

## A Philippine Experiment on Parliamentarism

By ANDRES B. SORIANO \*

It has fallen to the lot of fledgling nations which seek to establish their identity and some semblance of self-governance after a period of colonization to experiment with structures of government best suited to meet the needs of the people.

The Philippines has not been an exception. Conquered and occupied by three powers in the space of approximately one and a half centuries, its people have undergone the vicissitudes of accommodating themselves to superior wills even as they struggled to find a form of government reflective of their history, culture, temperament and psyche.<sup>1</sup>

One step further in this struggle was made in the plebiscite on the proposed constitutional amendments on April 7, 1981. Among others, the people voted affirmatively for a modified form of parliamentary government, radically restructuring a structure earlier established under the 1973 Constitution and thereby reallocating anew government powers and functions.

How the parliamentary form of government was modified by the results of the 1981 plebiscite is a subject matter too broad to contain in the succeeding discussions. This paper considers only the position of the Prime Minister, its significance under the new governmental set-up as embodied in the present Amended Constitution.

The approach taken is both historical and comparative.

### I. The Prime Minister Under the 1973 Constitution

The Prime Minister under the 1973 Constitution is a member of the National Assembly elected by a majority vote of said body.<sup>2</sup> As his mandate proceeds from the National Assembly, the withdrawal of the same may be effected by the said body.<sup>3</sup> But the fusion between the executive power and the legislative power is manifested in more significant ways than the above. The Prime Minister is Chief Executive, Chief Military Commander and Chief Legislator. It is in the last that the fusion of the executive and the legislative departments, characteristic of model parliamentary governments, is most manifested.

\*Staff, Ateneo Law Journal

<sup>1</sup>Speech delivered by Florida Ruth P. Romero at a two-day symposium on the proposed Constitutional amendments held at the University of the Philippines Law Center from March 16-17, 1981.

<sup>2</sup>1973 Constitution of the Philippines, section 3, Article IX.

<sup>3</sup>Ibid., section 13 (1), Article VII.

*The executive power shall be exercised by the Prime Minister with the assistance of the Cabinet. The Cabinet, headed by the Prime Minister, shall consist of the heads of ministries as provided by law. The Prime Minister shall be the head of the government.*<sup>4</sup>

Executive power is not vested in but is merely "exercised by the Prime Minister with the assistance of the Cabinet." The theory behind the peculiar language whereby executive power is allocated is that in a parliamentary system all powers of government, except judicial, are concentrated in parliament, but executive power is exercised through the Prime Minister and his Cabinet.<sup>5</sup>

In the exercise of his executive power and as head of government, the Prime Minister is empowered to appoint the members of his Cabinet, "who shall be heads of ministries, at least a majority of whom shall come from the National Assembly."<sup>6</sup> He is empowered to appoint a Deputy Prime Minister "from among the members of the National Assembly."<sup>7</sup> "The Prime Minister shall appoint the Deputy Ministers who shall perform such functions as may be assigned to them by law or by the respective, heads of ministries."<sup>8</sup> The appointing power of the Prime Minister<sup>9</sup> also extends to the appointment of "heads of bureaus and offices, the officers of the armed forces of the Philippines from the rank of brigadier general or commodore, and all other officers of the government whose appointments are not herein provided for, and those whom he may be authorized by law to appoint."<sup>10</sup> Within the above defined limits, the power to appoint carries with it the power to remove.<sup>11</sup> The above notwithstanding, the Prime Minister also has the power to

<sup>4</sup>Ibid., section 1, Article IX.

<sup>5</sup>Joaquinn G. Bernas, S.J. *Constitutional Structures and Powers of Government*, 1974 (Rex Printing Co., Inc.: Quezon City), p. 123.

<sup>6</sup>Supra, section 4, Article IX.

<sup>7</sup>Ibid., section 5 (1).

<sup>8</sup>Ibid., section 5 (2).

<sup>9</sup>Appointment to office is intrinsically an executive act (Concepcion v. Paredes, 42 Phil. 599, 603 (1921); reiterated in the case of Government v. Springer, 50 Phil. 259, 279 (1927); Manalang v. Quitoriano, 94 Phil. 903, 911 (1954).

<sup>10</sup>Supra, section 13.

