G.R. 102781, April 22, 1993



In the absence of any administrative action taken against the judge by the Supreme Court, the investigation being conducted by the Ombudsman encroaches into the Supreme Court's power of administrative supervision over all courts and its personnel, in violation of the doctrine of separation of powers.

RA 6770, §21.

Official Subject to Disciplinary Authority; Exceptions.

The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, *except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.*

⚠️ *But it has the power to investigate any serious misconduct by impeachable officials to file an impeachment complaint, if warranted (see §22) ([watch this](#)).*

§13 ★

The Office of the Ombudsman shall have the following powers, functions, and duties:

- (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
- (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
- (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and **recommend** his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
- (4) Direct the officer concerned, in any appropriate case, and **subject to such limitations as may be provided by law**, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
- (7) Determine the cause of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
- (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties **as may be provided by law**.

Scope of administrative disciplinary authority

Gupilan-Aguilar v. Ombudsman, G.R. 197307, February 26, 2014



Administrative disciplinary authority of the Ombudsman does not end with a recommendation to punish.

- Penalties imposed by the Ombudsman are immediately executory.
- An appeal shall not stop the decision from being executory (AO 17).

Ombudsman v. Apolonio, G.R. 165132, March 7, 2012



The Ombudsman has the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee, in the exercise of its administrative disciplinary authority.

- That the constitution merely indicated a "recommendatory" power in §13 did not deprive Congress of its plenary legislative power to vest the Ombudsman powers beyond those stated.

Power to preventively suspend an official

Buenasada v. Flavier, G.R. 106719, September 21, 1993



Under the Constitution, the Ombudsman is expressly authorized to recommend to the appropriate official the discipline or prosecution of erring public officials or employees. In order to make an intelligent determination whether to recommend such actions, the Ombudsman has to conduct an investigation. In turn, in order for him to conduct such investigation in an expeditious and efficient manner, he may need to suspend the respondent.

- Preventive suspension need not be a full-blown hearing as it is a procedural act, not a penal one.

Deputize prosecutors

Lastimosa v. Vasquez, G.R. 116801, April 6, 1995



In the exercise of his power, the Ombudsman is authorized to call on prosecutors for assistance.

When a prosecutor is deputized, he comes under the "supervision and control" of the Ombudsman which means that he is subject to the power of the Ombudsman to direct, review, approve, reverse or modify his (prosecutor's) decision.

Judicial interference (prosecutorial discretion of the Ombudsman)

PCGG v. Desierto, G.R. 140231, July 9, 2007



The Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigative and prosecutorial powers without good and compelling reasons to indicate otherwise, except:

1. When necessary to afford adequate protection to the constitutional rights of the accused
2. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (see e.g. *Joson v. Torres*).
3. When there is a prejudicial question which is subjudice.
4. When the acts of the officer are without or in excess of authority.
5. Where the prosecution is under an invalid law, ordinance or regulation (see *Carpio-Morales v. CA*).
6. When double jeopardy is clearly apparent.
7. When the court has no jurisdiction over the offense.

8. Where it is a case of persecution rather than prosecution. (*Huh*)
9. Where the charges are manifestly false and motivated by the lust for vengeance.
10. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.

§14

The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released.

Carpio-Morales v. CA, G.R. 217126, November 10, 2015



The concept of Ombudsman's independence covers three things:

1. *Creation by constitution* – The office cannot be abolished, nor its constitutionally specified functions and privileges, be removed, altered, or modified by law, unless the Constitution itself allows, or an amendment thereto is made.
2. **Fiscal autonomy** – The office "may not be obstructed from its freedom to use or dispose of its funds for purposes germane to its functions, hence, its budget cannot be strategically decreased by officials of the political branches of government so as to impair said functions
3. *Insulation from executive supervision and control* – Those within the ranks of the office can only be disciplined by an internal authority

§15

The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

§15 applies only to civil actions for recovery of ill-gotten wealth, and not to criminal cases such as the complaint against the respondents.

- Because, crimes have a statute of limitations (prescription) ([watch this](#)).
- But the recovery of ill-gotten wealth is forever allowed!

Prohibition on loans

§16

No loan, guaranty, or other form of financial accommodation for any business purpose may be granted, directly or indirectly, by any government-owned or controlled bank or financial institution to the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, and the Constitutional Commissions, the Ombudsman, or to any firm or entity in which they have controlling interest, during their tenure.

No GOCC or GFI may grant loans **for any business purpose** to:

1. President
2. Vice president
3. Cabinet members
4. Members of Congress
5. Supreme Court justices
6. Members of the CSC, COMELEC and COA
7. Ombudsman

or any firm which they have controlling interest, but only during their tenure.

The SALN

§17

A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities and net worth. In case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

There are two commands in §17:

- The first prescribes the filing of a declaration of assets and liabilities.
 - This is applicable to all public officers and employees regardless of rank.
- The second prescribes public disclosure of assets and liabilities in the manner provided by law.
 - This is applicable only to:
 - The President,
 - the Vice-President,
 - members of the Cabinet,
 - the Congress,
 - the Supreme Court, and
 - the Constitutional Commissions, and

- other constitutional offices.
- The legislature may also require public disclosure of the assets and liabilities of other officials.

