

Chapter 7

Independence and Integrity of the Philippine Judiciary*

I thank our chairperson, Chief Justice David K. Malcolm, for inviting me to speak during this XIX Biennial LAWASIA Conference in the Gold Coast, Queensland, Australia. Specifically, I would like to discuss how the integrity and the independence of the judiciary is upheld in our country.

Though court decisions are not made on the basis of what is popular or newsworthy, still I believe it essential that the judiciary must continuously retain the trust and confidence of the litigants and the public. A number of factors explain why our Supreme Court has been rated annually as one of the top five most credible institutions in our country in public opinion surveys conducted by respected polling organizations in the Philippines. One outstanding reason is that our Supreme Court has, time and time again, demonstrated its independence and integrity in performing its functions. Let me explain why and how.

Equality Amongst the Three Great Branches

First, our present Constitution, which took effect in 1987, was crafted after a dictatorial regime was toppled in a bloodless People Power Revolution in 1986. To prevent the recurrence of an authoritarian government, our Constitution reduced the powers of the

Executive and the Legislative Departments and intensified those of the Judicial Department to enable the judiciary to check executive and legislative abuses and excesses. In our country, there is only one Supreme Court; its decisions -- on constitutional, administrative, legal or arbitral issues -- cannot be passed upon, much less modified or reversed, by any other office or agency.

Second, as in most other judiciaries of the world, our Supreme Court reviews and corrects the errors of lower courts. Unlike many other Supreme Courts, however, it is additionally mandated by our Constitution to nullify *any* act of *any* branch or official of the government -- including that of the President or of Congress -- when such act is done with “grave abuse of discretion.”^[1] This specific mandate to strike down gravely abusive actions is

a solemn responsibility the Court cannot shirk from. It is not just a power; it is a duty.^[2] A power can be relinquished; but a duty cannot, under any circumstance, be evaded.^[3]

Pursuant to this duty, the Supreme Court has nullified laws^[4] passed by Congress and executive orders^[5] issued by the President. In one notable case,^[6] the Court even stopped Congress from impeaching the Chief Justice, on the ground that the lawmaking body had violated a time-bar provision of our Constitution. The Court has likewise struck down decisions and actions of cabinet secretaries, bureau directors, top-ranking officers of the military and the police;^[7] and has voided contracts entered into by government officials^[8] -- all on the ground of grave abuse of discretion.

Grave abuse of discretion is committed 1) when an act is done contrary to the Constitution, the laws or jurisprudence,^[9] or 2) when it is executed “whimsically or arbitrarily” in a manner “so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined.”^[10]

Despite its exercise of this duty to nullify gravely abusive acts, the Supreme Court is not superior to the President or to Congress. When the Court so acts, it is merely to see to it that the Constitution and the laws reign supreme. Law overrides the desires and caprices of officials. In short, in our country, the rule of law -- not of men -- prevails.

Sole Judge of All Presidential Election Protests

Third, the Supreme Court, sitting en banc, is the sole judge of all contests relating to the “election, returns and qualifications” of the President and the Vice-President.^[11] Still pending before our Court is the election protest filed against our incumbent Vice-President by the losing vice- presidential candidate in the 2004 elections.

Fourth, the Constitution has empowered the Supreme Court, in an appropriate proceeding filed by any citizen, to inquire into “the sufficiency of the factual basis of [a presidential] proclamation of Martial Law or the suspension of the privilege of the writ [of habeas corpus] or the extension thereof x x x.”^[12]

Fifth, our Constitution bars Congress from enacting laws that *emasculate* or *lessen* the jurisdiction^[13] of the Supreme Court. Furthermore, to *increase* the appellate jurisdiction of the Court, its advice and concurrence must first be secured by Congress.^[14]

Sixth, the security of tenure of all judges is guaranteed. Once appointed by the President, they serve until they reach the age of 70, on condition of good behavior.^[15] They may be disciplined or removed from office only for cause and only by the Supreme Court -- not by the President or Congress.^[16] Neither can their terms of office be extended. On the other hand, members of the Supreme Court may be removed only by the tedious process of impeachment.^[17]

Limitations on Judicial Appointments

Seventh, the President's power to appoint members of the judiciary is limited to a list of at least three persons nominated by the Judicial and Bar Council, a constitutional agency chaired by the Chief Justice.^[18] The President cannot appoint anyone not included in that list. Unlike in the US, appointments to the bench do not require legislative confirmation.