<sup>11</sup>Ang-Angco v. Castillo, 9 SCRA 619, 630 (1963).

appoint members of the Supreme Courts and judges of inferior courts<sup>12</sup> and Chairmen and Commissioners of the Constitutional Commissions,<sup>13</sup> although the removal of these sets of officials is not subject to the Prime Minister's discretion.<sup>14</sup>

Moreover, as head of government, "the Prime Minister shall have control of all ministries," in the same manner that the President under the 1935 Constitution had over executive departments, bureaus and offices.<sup>15</sup> This power of control has a definite meaning in Philippine jurisprudence as "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter"<sup>16</sup> with the necessary incident of 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 for such can be justified under the principle that the power to remove is inherent in the power to appoint."<sup>17</sup> Furthermore, the same power may be exercised by the Prime Minister in government-owned or controlled corporations without prejudice to the theory that the National Assembly may limit the exercise of this power of control in said venue.<sup>18</sup>

The Prime Minister is also commander-in-chief of the armed forces of the Philippines and as such he holds supreme military authority and is the ceremonial,

<sup>12</sup>Supra, section 4, Article X.

<sup>13</sup>Ibid., section 1 (1) Article XII (B), section 1 (2) Article XII (C), section 1 (2) Article XII (D).

<sup>14</sup>Ibid., section 7, Article X: The members of the Supreme Court and judges of inferior courts shall hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court shall have the power to discipline judges of inferior courts and, by a vote of at least eight members, order their dismissal.

Section 2, Article XIII: The President, the Justices of the Supreme Court and the members of Constitutional Commissions shall be removed from office on impeachment for and conviction of culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption.

<sup>15</sup>Ibid., section 11, Article IX; Bernas, *Constitutional Structures*, p. 128.

<sup>16</sup>Mondano v. Silvosa, 97 Phil. 143, 148 (1955).

<sup>17</sup>Lacson v. Romero, 84 Phil. 740, 754 (1949); Ang-Angco v. Castillo, 9 SCRA 619, 630 (1963).

<sup>18</sup>Bernas, *Constitutional Structures*, p. 132.

legal and administrative head of the armed forces.<sup>19</sup> As commander-in-chief, he has the power to direct military operations and to determine military strategy.<sup>20</sup> Incident to his title as commander-in-chief, the Prime Minister also holds martial law powers exercisable within the broad limits set by the Constitution.<sup>21</sup>

As other incidents of his exercise of executive power, the Prime Minister also enjoys the power of executive clemency,<sup>22</sup> the power to contract and guarantee loans on behalf of the Republic of the Philippines, subject to limitations as may be provided by law,<sup>23</sup> and the power to enter into executive agreements (as incident to his treaty-making power under section 15, Article XIV of the 1973 Constitution) without the concurrence of the National Assembly.<sup>24</sup> In addition, he also heads the National Economic and Development Authority.<sup>25</sup>

### Vis-a-vis the National Assembly

As has earlier been stated, the Prime Minister, under the 1973 Constitution, is elected by the members of the National Assembly from among themselves. Moreover, the mandate granted him may be withdrawn by said National Assembly upon the latter's election of his successor. This notwithstanding, "the Prime Minister may advise the President in writing to dissolve the National Assembly whenever the need arises for a popular vote of confidence on fundamental issues. . ."<sup>26</sup> Upon the dissolution of the National Assembly, the Prime Minister with his Cabinet shall continue to conduct the affairs of government until the new members of the National Assembly shall have been elected and has convoked, and a Prime Minister will have been elected and qualified.<sup>27</sup>

<sup>19</sup>1973 Constitution, section 12, Article IX; Bernas *Constitutional Structures*, p. 133.

<sup>20</sup>Ibid.

<sup>21</sup>Ibid.

<sup>22</sup>Ibid., section 14.

<sup>23</sup>Ibid., section 15.

<sup>24</sup>Ibid., section 16; Bernas, *Constitutional Structures*, p. 161.

<sup>25</sup>Ibid., section 15, Article XIV.

<sup>26</sup>Ibid., section 13 (2), Article VIII.

<sup>27</sup>Ibid., section 13 (3).