Prohibition on dual allegiance

§18

Public officers and employees owe the State and this Constitution allegiance at all times and any public officer or employee who seeks to change his citizenship or acquire the status of an immigrant of another country during his tenure shall be dealt with by law.

Caasi v. CA, G.R. 88831, November 8, 1990



§18 does not apply when the person acquired the status of an immigrant before he was elected to public office, not "during his tenure."

- Hence, it only applies to incumbent public officers.
- However, §68 of the OEC prohibits any person who is a permanent resident or immigrant of a foreign country from running for any elective office, unless he has waived those.

ARTICLE XII National Economy and Patrimony

General economic policy

§1

The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises,

including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.

Three goals of the national economy:

1. More equitable distribution of opportunities, income, and wealth
2. Sustained increase in the amount of goods and services produced by the nation for the benefit of the people
3. Expanding productivity as the key to raising the quality of life for all, especially the underprivileged

§1 must be complemented by **Art. II, §19**, which commands the development of a self-reliant and independent national economy, and **Art. II, §20**, which recognizes the indispensable role of the private sector (*see also Garcia v. BOI*).

§2 ★

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's maritime wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In

such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

¶1: Regalian doctrine

The state owns:

1. All the lands of the public domain
2. Waters
3. Minerals, coal, petroleum, and other mineral oils
4. All forces of potential energy
5. Fisheries
6. Forests of timber
7. Wildlife
8. Flora and fauna
9. Other natural resources

General rule: All natural resources shall not be alienated.

- **Exception:** Agricultural lands of the public domain may be alienated.

EDU

The exploration, development, and utilization (EDU) of natural resources shall be under the **full control and supervision of the state**:

- The state itself can do such exploitation, or
- Enter into co-production, JV, or production-sharing agreements with Filipinos or corporations or associations whose capital is >60% Filipino-owned, subject to the following conditions:
 - A period not exceeding 25 years
 - For water rights other than hydropower, the limit is not 25 years, but beneficial use.
 - Comply with conditions set by law

Torrens title

Lee Hong Hok v. David, G.R. L-30389, December 27, 1972



It is well-settled that no public land can be acquired by private persons without any grant, express or implied, from the government.

- It is indispensable then that there be a showing of a title from the state or any other mode of acquisition recognized by law.

Water rights

IDEALS v. PSALM, G.R. 192088, October 9, 2012



While the sale of a hydroelectric power plant to a foreign corporation does not violate §2, the transfer of water rights to a foreign corporation, however, is unconstitutional.

- Water right – Privilege granted by the government to appropriate and use water.
- A water right may be transferred, provided that the 60-percent nationality rule is complied with.

“Exploration”

Ocampo v. Macapagal-Arroyo, G.R. 182734, January 10, 2023



“Exploration,” as used in §2, refers to the search or discovery of something (verba legis).

- Hence, pre-exploration is under the ambit of “exploration,” which must be under the full control and supervision of the state.

60-40 rule

Narra Nickel Mining v. Redmont, G.R. 195580, April 24, 2014



There are two acknowledged tests in determining the nationality of a corporation:

1. **Control test** – shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality
 - Still the default test in determining whether a Filipino corporation may be allowed to undertake EDU.
2. **Grandfather rule** – if the percentage of the Filipino ownership in the corporation or partnership is less than 60%, only the number of shares corresponding to such percentage shall be counted as Philippine nationality
 - The combined totals in the investing corporation and the investee corporation must be traced.
 - This rule applies where corporate layering is present, and there is doubt in the 60-40 Filipino-equity.

Public trust doctrine

MAYNILAD v. DENR, G.R. 202897, August 6, 2019 ♥



The **public trust doctrine** speaks of an imposed duty upon the state and its representative of continuing supervision over the taking and use of appropriated water.

- It impresses upon states the affirmative duties of a trustee to manage

these natural resources for the benefit of present and future generations and embodies key principles of environmental protection: stewardship, communal responsibility, and sustainability

- The public is regarded as the beneficial owner of trust resources, and courts can enforce the public trust doctrine even against the government itself.

¶2: Maritime wealth

The state should **protect** the:

1. Internal/archipelagic waters,
2. TS, and
3. EEZ

The use of these are exclusive to Filipinos.

⚠ **Correlate this with CONST. art. I.**

¶3: Small-scale use of natural resources

General rule (in par. 1): The state has full control and supervision over exploitation of natural resources.

- **Except** that Congress may, by law, allow–
 - Small-scale utilization of natural resources by Filipino citizens; and
 - Cooperative fish farming, prioritizing subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

¶4: Agreements with foreign-owned corporations

The president may enter into agreements with foreign-owned corporations (service contracts) for–

1. Large scale-exploration, development, and utilization of minerals, petroleum, and other mineral oils
2. According to the conditions provided by law
3. Based on real contributions to the economic growth and general welfare of the country.

¶5, reportorial requirement: The president shall notify Congress of every SC within 30 days from its execution.

“Involving either technical or financial assistance”

La Bugal-B'laan Tribal Assn. v. Ramos, G.R. 127882, December 1, 2004



The use of the word "involving" implies that these agreements with foreign corporations are not limited to mere financial or technical assistance.

