

- 8 p. 35, *ibid.*
 9 *People vs. Wilson and Dolores*, 52 Phil. 919, cited in 216 Reyes, the Revised Penal Code, Vol. 1, 1977 Edition.
 10 pp. 58-62, Martin, *Statutory Construction*, 1979 Edition (citing a long line of cases following this doctrine)
 11 cited in p. 14, Martin, *Statutory Construction*, 1979 Ed.
 12 p. 161, *ibid.*
 13 p. 111, *ibid.*
 14 p. 62, *ibid.*
 15 p. 202, *ibid.*
 16 p. 139, *ibid.*

Arnedo S. Valera

WHO ACTS AS PRESIDENT IN CASE OF HIS TEMPORARY INCAPACITY OR DISABILITY?

In Section 7 of Article VII, the 1973 Philippine Constitution provides

"In case of permanent disability, death, removal from office or resignation of the President, the Executive Committee headed by the Prime Minister as hereinafter provided shall exercise the powers of the President until a President shall have been elected and qualified. If the permanent disability, death, removal from office or resignation of the President occurs earlier than eighteen (18) months before the expiration of his term, the Batasang Pambansa shall, within thirty days from the time the vacancy occurs, call a special election to be held not earlier than forty-five days nor later than sixty days from the time of such call, to elect a President to serve the unexpired term.

In the absence of an Executive Committee, the Speaker shall act as President until the President shall have been elected and qualified."

The aforementioned constitutional provision sets the rules applicable to presidential succession where permanent vacancy occurs after a President-elect has qualified. Depending on the circumstances and conditioned on the period when vacancy occurs due to permanent disability of the President, the Executive Committee headed by the Prime Minister shall exercise and discharge the powers and duties of the President; or, in the absence of the Executive Committee, the Speaker of the Batasang Pambansa shall act as President.

The Constitution, however, is silent as to the manner of filling up a vacancy in case the President suffers temporary disability or incapacity. If such contingency occurs, who will then act as President? Will it be the Speaker of the Batasang Pambansa? Section 7 of Article VII provides no answer since it contemplates only succession in case of *permanent* disability of the President.

Can the Batasang Pambansa designate the Prime Minister, the Speaker, or any member of the Executive Committee to act as President in case of the temporary disability of the latter? The answer is in the negative. As decided in *Vargas vs. Rilloraza*¹, on the issue of whether a judge could be designated as a justice to sit temporarily as a member of the Supreme Court in cases of temporary disability of vacancies occurring or preventing a quorum, the Court held:

“However temporary or brief may be the action or participation of a judge designated under Section 14 of the People’s Court Act in a collaboration case of the class therein defined, there is no escaping the fact that he would be participating in the deliberation and acts of the Supreme Court, as the appellate tribunal in such a case, and if allowed to do so, his vote would count as much as that of any regular justice of the Court. There can be no doubt that the Chief Justice and Associate Justices required by Section 4 of Article VII of the Constitution to compose the Supreme Court are the regular members of the Court - indeed, a ‘temporary member’ thereof would be a misnomer implying a position not contemplated by the Constitution

“We find absolutely nothing in the context which may soundly be construed as authorizing, *merely by legislation*, any change in the constitutional composition of the Supreme Court, or the performance of its functions by any but its constitutional members. On the other hand, we have to go by the cardinal rule that ‘usually provisions of the Constitution are mandatory rather than directory, and mandatory provisions are binding on all departments of the government’

“Hence we do not see the way clear to the proposition that the ‘designees’ in such a case can constitutionally ‘sit temporarily as Justices’ of the Supreme Court ... The designation thereby authorized would be inconsistent with this Constitution.”

It is submitted that, in view of the silence of the Constitution on who should act as President in case of temporary disability of the latter, the logical recourse is for the Batasang Pambansa in the exercise of its constituent power, to propose an amendment on the matter.²

¹*Vargas vs. Rilloraza*, 80 Phil. 297, 321.

²Joaquin G. Bernas, S.J., *The 1983 Philippine Constitution, a Reviewer-Primer*, 1981 Ed., p. 200:

“An amendment envisages an alteration of one or a few specific provisions of the Constitution, and its guiding original intention is to improve specific parts or to add new provisions or to suppress existing ones according as addition or subtraction might be demanded by existing condition.”