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Even if considered "an act of grace," declared this Court in *Infante v. Provincial Warden of Negros Occidental*, 32 Phil. 311, "there is general agreement that limitations upon its operation should be strictly construed (46 C.J. 1202) so that, where a conditional pardon is susceptible of more than one interpretation, it is to be construed most favorably to the grantee (39 Am. Jur. 564)."

I am for the reversal of *Espuelas v. Provincial Warden of Bohol* and the immediate release of the petitioner on the ground that he has not violated the condition of his pardon.

EN BANC

[G.R. No. 78780. July 23, 1987]

DAVID G. NITAFAN, WENCESLAO M. POLO, and MAXIMO A. SAVELLANO, JR., *petitioners, vs.* **COMMISSIONER OF INTERNAL REVENUE and THE FINANCIAL OFFICER, SUPREME COURT OF THE PHILIPPINES**, *respondents.*

SYLLABUS

TAXATION; INCOME TAX; SALARIES OF JUSTICES AND JUDGES ARE PROPERLY SUBJECT TO A GENERAL INCOME TAX; LAW APPLICABLE TO ALL INCOME EARNERS; JUSTIFIED.— The Court hereby reiterates that the salaries of Justices and Judges are properly subject to a general income tax law applicable to all income earners and that payment of such income tax by Justices and Judges does not fall within the constitutional protection against decrease of their salaries during their continuance in office. x x x The debates, interpellations and opinions expressed regarding the constitutional provision in question until it was finally approved by the Commission disclosed that the true intent of the framers of the 1987 Constitution, in adopting it, was to make the salaries of members of the Judiciary taxable. The ascertainment of that intent is but in keeping with the fundamental principle

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of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect. The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. It may also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers. Besides, construing Section 10, Article VIII, of the 1987 Constitution, which, for clarity, is again reproduced hereunder: "The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be *decreased*." It is plain that the Constitution authorizes Congress to pass a law fixing another rate of compensation of Justices and Judges but such rate must be higher than that which they are receiving at the time of enactment, or if lower, it would be applicable only to those appointed after its approval. It would be a strained construction to read into the provision an exemption from taxation in the light of the discussions in the Constitutional Commission. With the foregoing interpretation, and as stated heretofore, the ruling that "the imposition of income tax upon the salary of judges is a diminution thereof, and so violates the Constitution" in *Perfecto vs. Meer*, as affirmed in *Endencia vs. David* must be declared discarded. The framers of the fundamental law, as the *alter ego* of the people, have expressed in clear and unmistakable terms the meaning and import of Section 10, Article VIII, of the 1987 Constitution that they have adopted. Stated otherwise, we accord due respect to the intent of the people, through the discussions and deliberations of their representatives, in the spirit that all citizens should bear their aliquot part of the cost of maintaining the government and should share the burden of general income taxation equitably.

R E S O L U T I O N

MELENCIO-HERRERA, *J.*:

Petitioners, the duly appointed and qualified Judges presiding over Branches 52, 19 and 53, respectively, of the Regional Trial Court, National Capital Judicial Region, all with stations in Manila, seek to prohibit and/or perpetually enjoin respondents,

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the Commissioner of Internal Revenue and the Financial Officer of the Supreme Court, from making any deduction of withholding taxes from their salaries.

In a nutshell, they submit that "any tax withheld from their emoluments or compensation as judicial officers constitutes a decrease or diminution of their salaries, contrary to the provision of Section 10, Article VIII of the 1987 Constitution mandating that '(d)uring their continuance in office, their salary shall not be decreased,' even as it is anathema to the ideal of an independent judiciary envisioned in and by said Constitution."