More significantly, the Prime Minister with his Cabinet "shall be responsible to the National Assembly for the program of government and shall determine the guidelines of national policy".<sup>28</sup> In view of the above, "the Prime Minister shall, at the beginning of each regular session of the National Assembly and from time to time thereafter, present the program of government and recommend for the consideration of the National Assembly such measures as he may deem necessary and proper."<sup>29</sup> Also, the Prime Minister may be questioned by the National Assembly during the latter's regular question hour.<sup>30</sup>

### The Prime Minister as Chief-Legislator

Under the 1973 Constitution, the Prime Minister assumes recommendatory roles in legislation in the following ways: namely (1) by submitting to the "National Assembly within thirty days from the opening of each regular session, as the basis of the general appropriations bill, a budget of receipts based on existing and proposed revenue measures, and of expenditures"<sup>31</sup>; (2) as head of the National Economic and Development Authority, by submitting to the National Assembly a "continuing, coordinated, and fully integrated social and economic plans and programs"<sup>32</sup>; (3) by his direct negotiations on treaties as an incident of his treaty-making power<sup>33</sup>; and (4) by the exercise of his veto power.<sup>34</sup>

In a more direct manner, the Prime Minister is legislator in (1) fixing within specified limits and subject to such limitations and restrictions as the National Assembly may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties and imposts,<sup>35</sup> (2) the exercise of his emergency powers,<sup>36</sup> and (3) the exercise of his martial law powers. These notwithstanding, extraordinary legislative power is also given to the Prime Minister by the 1976 Amendment No. 6 as follows:

<sup>28</sup> *Ibid.*, section 2, Article IX.

<sup>29</sup> *Ibid.*, section 10.

<sup>30</sup> *Ibid.*, section 12 (1), Article VIII.

<sup>31</sup> *Ibid.*, section 16 (1).

<sup>32</sup> *Ibid.*, section 1, Article XIV.

<sup>33</sup> *Ibid.*, section 15.

<sup>34</sup> *Ibid.*, section 20, Article VII.

<sup>35</sup> *Ibid.*, section 17 (2).

<sup>36</sup> *Ibid.*, section 15; Bemas, *Constitutional Structures*, pp. 104-105

Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa, or the regular National Assembly fails or is unable to act adequately or any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders or letters of instructions, which shall form part of the law of the land.

## II. The Prime Minister Under The 1981 Constitutional Amendments

Under the amendments effected through the 1981 plebiscite, the powers of the Prime Minister have been reduced substantially. He no longer exercise executive power and therefore cannot be considered head of government. Corollarily, the power to appoint and to remove government officials, delineated in the earlier discussion, has been withdrawn from the Prime Minister. Moreover, the Prime Minister shall no longer have the power of control over the ministries. In addition, he is no longer commander-in-chief of the armed forces; and he no longer enjoys powers incident to the exercise of executive power such as the power of executive clemency, the power to contract and guarantee loans on behalf of the Republic of the Philippines and the power to enter into executive agreements as an aspect of his treaty-making power. Also, the Prime Minister is no longer the head of the National Economic and Development Authority. *The Prime Minister is no longer Chief Executive.*

Moreover, the involvement of the Prime Minister in law-making has been greatly reduced. The power to veto bills proceeding from the Assembly has been withdrawn from him; so too the power to negotiate treaties for the Philippine government. Insofar as he is no longer head of the National Economic and Development Authority, he is no longer expected to submit to the National Assembly continuing, coordinated, and fully integrated social and economic plans and programs. On more significant planes, the Prime Minister can no longer legislate on fixing tariff rates, import and export quotas, tonnage and wharfage dues and other duties and imposts. Moreover, the exercise of emergency powers as well as extraordinary legislative powers has also been withdrawn from the Prime Minister. *in very substantial respects, the Prime Minister is no longer Chief Legislator.*

The Prime Minister under the Amended Constitution is elected, *upon nomination by the President*, from among the members of the National Assembly by a majority vote of the same body.<sup>37</sup> Over and above the membership qualification, therefore, to be elected Prime Minister, one must also be a nominee of the Presi-

<sup>37</sup> 1973 Constitution, As Amended (1981 Plebiscite), section 1., Article IX.

dent. Thereafter, the mandate given him by the National Assembly may be withdrawn by the same body by the election of a successor *after the President will have submitted his nominee therein*.<sup>38</sup> The Prime Minister may still advise the President in writing to dissolve the Batasang Pambansa whenever the need arises for a popular vote of confidence on fundamental issues. . . .<sup>39</sup> With regards to the last two points mentioned, it appears that both the check-and-balance methods of no-confidence vote by the National Assembly and the dissolution by the President upon advice of the Prime Minister is ineffective for the purposes of either the National Assembly or the Prime Minister. The latter no longer has executive power; the former is effectively independent of the latter.

