

The System of Checks and Balances: A Look at the Commission on Appointments

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Introduction

This principle of separation of powers under the presidential system goes hand in hand with the system of checks and balances ...²

The Republic of the Philippines follows a presidential system of government divided into three departments: (1) the legislative department, which deals with the making of the laws; (2) the executive department, which deals with the enforcement of laws; and (3) the judicial department, which deals with the settlement of disputes and controversies.

According to Justice Laurel, the doctrine of separation of powers is intended to secure action, to forestall over action, to prevent despotism and to obtain efficiency.³ However, a government cannot function efficiently by strictly following this principle of separation of powers. As such, corollary to this is the system of checks and balances, wherein one department is allowed to resist encroachments upon its prerogatives or to rectify mistakes or excesses committed by the other departments.⁴ Hence, the government can function more efficiently if the exercise of

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²*Javellana v. Executive Secretary*, G.R. No. L-36142 (1973).

³*Pangansinan Transportation v. PSC*, 40 O.G., 8th Supp. 57.

⁴Isagani A. Cruz, *Philippine Political Law* p. 186 (Central Lawbook Publishing Co., Inc. 1991).

the respective powers of each department is constantly checked and corrected, when necessary.

The 1987 Philippine Constitution provides a system of checks and balances through the establishment of the Commission on Appointments (CA). How does the CA support this system?

Discussion

An appointment is the selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office⁵. In Concepcion vs. Paredes⁶, the Supreme Court held that an appointment to an office is intrinsically an executive act involving the exercise of discretion. Since the power to appoint is an executive function, the legislature may not usurp such function⁷, following the principle of separation of powers. Hence, the Commission on Appointment comes into the picture.

Article VII, Section 9 (3)⁸ of the 1935 Constitution mentions that all appointments of the President need the consent of the CA. This provision as to the establishment of the the CA, which limits the appointing authority of the President, was removed in the 1973 Constitution. Article VII, Section 16⁹ of the 1987 Constitution contains the mandate of the CA

⁵ *Id.*

⁶ G.R. No. L-17539 (1921).

⁷ Joaquin Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* p. 839 (Rex Book Store, Inc., 2003).

⁸ Article VII, Section 9 (3). The President shall nominate and with the consent of the Commission on Appointments of the Congress of the Philippines, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and air forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the Congress of the Philippines may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments.

⁹ Article VII, Section 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 him in this Constitution. xxx

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 disapproved by the Commission on Appointments or until the next adjournment of the Congress.

to check on the President's power to appoint. In Sarmiento vs. Mison¹⁰, Justice Cruz comments,

It must be borne in mind that one of the purposes of the Constitutional Commission was to restrict the powers of the Presidency and so prevent the recurrence of another dictatorship. Among the many measures taken was the restoration of the Commission on Appointments to check the appointing power which had been much abused by President Marcos.

However, the scope of the power of the CA in the 1987 Constitution is not as broad as that of the CA in the 1935 Constitution.¹¹ In Manalo vs. Sistoza¹², the Supreme Court adds that the said provision in the 1987 Constitution was a sort of "middle ground".

Experiences showed that when almost all presidential appointments required the consent of the Commission on Appointments, as was the case under the 1935 Constitution, the commission became a venue of "horse-trading" and similar malpractices. On the other hand, placing absolute power to make appointments in the President with hardly any check by the legislature, as what happened under 1973 Constitution, leads to abuse of such power. Thus was perceived the need to establish a "middle ground" between the 1935 and 1973 Constitutions. The framers of the 1987 Constitution deemed it imperative to subject certain high positions in the government to the power of confirmation of the Commission on Appointments and to allow other positions within the exclusive appointing power of the President.

The Court then explains further in Calderon vs. Carale¹³,

It cannot be overlooked that Sec. 16, Art. VII of the 1987 Constitution was deliberately, not unconsciously, intended by the framers of the 1987 Constitution to be a departure from the system embodied in the 1935 Constitution where the Commission on Appointments exercised the power of

¹⁰ G.R. No. 79974 (1987).

¹¹ *Id.*

¹² G.R. No. 107369 (1999).

¹³ G.R. No. 91636 (1992).

confirmation over almost all presidential appointments, leading to many cases of abuse of such power of confirmation.