It may be pointed out that, early on, the Court had dealt with the matter administratively in response to representations that the Court direct its Finance Officer to discontinue the withholding of taxes from salaries of members of the Bench. Thus, on June 4, 1987, the Court *en banc* had re-affirmed the Chief Justice's directive as follows:

"RE: Question of exemption from income taxation. — The Court REAFFIRMED the Chief Justice's previous and standing directive to the Fiscal Management and Budget Office of this Court to continue with the deduction of the withholding taxes from the salaries of the Justices of the Supreme Court as well as from the salaries of all other members of the judiciary."

That should have resolved the question. However, with the filing of this petition, the Court has deemed it best to settle the legal issue raised through this judicial pronouncement. As will be shown hereinafter, the clear intent of the Constitutional Commission was to delete the proposed express grant of exemption from payment of income tax to members of the Judiciary, so as to "give substance to equality among the three branches of Government" in the words of Commissioner Rigos. In the course of the deliberations, it was further expressly made clear, specially with regard to Commissioner Joaquin F. Bernas' accepted amendment to the amendment of Commissioner Rigos, that the salaries of members of the Judiciary would be subject to the general income tax applied to all taxpayers.

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This intent was somehow and inadvertently not clearly set forth in the final text of the Constitution as approved and ratified in February, 1987 (*infra*, pp. 7-8). Although the intent may have been obscured by the failure to include in the General Provisions a proscription against exemption of any public officer or employee, including constitutional officers, from payment of income tax, the Court since then has authorized the continuation of the deduction of the withholding tax from the salaries of the members of the Supreme Court, as well as from the salaries of all other members of the Judiciary. The Court hereby makes of record that it had then discarded the ruling in *Perfecto vs. Meer* and *Endencia vs. David*, *infra*, that declared the salaries of members of the Judiciary exempt from payment of the income tax and considered such payment as a diminution of their salaries during their continuance in office. The Court hereby reiterates that the salaries of Justices and Judges are properly subject to a general income tax law applicable to all income earners and that payment of such income tax by Justices and Judges does not fall within the constitutional protection against decrease of their salaries during their continuance in office.

A comparison of the Constitutional provisions involved is called for. The 1935 Constitution provided:

"x x x (The members of the Supreme Court and all judges of inferior courts) shall receive such compensation as may be fixed by law, which shall not be *diminished* during their continuance in office x x x."[1] (Italics supplied).

Under the 1973 Constitution, the same provision read:

"The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of inferior courts shall be fixed by law, which shall not be *decreased* during their continuance in office. x x x."[2] (Italics ours).

And in respect of income tax exemption, another provision in the same 1973 Constitution specifically stipulated:

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[1] Section 9, Article VIII.

[2] Section 10, Article X.

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"No salary or any form of emolument of any public officer or employee, including constitutional officers, shall be exempt from payment of income tax."[3]

The provision in the 1987 Constitution, which petitioners rely on, reads:

"The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be *decreased*."[4] (Italics supplied).

The 1987 Constitution does not contain a provision similar to Section 6, Article XV of the 1973 Constitution, for which reason, petitioners claim that the intent of the framers is to revert to the original concept of "non-diminution" of salaries of judicial officers.

The deliberations of the 1986 Constitutional Commission relevant to Section 10, Article VIII, negate such contention.

The draft proposal of Section 10, Article VIII, of the 1987 Constitution read:

"Section 13. The salary of the Chief Justice and the Associate Justices of the Supreme Court and of judges of the lower courts shall be fixed by law. During their continuance in office, their salary *shall not be diminished nor subjected to income tax*. Until the National Assembly shall provide otherwise, the Chief Justice shall receive an annual salary of _____ and each Associate Justice _____ pesos."[5] (Italics ours).

During the debates on the draft Article (Committee Report No. 18), two Commissioners presented their objections to the provision on tax exemption, thus:

"MS. AQUINO. Finally, on the matter of exemption from tax of the salary of justices, does this not violate the principle of the uniformity of taxation and the principle of equal protection of

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[3] Section 6, Article XV, General Provisions.

[4] Section 10, Article VIII.

[5] Record of the Constitutional Commission, Vol. I, p. 433.