From another vantage point, the Prime Minister remains to be the head of the Cabinet.<sup>40</sup> In addition, he shall also be Chairman of the newly created Executive Committee.<sup>41</sup> As head of the Cabinet, he shall continue to be responsible, together with the Cabinet, to the National Assembly for the program of government which program will first have to be *approved by the President*. (It may be noted here that while the Prime Minister is responsible to the National Assembly for a program of government, it is the President who determines the guidelines of national policy, and it is also the President who presents to National Assembly the program of government.) And as such, the National Assembly may question him during the former's question hour.<sup>43</sup> As head of the Executive Committee, he shall together with said Committee, assist the President in the exercise of his powers and functions and in the performance of his duties as he may prescribe.<sup>44</sup>

The above notwithstanding, it may be noted that the power of control afforded the Prime Minister under the 1973 Constitution has been relegated to one of *supervision* under the Amended Constitution.<sup>45</sup> This power of supervision is defined under Philippine jurisprudence as the power to ascertain whether a subordinate has exceeded the scope of his authority as provided by law in the exercise of his duties and functions.<sup>46</sup> The power does not extend to supplanting the deci-

<sup>38</sup>Ibid., section 13 (1) Article VII.

<sup>39</sup>Ibid., section 13 (2).

<sup>40</sup>Ibid., section 1, Article IX.

<sup>41</sup>Ibid., section 3.

<sup>42</sup>Ibid., section 2.

<sup>43</sup>Ibid., section 12 (1), Article VIII.

<sup>44</sup>Ibid., section 3, Article IX.

<sup>45</sup>Ibid., section 10.

<sup>46</sup>Mondano v. Silvosa, 97 Phil. 143, 147-148 (1955): "... supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the later fail or neglect to fulfill them the former may take such action or step as prescribed by law of make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."

See also Hebron v. Reyes, 104 Phil. 187-188 (1958), and Ang-Angco v. Castillo, 9 SCRA

sion of a subordinate with his own decision. Thus, the position of Prime Minister seem to simmer down to mere administration and supervision.

It may not be amiss to point out here that vis-a-vis the National Assembly, the Prime Minister, as in the 1973 Constitution, "shall submit to the Batasang Pambansa within thirty days from the opening of each regular session, as the basis of the general appropriations bill, a budget of receipts based on existing and proposed revenue measures and of expenditures. . . ."<sup>47</sup>

### III. Summary and Conclusion

Realizing the need for a political system whose natural dynamics will not contradict the temperament and basic psychology of the Filipino people, the delegates 1971 Constitutional Convention) envisioned the shift to a parliamentary form as a solution to the defects of the presidential system. The new form of government fuses the executive and legislative departments and facilitates a smooth working relationship between them.<sup>48</sup>

In the forefront of this system was the Prime Minister — Chief Executive, Chief Military Commander and Chief Legislator.

April 7, 1981 — the people overwhelmingly voted for a modified form of parliamentary government, one aptly described as a hybrid type, partaking of both the parliamentary and presidential type of government. In this Philippine experiment on parliamentarism, the Prime Minister is not the Chief Executive; neither is he the Chief Legislator. But his accountability to the National Assembly has been retained even as he cannot present a program of government to the said Body without the approval thereon of the President. He continues to be head of the Cabinet, and in addition is Chairman of the Executive Committee. Nonetheless, his functions and powers as such have been confined to administration and supervision.

What is his *raison d'être*?

<sup>47</sup>Supra, section 16 (1), Article VIII.

<sup>48</sup>Ferdinand E. Marcos, AN INTRODUCTION TO THE POLITICS OF TRANSITION, pp. 49-50, as cited in the speech of Florida Ruth P. Romero at the symposium on the proposed Constitutional amendments held on March 16-17, 1981 at the University of the Philippines Law Center.