Eighth, our Constitution grants fiscal autonomy to the judiciary in two ways: (1) the salaries of members of the bench cannot be decreased during their terms of office;^[19] and (2) the budgetary appropriation for the judiciary cannot be decreased by Congress below that for

the previous year.^[20] Once approved, the judicial budget shall be “automatically and regularly released.”^[21]

Ninth, the Supreme Court also controls admission to the practice of law,^[22] for this reason, it conducts the annual bar examinations. It is also empowered to discipline, suspend or disbar erring lawyers. In the exercise of this prerogative, it has required all attorneys to be members of the Integrated Bar of the Philippines.

Tenth, the Supreme Court prepares and promulgates rules of procedure and evidence in all courts in the Philippines. It can also decree rules “concerning the protection and enforcement of constitutional rights,”^[23] a prerogative that is quasi-legislative in character.

True Source of Judicial Power

Despite wielding the foregoing enormous powers and responsibilities that go beyond normal judicial prerogatives, the Philippine judiciary is still considered the weakest of the three great branches of government. It is said that the bench is no match to the authority of the legislature to control the budget of the country and to impeach the President, the Vice-President, the Supreme Court justices, and other government officials whose terms of office have otherwise been fixed by the Constitution; or to the power of the executive to command the armed forces and the police.

I respectfully believe, however, that in every confrontation, on every occasion in which the Supreme Court has been called upon to wade into “grave abuse” and other legal disputes, it has always taken courage and performed its constitutional duty with integrity and independence. Its very weakness -- its lack of budget and police powers -- has become its strength when it dares speak through objective and well-reasoned decisions that uphold the rule of law and the supremacy of the Constitution. The true strength of our Supreme Court (and of the entire judiciary) lies not in brute military power or political patronage, but in its moral courage -- born of competence, independence and integrity -- to perform its constitutional mandate at all times and against all odds.^[24]

I thank you.

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Address I delivered on March 21, 2005, during the XIX Biennial LAWASIA Conference held in the Gold Coast, Queensland, Australia, on March 20-24, 2005.

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§1 of Article VIII of the Constitution:

“x x x. 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.”

[2]

In *Tañada v. Angara*, 338 Phil. 546, May 2, 1997, the Court stressed that “[w]here the action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. The duty (to adjudicate) remains, to assure x x x the supremacy of the Constitution x x x.”

[3]

Francisco v. House of Representatives, 415 SCRA 44, November 10, 2003.

[4]

See *Macalintal v. Comelec*, 405 SCRA 614, July 10, 2003; *Manalo v. Sistoza*, 371 Phil. 165, August 11, 1999; *Tatad v. Secretary of Energy*, 346 Phil. 321, November 5, 1997; and *Export Processing Zone Authority v. Dulay*, 149 SCRA 305, April 29, 1987.

[5]

See *Ople v. Torres*, 354 Phil. 948, July 23, 1998; and *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317, February 22, 1991.

[6]

Francisco v. House of Representatives, *supra*.

- [7] See *Freedom from Debt Coalition v. Energy Regulation Commission*, GR No. 161113, June 15, 2004; *PCGG v. Desierto*, 397 SCRA 171, February 10, 2003; *Iglesia ni Cristo v. CA*, 328 Phil. 893, July 26, 1996; and *Adiong v. Comelec*, 207 SCRA 712, March 31, 1992.
- [8] See *Information Technology Foundation v. Comelec*, 419 SCRA 141, January 13, 2004, and February 17, 2004; *Jaworski v. Pagcor*, 419 SCRA 317, January 14, 2004; *Agan v. PIATCO*, 402 SCRA 612, May 5, 2003 and January 21, 2004; and *Chavez v. Public Estates Authority*, 433 Phil. 506, July 9, 2002, May 6, 2003 and November 11, 2003.
- [9] *Republic v. COCOFED*, 423 Phil. 735, December 14, 2001.
- [10] *Benito v. Comelec*, 349 SCRA 705, January 19, 2001; *Defensor-Santiago v. Guingona Jr.*, 359 Phil. 276, November 18, 1998; and *Philippine Airlines, Inc. v. Confesor*, 231 SCRA 41, March 10, 1994.
- [11] § 4, Art. VII of the Constitution.
- [12] § 18, Art. VII.
- [13] §2, Art. VIII.
- [14] §30, Art. VI.
- [15] §11, Art. VIII.
- [16] §§6 and 11, Art. VIII.
- [17] §2, Art. XI.
- [18] §§ 8 and 9 of Art. VIII.
- [19] §10, Art. VIII.
- [20] §3, Art. VIII.
- [21] Ibid.
- [22] §5 (par. 5), Art. VIII.
- [23] Ibid.
- [24] See Panganiban, *Leveling the Playing Field* (2004), pp. 27-28.