- The use of the word "involving" signifies the possibility of the inclusion of other forms of assistance or activities having to do with, otherwise related to or compatible with financial or technical assistance.
- Agreements involving either technical or financial assistance referred to in paragraph 4 are service contracts.

Then Atty. Marvic Leonen argued this case for the IP community. [Watch.](#)

Opinion of Carpio-Morales, J. (original decision, Jan. 27, 2004):

While, in theory, the state owns these natural resources — and Filipino citizens, their beneficiaries — *service contracts actually vested foreigners with the right to dispose, explore for, develop, exploit, and utilize the same.* Foreigners, not Filipinos, became the beneficiaries of Philippine natural resources. This arrangement is clearly incompatible with the constitutional ideal of nationalization of natural resources, with the Regalian doctrine, and on a broader perspective, with Philippine sovereignty.

SC validity requirements

Resident Marine Mammals v. Reyes, G.R. 180771, April 21, 2015



Service contracts with respect to minerals, petroleum and other mineral oils must comply with:

1. A general law that will set standard or uniform terms, conditions and requirements of the service contract;
2. The president as the signatory; and
 - a. The alter ego principle will not apply because the constitution requires that the president herself must sign the service contract.
3. Within 30 days from signing, the president shall report it to Congress.

Lands of the public domain

§3 ★

Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and natural parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one

thousand hectares in area. Citizens of the Philippines may not lease more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.

Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

Lands of the public domain are:

1. Agricultural
 - a. Can be further classified by law
 - b. Can be alienated
2. Forest or timber
3. Mineral lands
4. Natural parks

Rules for leasing/owning alienable lands of the public domain (agricultural):

- Private corporations:
 - Can only lease (not own!)
 - For 25 years (and renew for another 25 years)
 - Lease should not exceed 1,000 ha.
- Filipinos, either:
 - Lease not more than 500 ha., or
 - Acquire/own not more than 12 ha. by purchase, homestead, or grant

CA 141, §6: The president, upon recommendation of the secretary of agriculture, shall from time to time classify the lands of the public domain, and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

Director of Lands v. Aquino, G.R. L-31688, December 17, 1990



Forest lands or forest reserves are incapable of private appropriation and possession thereof, however long, cannot convert them into private properties.

- The land must first be released from its classification as forest land and reclassified as agricultural land.
- A **positive act of the government** is needed to declassify a forest land into alienable or disposable land for agricultural or other purposes.

*Forest limits law***§4**

The Congress shall, as soon as possible, **determine by law** the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide, for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

*IPRA***§5**

The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

Indigenous Peoples' Rights Act 1997

Ancestral domain – All areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, or continuously.

Ancestral lands – Land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present.

- Actual occupation, possession, and utilization is required for ancestral lands.

Cruz v. DENR, G.R. 135385, December 6, 2000

As the votes were equally divided (7 to 7) and the necessary majority was not obtained, the case was redeliberated upon. However, after redeliberation, the voting remained the same.

- Therefore, the **IPRA Law is not unconstitutional.**

*Principle of solidarity***§6**

The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to **promote distributive justice** and to intervene when the common good so demands.

*Foreign ownership of land***§7**

Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

§8

Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, **subject to limitations provided by law.**

Who may acquire private lands?

1. Filipino citizens
2. Filipino corporations
3. Aliens, but only through intestate succession
4. Natural-born citizens who lost their citizenship

General rule: Non-Filipinos cannot acquire or hold title to private lands or to lands of the public domain.

- **Exception:** Legal succession

*“Hereditary succession”***Testate Estate of Ramirez v. Ramirez, G.R. L-27952, February 15, 1982**

The constitutional provision (§8) which enables aliens to acquire private lands **does not extend to testamentary** succession.

- It must be intestate.
- Still, a usufruct in favor of an alien is allowed as it does not vest title to the land in the usufructuary and it is the vesting of title to land in favor of aliens which is proscribed by the Constitution.

Halili v. CA, G.R. 113539, March 12, 1998

If land is invalidly transferred to an alien who subsequently becomes a citizen or transfers it to a citizen, the flaw in the original transaction is considered cured and the title of the transferee is rendered valid, i.e., the following are valid:

1. Filipino → Alien → alien *but becomes Filipino*; and
2. Filipino → Alien → Filipino citizen.

*§8, and the implementing law's limits***Republic v. CA, G.R. 108998, August 24, 1994**

What governs the disposition of private lands in favor of a natural-born Filipino citizen who has lost his Philippine citizenship is BP 185. Hence, these former Filipinos may be transferees of-

1. Urban land, not to exceed 1,000 square meters, or
2. Rural land, not to exceed 1 ha.

For the purpose of transfer and/or acquisition of a parcel of residential land, it is not significant whether the transferees are no longer Filipino citizens at the time they purchased or registered the parcels of land in question. What is important is that transferees were formerly natural-born citizens of the Philippines.

*The NEDA***§9**

The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development.

Until the Congress provides otherwise, the National Economic and Development Authority shall function as the independent planning agency of the government.

*Filipino-first policy***§10 ★**

The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the

Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

*Par. 2 self-executing***Manila Prince Hotel v. GSIS, G.R. 122156, February 3, 1997 ♥**

The second paragraph of §10 can only be self-executing as it does not by its language require any legislation in order to give preference to qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony.