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the law? After all, tax is levied not on the salary but on the combined income, such that when the judge receives a salary and it is comingled with the other income, we tax the income, not the salary. Why do we have to give special privileges to the salary of justices?

"MR. CONCEPCION. It is the independence of the judiciary. We prohibit the increase or decrease of their salary during their term. This is an indirect way of decreasing their salary and affecting the independence of the judges.

"MS. AQUINO. I appreciate that to be in the nature of a clause to respect tenure, but the special privilege on taxation might, in effect, be a violation of the principle of uniformity in taxation and the equal protection clause.[6]

x x x x x x x x x

"MR. OPLE. x x x

"Of course, we share deeply the concern expressed by the sponsor, Commissioner Roberto Concepcion, for whom we have the highest respect, to surround the Supreme Court and the judicial system as a whole with the whole armor of defense against the executive and legislative invasion of their independence. But in so doing, some of the citizens outside, especially the humble government employees, might say that in trying to erect a bastion of justice, we might end up with the fortress of privileges, an island of extra territoriality under the Republic of the Philippines, because a good number of powers and rights accorded to the Judiciary here may not be enjoyed in the remotest degree by other employees of the government.

"An example is the exception from income tax, which is a kind of economic immunity, which is, of course, denied to the entire executive department and the legislative."[7]

And during the period of amendments on the draft Article, on July 14, 1986, Commissioner Cirilo A. Rigos proposed that the term "diminished" be changed to "decreased" and that the words "nor subjected to income tax" be deleted so as to "give substance to equality among the three branches in the government."

[6] Record of the Constitutional Commission, p. 460.

[7] *Ibid.*, at page 467.

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Commissioner Florenz D. Regalado, on behalf of the Committee on the Judiciary, defended the original draft and referred to the ruling of this Court in *Perfecto vs. Meer*[8] that "the independence of the judges is of far greater importance than any revenue that could come from taxing their salaries." Commissioner Rigos then moved that the matter be put to a vote. Commissioner Joaquin G. Bernas stood up "in support of an amendment to the amendment with the request for a modification of the amendment," as follows:

"FR. BERNAS. Yes. I am going to propose an amendment to the amendment saying that it is not enough to drop the phrase 'shall not be subjected to income tax,' because if that is all that the Gentleman will do, then he will just fall back on the decision in *Perfecto vs. Meer* and in *Dencia vs. David* [should be *Endencia and Jugo vs. David, etc.*, 93 Phil. 696] which excludes them from income tax, but rather I would propose that the statement will read: 'During their continuance in office, their salary shall not be diminished BUT MAY BE SUBJECT TO GENERAL INCOME TAX.' In support of this position, I would say that the argument seems to be that the justices and judges should not be subjected to income tax because they already gave up the income from their practice. That is true also of Cabinet members and all other employees. And I know right now, for instance, there are many people who have accepted employment in the government involving a reduction of income and yet are still subject to income tax. So, they are not the only citizens whose income is reduced by accepting service in government."

Commissioner Rigos accepted the proposed amendment to the amendment. Commissioner Rustico F. de los Reyes, Jr. then moved for a suspension of the session. Upon resumption, Commissioner Bernas announced:

"During the suspension, we came to an understanding with the original proponent, Commissioner Rigos, that his amendment on page 6. line 4 would read: 'During their continuance in office, their salary shall not be DECREASED.' But this is on the understanding that there will be a provision in the Constitution similar to Section 6 of Article XV, the General Provisions of the 1973 Constitution, which says:

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[8] 85 Phil. 552 (1950).

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> 'No salary or any form of emolument of any public officer or employee, including constitutional officers, shall be exempt from payment of income tax.'

"So, we put a period (.) after 'DECREASED' on the understanding that the salary of justices is subject to tax."