Hence, the CA established in the 1987 Constitution serves to check not only the appointing powers of the President but also its power to confirm.

Section 18, Article VI¹⁴ of the 1987 Constitution provides for the composition of the CA, which includes the members of the legislative department of the government. This points to a most salient fact: the CA is somehow a check by the legislative department on the exercise of the executive powers of the President.

There shall be a Commission on Appointments consisting of the President of the Senate, as *ex officio* Chairman, twelve Senators, and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein. The chairman of the Commission shall not vote, except in case of a tie. The Commission shall act on all appointments submitted to it within thirty session days of the Congress from their submission. The Commission shall rule by a majority vote of all the Members.

However, although Congress assembles the CA, which meets only when Congress is in session, the CA is a creature of the Constitution and not of Congress, and is not legislative but executive in nature.¹⁵

Considering the doctrine of separation of powers and the system of checks and balances, how does the Court respond to its distinct role in the government and the purpose of the existence of the CA? Jurisprudence is replete with cases dealing with the jurisdiction of the courts to address

¹⁴ Article VI, Section 18. There shall be a Commission on Appointments consisting of the President of the Senate, as *ex officio* Chairman, twelve Senators, and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein. The chairman of the Commission shall not vote, except in case of a tie. The Commission shall act on all appointments submitted to it within thirty session days of the Congress from their submission. The Commission shall rule by a majority vote of all the Members.

¹⁵ *Supra*.

issues involving the CA. If the question is *judicial* and not *political*, the Court has jurisdiction to address the issue brought before it. In Pacete vs. Secretary¹⁶, the Supreme Court states,

In the terse language of Justice Brandeis, speaking of the rules of the United States Senate, which, under its Constitution, has the task of confirmation: 'As the construction to be given to the rule affects persons other than members of the Senate, the question presented is of necessity a judicial one.'

In Daza vs. Singson¹⁷, the Court explains that it is the legality of removing Daza from the CA, which makes it justiciable. It does not involve the wisdom of the Senate in choosing its members but the legality of the choice in the light of the requirements in the Constitution. In Guingona, Jr. vs. Gonzales¹⁸, citing the case of Coseteng vs. Mitra¹⁹, the Court explains, "It has been established that the legality of filling up the membership of the Commission on Appointments is a justiciable issue and not a political question."

However, the aforementioned cases must be distinguished from the case of Cabili vs. Francisco²⁰. The issue here rests on the re-composition of Senate representation in the Commission which calls for (1) the jurisdiction of the Court; and (2) the power of the Senate to change its members in the Commission on Appointments.

After careful deliberation, a majority of six justices regretfully but necessarily reached the conclusion that the matter is beyond the Court's jurisdiction, it being no different in principle from the situation in Alejandro vs. Quezon and Vera et al., vs. Avelino et al. wherein we declined to entertain petitions to require the Senate to restore to certain suspended senators the exercise of their senatorial prerogatives. Here the petition attempts to force upon the Senate the reinstatement of Senator Magalona in the Commission on Appointments, and

¹⁶ G.R. No. L-25895 (1971).

¹⁷ G.R. No. 86344 (1989).

¹⁸ G.R. No. 106971 (1993).

¹⁹ G.R. No. 86649 (1990).

²⁰ G.R. No. L-4638 (1951).

involves a lesser deprivation of legislative privileges. Needless to state, the condition which impelled this Court to assume jurisdiction in *Avelino vs. Cuenco*, G.R. No. L-2821 do not presently obtain.

Article VII, Section 16²¹ of the 1987 Constitution enumerates the officials whose appointments by the President are subject to the confirmation of the CA. The list is exclusive and thus, only those enumerated shall fall under its jurisdiction. Since the position of Chairman of the Commission on Human Rights (CHR) is not among the positions mentioned in the first sentence of Sec. 16, Art. VII of the 1987 Constitution, it follows that the appointment by the President of the Chairman of the CHR is to be made without the review or participation of the Commission on Appointments.²² The President appoints the Chairman and Members of the Commission on Human Rights pursuant to the second sentence in Section 16, Art. VII, that is, without the confirmation of the Commission on Appointments because they are among the officers of government "whom he (the President) may be authorized by law to appoint."²³

As the Philippine National Police is distinct and separate from the Armed Forces of the Philippines, confirmation by the CA is not required. Likewise, promotions and appointments in the Philippine Coast Guard do not require a similar confirmation. Hence, it is evident that the courts continue to respect the constitutional provision as to who among the persons appointed by the President shall be subject to the confirmation of the CA, consistently in line with the principle of separation of powers.