When the constitution speaks of national patrimony, it refers not only to the natural resources of the Philippines, as the constitution could have very well used the term natural resources, but also to the cultural heritage of the Filipinos.

Hence, where a foreign firm submits the highest bid in a public bidding concerning the grant of rights, privileges and concessions covering the national economy and patrimony, thereby exceeding the bid of a Filipino, there is no question that the Filipino will have to be allowed to match the bid of the foreign entity.

- If the Filipino matches the bid of a foreign firm the award should go to the Filipino.

*Historical landmarks***Army and Navy Club of Manila v. CA, G.R. 110223. April 8, 1997**

The authority of the National Historical Commission is limited only to the supervision of any reconstruction, restoration or preservation of the architectural design of the identified historical building and nothing more.

- Hence, the historical significance of the Army and Navy Club, if any, shall not be affected if petitioner's eviction from the premises is warranted.

Colmenares v. Duterte, G.R. 245981, August 9, 2022

The objective is simply to prohibit foreign powers or interests from maneuvering our economic policies and ensure that Filipinos are given preference in all areas of development (*read with Art. II, §19*).

*Franchises and public utilities***§11** ★

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

Public utility – A business or service engaged in regularly supplying the public with some commodity or service of public consequence.

Rules for granting franchises, certificates, and other forms of authorization for the operation of public utilities:

1. It can only be granted to Filipino citizens, or corporations–
 - a. Organized under Philippine law (Corporation Code), and
 - b. Whose capital is at least 60% owned by Filipinos.
2. It cannot be exclusive in character.
3. It cannot be longer than 50 years.
4. It may be subject to amendment, alteration, or repeal by Congress when the common good so requires.

The participation of foreign investors in the governing board is limited to its proportionate share in the corporation's capital.

- But the managing and executive officers must be Filipinos.
 - Codal doesn't say natural-born!

“Capital”

Gamboa v. Teves, G.R. 176579, June 28, 2011

The term "capital" in §11 refers **only to shares of stock entitled to vote in the election of directors**, and thus, only to common shares, and not to the total outstanding capital stock comprising both common and non-voting preferred shares.

- Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required.

Roy v. Herbosa, G.R. 207246, April 18, 2017

For purposes of determining compliance with the constitutional or statutory ownership, the required percentage of Filipino ownership shall be applied to both

- a. the total number of outstanding shares of stock entitled to vote in the election of directors; *and*
- b. the total number of outstanding shares of stock, whether or not entitled to vote.

*Who may grant the franchise***Francisco v. Toll Regulatory Board, G.R. 166910, October 19, 2010**

Congress may validly delegate its legislative authority, under the power of subordinate legislation.

Franchise includes not only authorizations issued directly from Congress in the form of statute, but also those granted by administrative agencies to which the power to grant franchise has been delegated by Congress.

⚠ *Correlate this with the doctrine of nondelegation in CONST. art. VI, §1.*

*Filipino-first policy***§12**

The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

*Trade policy***§13**

The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and

reciprocity.

So, no trade wars, please!

§14

The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.

The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

Cooperatives

§15

The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.

This is the Cooperative Development Authority, established under RA 6939.

- The current governing law is RA 11364.

Charter test

§16

The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

This provision is the predicate of the charter test, which provides that:

- The test to determine whether a corporation is government owned or controlled, or private in nature is simple. *Is it created by its own charter for the exercise of a public function, or by incorporation under the general corporation law?*
- Hence, this provision must be correlated with the discussion on

CONST. art. II, §1.

“General law” – The Revised Corporation Code.

Congress may create corporations, but they are deemed GOCCs and must be:

1. Created by a special charter (a law)
2. Created in the interest of the common good
3. Subjected to the test of economic viability

Temporary take-over

§17 ★

In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.

This forms the last of the trifecta of emergency powers provisions in the constitution:

1. Art. VI, §23 (Declaration and war and delegation to the president)
2. Art. VII, §18 (Commander-in-chief powers and martial law)
3. Art. XII, §17 (Take-over power during national emergencies)

“Business affected with public interest” – Business that has a lot of repercussion on the public, whether it be public utility or other businesses which may partake of the characteristics of public utility but which is not yet considered public utility, or any business "which concerns a mass-based consumer group" and especially among "the low income groups.

David v. Arroyo, G.R. 171396, May 3, 2006 ♥

Thus, when §17 states that the "the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest," it refers to Congress, not the president.

Executive Secretary v. Pilipinas Shell, G.R. 209216, February 21, 2023

The emergency takeover power under §17 may be delegated by Congress to the heads of the executive departments, pursuant to the doctrine of qualified political agency.

- Hence, the president need not personally direct the take-over.

*Nationalization***§18**

The State may, in the interest of national welfare or defense, establish and operate vital industries, and upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.

Nationalization as authorized by the Constitution should be regarded more as an instrument toward Filipinization rather than as an expression of an option against private ownership.

- **Nationalization** – ownership by the *state*
- **Filipinization** – ownership by *Filipinos*

*Monopolies and combinations***§19**

The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

⚠ **Monopolies are not necessarily prohibited.**

- The state must still decide whether public interest demands that monopolies be regulated or prohibited.