When queried about the specific Article in the General Provisions on non-exemption from tax of salaries of public officers, Commissioner Bernas replied:

"FR. BERNAS. Yes, I do not know if such an article will be found in the General Provisions. But at any rate, when we put a period (.) after 'DECREASED,' it is on the understanding that the doctrine in *Perfecto vs. Meer* and *Dencia vs. David* will not apply anymore."

The amendment to the original draft, as discussed and understood, was finally approved without objection.

"THE PRESIDING OFFICER (Mr. Bengzon). The understanding, therefore, is that there will be a provision under the Article on General Provisions. Could Commissioner Rosario Braid kindly take note that the salaries of officials of the government including constitutional officers shall not be exempt from income tax? The amendment proposed herein and accepted by the Committee now reads as follows: 'During their continuance in office, their salary shall not be DECREASED'; and the phrase 'nor subjected to income tax' is deleted."[9]

The debates, interpellations and opinions expressed regarding the constitutional provision in question until it was finally approved by the Commission disclosed that the true intent of the framers of the 1987 Constitution, in adopting it, was to make the salaries of members of the Judiciary taxable. The ascertainment of that intent is but in keeping with the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect.[10] The primary task in constitutional

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[9] Record of the Constitutional Commission, Vol. I, p. 506.

[10] *Gold Creek Mining Co. vs. Rodriguez*, 66 Phil. 259 (1938).

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construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution.[11] It may also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers.[12]

Besides, construing Section 10, Article VIII, of the 1987 Constitution, which, for clarity, is again reproduced hereunder:

"The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be *decreased*." (Italics supplied).

it is plain that the Constitution authorizes Congress to pass a law fixing another rate of compensation of Justices and Judges but such rate must be higher than that which they are receiving at the time of enactment, or if lower, it would be applicable only to those appointed after its approval. It would be a strained construction to read into the provision an exemption from taxation in the light of the discussions in the Constitutional Commission.

With the foregoing interpretation, and as stated heretofore, the ruling that "the imposition of income tax upon the salary of judges is a dimunition thereof, and so violates the Constitution" in *Perfecto vs. Meer*,[13] as affirmed in *Endencia vs David*[14] must be declared discarded. The framers of the fundamental law, as the *alter ego* of the people, have expressed in clear and unmistakable terms the meaning and import of Section 10, Article VIII, of the 1987 Constitution that they have adopted.

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[11] *J.M. Tuason & Co., Inc. vs. Land Tenure Administration,* No. 1-21064, February 18, 1970, 31 SCRA 413.

[12] Tañada, Fernando, *Constitution of the Philippines*, Fourth Ed., Vol. 1, p. 21.

[13] 85 Phil. 552 (1950).

[14] 93 Phil. 696 (1953).

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Stated otherwise, we accord due respect to the intent of the people, through the discussions and deliberations of their representatives, in the spirit that all citizens should bear their aliquot part of the cost of maintaining the government and should share the burden of general income taxation equitably.

WHEREFORE, the instant petition for Prohibition is hereby dismissed.

Teehankee, C.J., Fernan, Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and *Cortes, JJ.*, concur.

Yap, J., on leave.

EN BANC

[A.C. No. 1327. July 27, 1987]

RE: ATTY. OCTAVIO D. FULE

SYLLABUS

LEGAL ETHICS; NOTARY PUBLIC; FAILURE TO MAKE THE PROPER ENTRY IN THE NOTARIAL REGISTRY CONSTITUTES NEGLECT; PENALTY. — The evidence on record indicates that the intercalations did not amount to falsification, that they were made with the knowledge and consent of Mr. Ongsip and that the respondent's acts did not warrant disciplinary sanctions but that the respondent's failure to enter in his notarial register Mr. Ongsip's name as the person who either executed, swore to or acknowledged the receipts in question amounted to neglect. Respondent could not relieve himself of this legal duty by delegating it to another person. For this failure to make the proper entry in the notarial registry, the respondent is admonished to exercise due care in the performance of his duties as notary and cautioned that a similar lapse in the future will be dealt with more severely.