²¹ 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 him 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 disapproved by the Commission on Appointments or until the next adjournment of the Congress."

²² *Bautista vs. Salonga*, G.R. No. 86439 (1989).

²³ *Id.*

Among those officials whose appointments by the President are subject to the confirmation of the CA are those whose appointments in the 1987 Philippine Constitution require such confirmation. These include the Chairman and Members of the Commission on Elections, Civil Service Commission and Commission on Audit²⁴; the regular members of the Judicial and Bar Council²⁵; and the Sectoral representatives²⁶. Hence, the system of checks and balances remains in place.

In *Manalang vs. Quitariano*²⁷, the Court emphasizes the delineation of powers between the executive and legislative departments.

The appointing power is the exclusive prerogative of the President, upon which no limitations may be imposed by Congress, except those resulting from the need of securing the concurrence of the Commission on Appointments and from the exercise of the limited legislative power to prescribe the qualifications to a given appointive office.

Section 16, Article VII of the Constitution provides that the appointment by the President of the persons enumerated therein must be with the consent of the Commission on Appointments. As such, the interpretation thereof, and as supported by jurisprudence, is that such confirmation is mandatory in character.

However, there are two kinds of appointment that affect the mandatory nature of the confirmation by the Commission on Appointments: a regular appointment and an *ad interim* appointment. When the appointment is regular, the President makes the nomination; the Commission on Appointments confirms the appointment; and, it issues its confirmation of the appointment. An *ad interim* appointment occurs during recess and becomes effective then, subject to confirmation or rejection later, during the next legislative session.²⁸ The appointment comes before the confirmation, which is made by the CA when it

²⁴ 1987 Phil. Constitution. art. IX B-CSC §. 1(2), C-Comelec §. 1(2), D-COA §. 1(2).

²⁵ 1987 Phil. Constitution. art. VIII §. 8.

²⁶ 1987 Phil. Constitution. art. XVIII §. 7.

²⁷ G.R. No. L-6898 (1954).

²⁸ Isagani A. Cruz, *Philippine Political Law* p. 191 (Central Lawbook Publishing Co., Inc. 1991).

reconvenes following the legislative recess.²⁹ Nevertheless, an *ad interim* appointment is considered a permanent appointment. In fact, even way back in 1948, the Court has already ruled on the nature of an *ad interim* appointment in the case of Summers vs. Ozaeta.³⁰

It is an appointment permanent in nature, and the circumstance that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. An *ad interim* appointment is disapproved certainly for a reason other than that its provisional period has expired. Said appointment is of course distinguishable from an “acting” appointment which is merely temporary, good until another permanent appointment is issued.

Article VI, Section 18 of the 1987 Philippine Constitution provides that all appointments submitted to the CA must be acted upon within 30 session days from their submission. However, *ad interim* appointments not acted upon at the time of the adjournment of the Congress, even if the 30-day period has not yet expired, are deemed by-passed under Article VII, Section 16.³¹ Hence, the rule that the CA can meet only during the sessions of Congress is the reason *ad interim* appointments are permitted under the Constitution³². The said *ad interim* appointment shall cease to be valid if disapproved by the CA or upon the next adjournment of Congress³³. In the latter case, the appointment is deemed “by-passed” through inaction of, and so disapproved impliedly by, the CA.³⁴

However, the President cannot be faulted in this scenario for an *ad interim* appointment is intended to prevent a hiatus in the discharge of official duties.³⁵ Obviously, the public office would be immobilized to the prejudice of the people if the President had to wait for Congress and the CA to reconvene before he could fill a vacancy occurring during the

²⁹ *Id.*

³⁰ G.R. No. L-1534 (1948).

³¹ Isagani A. Cruz, *Philippine Political Law* p. 137 (Central Lawbook Publishing Co., Inc. 1991).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

recess.³⁶ Whether the appointment is regular or *ad interim*, disapproval by the CA has a different effect from its inaction.