Avon Cosmetics v. Luna, G.R. 153674, December 20, 2006



Contracts requiring exclusivity are not per se void. Each contract must be viewed vis-à-vis all the circumstances surrounding such agreement in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition.

*The Bangko Sentral ng Pilipinas***§20**

The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other

qualifications and disabilities as may be prescribed by law. The authority shall provide policy discretion in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

Until the Congress otherwise provides, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority.

The governing board of the Bangko Sentral ng Pilipinas is the Monetary Board.

It is composed of:

1. The governor of the BSP, *chair*
2. A member of the Cabinet
3. 5 members from the private sector

Tarrosa v. Singson, G.R. 111243, May 25, 1994

The governor of the BSP does not require ComAppt confirmation.

*Foreign loans***§21**

Foreign loans may only be incurred in accordance with law and the regulation of the monetary authority. Information on foreign loans obtained or guaranteed by the Government shall be made available to the public.

Read with CONST. art. VII, §20, which requires that the president obtain the concurrence of the Monetary Board in contracting foreign loans.

Colmenares v. Duterte, G.R. 245981, August 9, 2022



The second sentence of §20 is **unqualified**. Hence, a confidentiality clause over a foreign loan that requires the lender's prior consent for disclosure is unconstitutional.

Moreover, it is enough that the foreign loan gets the MB's **approval in principle**, while allowing the negotiations to proceed.

- Once the MB grants its final approval can the borrower draw on the

loan.

Penal sanctions

§22

Acts which circumvent or negate any of the provisions of this Article shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law.

It simply says that Congress should penalize acts which seek to circumvent the goals set down by the economic provisions of the constitution.

ARTICLE XVI General Provisions

§1

The flag of the Philippines shall be red, white, and blue, with a sun and three stars, as consecrated and honored by the people and recognized by law.

The design of the flag may only be changed via constitutional amendment.

§2

The Congress may, by law, adopt a new name for the country, a national anthem, or a national seal, which shall all be truly reflective and symbolic of the ideals, history, and traditions of the people. Such law shall take effect only upon its ratification by the people in a national referendum.

A change of name, national anthem, or a seal is valid only if it is done through–

1. A law,
2. Ratified by the people in a referendum.

Sovereign immunity

§3

The State may not be sued without its consent.

A suit is against the state in the following instances:

1. When the Republic is sued by name (Someone v. Republic)
2. When the suit is against an unincorporated government agency
 - a. Hence, a government instrumentality with a juridical personality of its own may be sued (i.e. GOCCs).
3. When the suit is against a government officer but it would result in a financial responsibility for the state, such as the disbursement of funds or loss of property
 - a. But public officials can be held liable for his unofficial acts (e.g. illegal and injurious acts).

General rule: The state may not be sued without its consent.

- **Exception:** When it explicitly consents, such as when the LGC allows the LGUs to be sued (§22(a)(2), LGC).

Instances where the state may be sued

Mobil Philippines v. Customs, G.R. L-23139, December 17, 1966



The power to sue and be sued is implied from the power to transact private business, except when such transaction is incidental in nature.

- Hence, a government agency which runs like a business can be sued.

Del Mar v. Philippine Veterans Administration, G.R. L-27299, June 27, 1973



The nonsuability of the state finds no application where a claimant institutes an action against a functionary who fails to comply with his statutory duty to release the amount claimed from the public funds already appropriated by statute for the benefit of the said claimant.

DOH v. CV Canchela, G.R. 151373-74, November 17, 2005



Nonsuability does not apply if it would perpetuate a grave injustice on the plaintiff who performed their services in good faith and would sanction unjust enrichment on the part of the state.

- Hence, a contractor may sue the government to demand payment.

State immunity

Republic of Indonesia v. Vinzon, G.R. 154705, June 26, 2003



The rule that a state may not be sued without its consent is a necessary consequence of the principles of independence and equality of States.

- The immunity of the sovereign is recognized only with regard to public acts or acts *jure imperii*, but not with regard to private acts or acts *jure gestionis*.
- Submission by a foreign state to local jurisdiction must be clear and unequivocal.

The Holy See v. Rosario, G.R. 101949, December 1, 1994



In the Philippines, the practice is for the foreign government or the international organization to first secure an executive endorsement of its claim of sovereign or diplomatic immunity.

Some acts jure imperii

Republic of Indonesia (id.)

The maintenance of the premises, furnishings, and equipment of the chancery, and the living quarters of the agents and officials of a sovereign state is a public act.

The Holy See (id.)

The decision to transfer the property and the subsequent disposal thereof are likewise clothed with a governmental character.

- Especially when the property was supposed to be where the Papal Nuncio's residence would be.

Syquia v. Lopez, G.R. L-1648, August 17, 1949



The municipal court action was based on three lease contracts, and it is clear to this court that any unpaid or increased rent must be paid by the US Government. This is because the leases were executed by the US Government, and the premises were used by its military officers during and after the war.

- The US government has not given its consent to this suit.

Minucher v. CA, G.R. 142396, February 11, 2003



A foreign agent, operating within a territory, can be cloaked with immunity from suit but only as long as it can be established that he is acting within the directives of the sending state.

