

Implications of the 1987 Constitution on the Rights of the Accused

Justice Jose Y. Feria

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This Article provides a comparison of the provisions of the 1987 Constitution and the 1935 and 1973 Constitutions affecting the rights of the accused. Firstly, on warrants of arrest and search warrants, Justice Feria clarifies that Section 2, Article III of the new Constitution mandating the issuance of a warrant upon probable cause to be determined personally by the judge still does not prevent the judge from relying on the preliminary investigation conducted by the fiscal. No deviation from the *Amarga* and *Placer* cases is said to be intended by the Constitutional Commission.

On the right of the accused to remain silent and to counsel, the following changes *inter alia* were noted: (1) the first sentence of the old Constitution, "no person shall be compelled to be a witness against himself," has been transposed to Section 17 of the Constitution; (2) the right to counsel is reinforced by the addition of the qualification "competent and independent counsel preferably of his own choice" and the provision that "if the person cannot afford the services of counsel, he must be provided with one;" and (3) the right to remain silent and to counsel cannot be waived except in writing and in the presence of counsel.

On the right to bail and the elimination of the death penalty, the provision of the old Constitution that the accused was entitled to bail as matter of right except in capital offenses when evidence of guilt was strong was shown to be modified by that of the new Constitution whereby the accused becomes entitled to bail as a matter of right except when charged with an offense punishable by *reclusion perpetua* and the evidence of guilt is strong.

On the right to free access to courts and legal assistance, the Author pointed out that while this right of an accused was not expressly provided in the old Constitution, it was observed in actual practice through the instrumentality of the Integrated Bar of the Philippines and other voluntary bar associations as well as by the government.

On the right to a speedy trial and a speedy judgment, the maximum period given to the Supreme Court to decide has been upped from 18 months under the old Constitution to 24 months under the new.

Finally, on the majority required to decide in the Supreme Court, from a concurrence of at least eight Members in cases *en banc* and, under its rule, 10 members to impose death penalty, the same has been changed to “a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.” Feria notes that, in theory, this could be less than eight Members.

Therefore, under the new Constitution, the necessary majority is not necessarily eight Justices, but depends on the number of Justices who actually took part in the deliberations of the issues in the case and voted thereon. These amendments are projected to expedite the decision of cases appealed to the highest tribunal.