If the CA disapproves the appointment, the President can no longer appoint the person in the same position. On the other hand, if the CA does not act on the nomination and by-passes the nominee, the President may still appoint the nominee to the same position. The non-action of the CA is not necessarily tantamount to disapproval. Hence, a by-passed *ad interim* appointment can be renewed and the appointee can be issued an *ad interim* appointment anew.

Despite the seemingly mandatory nature of the power conferred upon the CA under Article VII, Section 16 of the 1987 Constitution, it has not confirmed the appointments of a number of positions. The nominees continue to hold on to their positions in an *ad interim* capacity, which is allowed under our Constitution. Hence, no one can interfere as to how the President nominates a person into a government position because such prerogative is given to him except when his act is considered a grave abuse of discretion.

Another way to look at it is for the CA to disapprove such nominee and not merely by-pass it. Unless it will do so, the President continues to appoint said nominee in an *ad interim* capacity. In the earlier-stated case of Matibag vs. Benipayo³⁷, the Court explains,

The President’s power to extend *ad interim* appointments may indeed briefly put the appointee at the mercy of both the appointing and confirming powers. This situation, however, is only for a short period — from the time of issuance of the *ad interim* appointment until the Commission on Appointments gives or withholds its consent. The Constitution itself sanctions this situation, as a trade-off against the evil of disruptions in vital government services. This is also part of the check-and-balance under the separation of powers, as a trade-off against the evil of granting the President absolute and sole power to appoint. The Constitution has wisely subjected the President’s appointing power to the checking power of the legislature.

³⁶ *Id.*

³⁷ G.R. No. 149036 (2002).

Another way for the President to somehow circumvent this requirement of confirmation by the CA is to appoint a nominee in an acting capacity to avoid a hiatus in the exercise of governmental functions while he is still in the process of looking for the most qualified person to occupy such position in a more permanent capacity. However, since there is no confirmation required, the doctrine of checks and balances, as exercised by the CA, is lost as the said nominee occupies and exercises the functions in relation to the position to which he is appointed—an appointment which the Constitution mandates is required to be confirmed by the CA.

One cannot help but notice how the members of the CA exercise their powers. The CA rules allow any member to veto an appointment of a nominee. The nominee is then considered bypassed and will need another appointment order from the President³⁸. Again, there is nothing unlawful or unconstitutional regarding such veto power. However, when any member of the CA exercises his/her veto power, the President can just issue an *ad interim* appointment thereafter. In Calderon vs. Carale³⁹, the Court concludes that the deliberate limitation on the power of confirmation of the CA over presidential appointments, embodied in Sec. 16, Art. VII of the 1987 Constitution has undoubtedly evoked the displeasure and disapproval of the members of Congress. The Court states, thus,

The solution to the apparent problem, if indeed a problem, is not judicial or legislative but constitutional. A future constitutional convention or Congress sitting as a constituent (constitutional) assembly may then consider either a return to the 1935 Constitutional provisions or the adoption of a hybrid system between the 1935 and 1987 constitutional provisions. Until then, it is the duty of the Court to apply the 1987 Constitution in accordance with what it says and not in accordance with how the legislature or the executive would want it interpreted.

³⁸ Miriam to veto Mar's appointment, *Philippine Star* (2012). <http://www.philstar.com/nation/article.aspx?publicationscategoryid=63&articleid=849910>

³⁹ G.R. No. 91636 (1992).

Conclusion

When the Commission on Appointments checks the appointments made by the President, it is not strictly a case of the legislative department interfering with the executive department.⁴⁰ Hence, there is no encroaching upon the respective powers of each department; the exercise is still in consonance with the principle of separation of powers. But the Constitution also provides for *ad interim* appointments wherein the nominee assumes his/her position after appointment by the President but without the confirmation by the CA.

Hence, unless there will be changes instituted – in our Constitution and in our government system as well – there is not much reform that will happen in the role of the CA in consonance with the principle of checks and balances. Nonetheless, the intention is already there when the CA was established. It is just a matter of exercising the respective functions of each of the department in consonance with such intention. It is now in the hands of our respective government officials, in all three departments – legislative, executive, and judicial – to exercise their separate powers and to check each other's exercise of roles, functions, and duties.

⁴⁰ Joaquin G. Bernas, S.J. *The 1987 Constitution of the Republic of the Philippines: A Commentary* p. 851 (Rex Book Store, Inc. 2003 edition).