- Hence, a foreign agent who acted as a poseur-buyer in a buy-bust operation, with the consent of domestic authorities, is entitled to immunity from suit.

Arigo v. Swif, G.R. 206510, September 16, 2014



The alleged act or omission resulting in the unfortunate grounding of the USS Guardian on the Tubbataha Reef **was committed while they were performing official military duties**. Considering that the satisfaction of a judgment against said officials will require remedial actions and appropriation of funds by the US government, the suit is deemed to be one against the US itself.

The following, however, are not official acts covered by state immunity

US v. Rodrigo, G.R. 76607, February 26, 1990



The United States of America, like any other state, will be deemed to have impliedly waived its non-suability if it has entered into a contract in its proprietary or private capacity. It is only when the contract involves its sovereign or governmental capacity that no such waiver may be implied.

Hence, in both cases, the US cannot invoke state immunity, them being commercial transactions.

- The court concludes that the restaurant services offered at the John Hay Air Station partake of the nature of a business enterprise undertaken by the United States government in its proprietary capacity.
- The court also finds that the barbershops subject to the concessions granted by the United States government are commercial enterprises operated by private persons.

The AFP

§4

The Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and serve, as may be provided by law. It shall keep a regular force necessary for the security of the State.

§5

- (1) All members of the armed forces shall take an oath or affirmation to uphold and defend this Constitution.
- (2) The State shall strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people's rights in the performance of their duty.
- (3) Professionalism in the armed forces and adequate remuneration and benefits of its members shall be a prime concern of the State. The armed forces shall be insulated from partisan politics. No member of the military shall engage directly or indirectly in any partisan political activity, except to vote.

- (4) No member of the armed forces in the active service shall, at any time, be appointed or designated in any capacity to a civilian position in the Government including government-owned or controlled corporations or any of their subsidiaries.
- (5) Laws on retirement of military officers shall not allow extension of their service.
- (6) The officers and men of the regular force of the armed forces shall be recruited proportionately from all provinces and cities as far as practicable.
- (7) The tour of duty of the Chief of Staff of the armed forces shall not exceed three years. However, in times of war or other national emergency declared by the Congress, the President may extend such tour of duty.

Prohibitions on the members of the AFP:

1. To engage directly and indirectly in any partisan political activity, except to vote
2. To be appointed to a civilian position in the government, including GOCCs.

Police force

§6

The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law.

The Philippine National Police is national in scope and civilian in character.

- The day-to-day functions of police—crime investigation and control, traffic control, etc.—would be under the operational control of local executives.
- Larger administrative matters, however, such as standardization of pay, professional training, crime laboratories, etc. would come under the control of the NAPOLCOM.

§7

The State shall provide immediate and adequate care, benefits, and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans. Funds shall be provided therefor and due consideration shall be given them in the disposition of agricultural lands of

the public domain and, in appropriate cases, in the utilization of natural resources.

§8

The State shall, from time to time, review to upgrade the pensions and other benefits due to retirees of both the government and the private sectors.

In giving them (veterans and heirs) due consideration in the disposition of lands of the public domain, the determining factor should be not status but need.

§9

The State shall protect consumers from trade malpractices and from substandard or hazardous products.

The provision is intended to be a protection not only against traders but also against manufacturers who dump defective, substandard or even hazardous products in the market.

- This is embodied in the Consumer Act (RA 7394).

Communication policy

§10

The State shall provide the policy environment for the full development of Filipino capability and the emergence of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country, in accordance with a policy that respects the freedom of speech and of the press.

In the exercise of the authority to maintain a proper communication environment, the state may even order a private telephone company to allow interconnection (BERNAS, SJ, citing *PLDT v. NTC* [1990]).

Mass media

§11 ★

- (1) The ownership and management of mass media shall be limited to

citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed.

- (2) The advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare.

Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry.

The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.

Mass media

The ownership and management of mass media is limited to:

1. Filipino citizens, or
2. Corporations wholly-owned *and* managed by Filipinos.

Mass media – Any medium of communication designed to reach the masses and that tends to set the standards, ideals, and aims of the masses.

Advertising

Rules for the advertising sector:

- Ownership is limited to:
 - Filipino citizens, or
 - Corporations, 70% of which are owned by Filipinos.
- Participation of the foreign investors in the governing board is limited to their proportionate share in the capital (i.e. maximum of 30%)
- All the executive and managing officers must be Filipinos.

§12

The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.

Largely, this is the National Commission on Indigenous Peoples, created by the IPRA.

ARTICLE XVII Amendments or Revisions

§1

Any amendment to, or revision of, this Constitution may be proposed by:

- (1) The Congress, upon a vote of three-fourths of all its Members; or
- (2) A constitutional convention.

§2

Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right.

§3

The Congress may, by a vote of two-thirds of all its Members, call a constitutional convention, or by a majority vote of all its Members, submit to the electorate the question of calling such a convention.

§4

Any amendment to, or revision of, this Constitution under Section 1 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such amendment or revision.

Any amendment under Section 2 hereof shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the certification by the Commission on Elections of the sufficiency of the petition.

Voting requirements in Congress:

1. Proposal for a constitutional amendment – 3/4
2. To call for a constitutional convention – 2/3
3. To ask the electorate if they want a constitutional convention – 1/2

*Scope of PI***Lambino v. COMELEC, G.R. 174299, October 25, 2006 ♥**

A **people's initiative** to change the constitution applies only to an amendment of the constitution and not to its revision.

- *Amendment* – a change that adds, reduces, or deletes without altering the basic principle involved
- *Revision* – a change that alters a basic principle in the constitution (e.g. separation of powers, checks-and-balances, or when the change alters the substantial entirety of the constitution)

In determining whether a proposition is an amendment or a revision, the following **tests** are used:

1. *Quantitative test* – whether the proposed change is so extensive in its provisions as to change directly the substantial entirety of the constitution by the deletion or alteration of numerous existing provisions (number of provisions)
2. *Qualitative test* – whether the change will accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision

ARTICLE XVIII
Transitory Provisions

§1

The first elections of Members of the Congress under this Constitution shall be held on the second Monday of May, 1987.

The first local elections shall be held on a date to be determined by the President, which may be simultaneous with the election of the Members of the Congress. It shall include the election of all Members of the city or municipal councils in the Metropolitan Manila area.

§2

The Senators, Members of the House of Representatives, and the local officials first elected under this Constitution shall serve until noon of June

30, 1992.

Of the Senators elected in the election of 1992, the first twelve obtaining the highest number of votes shall serve for six years and the remaining twelve for three years.

§3

All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

§4

All existing treaties or international agreements which have not been ratified shall not be renewed or extended without the concurrence of at least two-thirds of all the Members of the Senate.

§5

The six-year term of the incumbent President and Vice-President elected in the February 7, 1986 election is, for purposes of synchronization of elections, hereby extended to noon of June 30, 1992.

The first regular elections for the President and Vice-President under this Constitution shall be held on the second Monday of May, 1992.

§6

The incumbent President shall continue to exercise legislative powers until the first Congress is convened.

§7

Until a law is passed, the President may fill by appointment from a list of nominees by the respective sectors the seats reserved for sectoral representation in paragraph (2), Section 5 of Article VI of this Constitution.

§8

Until otherwise provided by the Congress, the President may constitute the Metropolitan Authority to be composed of the heads of all local government units comprising the Metropolitan Manila area.

§9

A sub-province shall continue to exist and operate until it is converted into a

regular province or until its component municipalities are reverted to the mother province.

§10

All courts existing at the time of the ratification of this Constitution shall continue to exercise their jurisdiction, until otherwise provided by law. The provisions of the existing Rules of Court, judiciary acts, and procedural laws not inconsistent with this Constitution shall remain operative unless amended or repealed by the Supreme Court or the Congress.

§11

The incumbent Members of the Judiciary shall continue in office until they reach the age of seventy years or become incapacitated to discharge the duties of their office or are removed for cause.

§12

The Supreme Court shall, within one year after the ratification of this Constitution, adopt a systematic plan to expedite the decision or resolution of cases or matters pending in the Supreme Court or the lower courts prior to the effectivity of this Constitution. A similar plan shall be adopted for all special courts and quasi-judicial bodies.

§13

The legal effect of the lapse, before the ratification of this Constitution, of the applicable period for the decision or resolution of the cases or matters submitted for adjudication by the courts, shall be determined by the Supreme Court as soon as practicable.

§14

The provisions of paragraphs (3) and (4), Section 15 of Article VIII of this Constitution shall apply to cases or matters filed before the ratification of this Constitution, when the applicable period lapses after such ratification.

§15

The incumbent Members of the Civil Service Commission, the Commission on Elections, and the Commission on Audit shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder. In no case shall any Member serve longer than seven years including service before the ratification of this Constitution.

§16

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

§17

Until the Congress provides otherwise, the President shall receive an annual salary of three hundred thousand pesos; the Vice-President, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, two hundred forty thousand pesos each; the Senators, the Members of the House of Representatives, the Associate Justices of the Supreme Court, and the Chairmen of the Constitutional Commissions, two hundred four thousand pesos each; and the Members of the Constitutional Commissions, one hundred eighty thousand pesos each.

§18

At the earliest possible time, the Government shall increase the salary scales of the other officials and employees of the National Government.

§19

All properties, records, equipment, buildings, facilities, and other assets of any office or body abolished or reorganized under Proclamation No. 3 dated March 25, 1986 or this Constitution shall be transferred to the office or body to which its powers, functions, and responsibilities substantially pertain.

§20

The first Congress shall give priority to the determination of the period for the full implementation of free public secondary education.

§21

The Congress shall provide efficacious procedures and adequate remedies for the reversion to the State of all lands of the public domain and real rights

connected therewith which were acquired in violation of the Constitution or the public land laws, or through corrupt practices. No transfer or disposition of such lands or real rights shall be allowed until after the lapse of one year from the ratification of this Constitution.

§22

At the earliest possible time, the Government shall expropriate idle or abandoned agricultural lands as may be defined by law, for distribution to the beneficiaries of the agrarian reform program.

§23

Advertising entities affected by paragraph (2), Section 11 of Article XVI of this Constitution shall have five years from its ratification to comply on a graduated and proportionate basis with the minimum Filipino ownership requirement therein.

§24

Private armies and other armed groups not recognized by duly constituted authority shall be dismantled. All paramilitary forces including Civilian Home Defense Forces not consistent with the citizen armed force established in this Constitution, shall be dissolved or, where appropriate, converted into the regular force.

Most of these provisions are already spent.

§25 ★

After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

BAYAN v. Zamora, G.R. 138570, October 10, 2000 ♥

§25 disallows foreign military bases, troops, or facilities in the country, unless the following **conditions are sufficiently met**:

- a. it must be under a treaty;

- b. the treaty must be duly concurred in by the Senate and, when so required by congress, ratified by a majority of the votes cast by the people in a national referendum; and
- c. recognized as a treaty by the other contracting state.

§25 is a special provision that applies to treaties which involve the presence of foreign military bases, troops or facilities in the Philippines (cf: art. VII, §21).

§26

The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

Purpose of §26 and why Fr. Bernas opposed it

Republic v. Sandiganbayan, G.R. 104768, July 21, 2003

FR. BERNAS: Madam President, there is something schizophrenic about the arguments in defense of the present amendment.

For instance, I have carefully studied Minister Salonga's lecture in the Gregorio Araneta University Foundation, of which all of us have been given a copy. On the one hand, he argues that everything the Commission is doing is traditionally legal. This is repeated by Commissioner Romulo also. Minister Salonga spends a major portion of his lecture developing that argument. On the other hand, almost as an afterthought, he says that in the end what matters are the results and not the legal niceties, thus suggesting that the PCGG should be allowed to make some legal shortcuts, another word for niceties or exceptions.

Now, if everything the PCGG is doing is legal, why is it asking the CONCOM for special protection? The answer is clear. What they are doing will not stand the test of ordinary due process, hence they are asking for protection, for exceptions. Grandes malos, grandes remedios, fine, as the saying stands, but let us not say grandes malos, grande y malos remedios. That is not an allowable extrapolation. Hence, we should not give the exceptions asked for, and let me elaborate and give three reasons:

First, the whole point of the February Revolution and of the work of the CONCOM is to hasten constitutional normalization. Very much at the heart of the constitutional normalization is the full effectivity of the Bill of Rights. We cannot, in one breath, ask for constitutional normalization and at the same time ask for a temporary halt to the full functioning of what is at the heart of constitutionalism. That would be hypocritical; that would be a repetition of Marcosian protestation of due process and rule of law. The New Society word for that is "backsliding." It is tragic when we begin to backslide even before we get there.

Second, this is really a corollary of the first. Habits tend to become ingrained. The committee report asks for extraordinary exceptions from the Bill of Rights for six months after the convening of Congress, and Congress may even extend this longer.

Good deeds repeated ripen into virtue; bad deeds repeated become vice. What the committee report is asking for is that we should allow the new government to acquire the vice of disregarding the Bill of Rights.

Vices, once they become ingrained, become difficult to shed. The practitioners of the vice begin to think that they have a vested right to its practice, and they will fight tooth and nail to keep the franchise. That would be an unhealthy way of consolidating the gains of a democratic revolution.

Third, the argument that what matters are the results and not the legal niceties is an argument that is very disturbing. When it comes from a staunch Christian like Commissioner Salonga, a Minister, and repeated verbatim by another staunch Christian like Commissioner Tingson, it becomes doubly disturbing and even discombobulating. The argument makes the PCGG an auctioneer, placing the Bill of Rights on the auction block. If the price is right, the search and seizure clause will be sold. "Open your Swiss bank account to us and we will award you the search and seizure clause. You can keep it in your private safe."

Alternatively, the argument looks on the present government as hostage to the hoarders of hidden wealth. The hoarders will release the hidden wealth if the ransom price is paid and the ransom price is the Bill of Rights, specifically the due process in the search and seizure clauses. So, there is something positively revolving about either argument. The Bill of Rights is

not for sale to the highest bidder nor can it be used to ransom captive dollars. This nation will survive and grow strong, only if it would become convinced of the values enshrined in the Constitution of a price that is beyond monetary estimation.

For these reasons, the honorable course for the Constitutional Commission is to delete all of Section 8 of the committee report and allow the new Constitution to take effect in full vigor. If Section 8 is deleted, the PCGG has two options. First, it can pursue the Salonga and the Romulo argument — that what the PCGG has been doing has been completely within the pale of the law. If sustained, the PCGG can go on and should be able to go on, even without the support of Section 8. If not sustained, however, the PCGG has only one honorable option, it must bow to the majesty of the Bill of Rights.

The PCGG extrapolation of the law is defended by staunch Christians. Let me conclude with what another Christian replied when asked to toy around with the law. From his prison cell, Thomas More said, "I'll give the devil benefit of law for my nation's safety sake." I ask the Commission to give the devil benefit of law for our nation's sake. And we should delete Section 8.

Thank you, Madam President.

§27

This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite held for the purpose and shall supersede all previous Constitutions.

An overwhelming 77% of the electorate ratified the constitution in a plebiscite last February 2, 1987.

- That's why February 2 is constitution day (and that was also the reckoning point in *Gaminde v. COA*).

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