

MALACAÑAN PALACE  
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 40

AMENDING CERTAIN PROVISIONS OF THE REVISED ADMINISTRATIVE CODE ON THE JUDICIARY, BY INCREASING THE NUMBER OF JUSTICES OF THE SUPREME COURT, AND FOR OTHER PURPOSES.

WHEREAS the Court of Appeals was abolished by Executive Order No. 37, current series;

WHEREAS by such abolition of the Court of Appeals all cases which have theretofore been duly appealed thereto shall be transmitted to the Supreme Court for final decision, and all cases which under the law are appealable to the Court of Appeals shall be appealed to the Supreme Court, which is granted the jurisdiction to finally decide the same;

WHEREAS such enlarged jurisdiction of the Supreme Court requires the increase of the number of Justices thereof;

NOW, THEREFORE, by virtue of the powers vested in me by the Constitution and the laws of the Commonwealth of the Philippines, particularly Commonwealth Act No. 671, I, SERGIO OSMEÑA, President of the Philippines, do hereby order:

1. That sections 133 and 134 of the Revised Administrative Code, as amended by section 2 of Commonwealth Act No. 3 and sections 1 and 2 of Commonwealth Act No. 259, be

further amended so as to read as follows:

"SEC. 133. Justices of the Supreme Court; quorum of the Court; number of Justices necessary to reach a decision.—The Supreme Court of the Philippines shall consist of a Chief Justice and ten Associate Justices, any eight of whom shall constitute a quorum for its sessions in banc. In the absence of a quorum, the Court shall stand ipso facto adjourned until such time as the requisite number shall be present, and a memorandum showing this fact shall be inserted by the clerk in the minutes of the Court.

"The Supreme Court shall, as a body, sit in banc, but it may sit in two divisions, one of six and another of five Justices, to transact business, and the two divisions may sit at the same time. x

"Whenever the constitutionality of a law or a treaty is involved, the case shall be heard and determined by the Court sitting in banc, and no law or treaty may be declared unconstitutional without the concurrence of at least eight Justices. When the necessary majority, as herein provided, to declare a law or a treaty unconstitutional cannot be had, the Court shall so declare, and in such case the validity or constitutionality of the law or treaty involved

shall be deemed upheld.

"Whenever the judgment of the lower court imposes the death penalty, the case shall likewise be heard and determined by the Court sitting in banc, and the concurrence of all of the Justices present in the Philippines, not disqualified or physically incapacitated, shall be necessary for the pronouncement of a judgment imposing the death penalty. When the Court fails to reach a unanimous decision as herein provided, the penalty next lower in degree than the death penalty shall be imposed.

"All of the cases of the Court that are not required to be heard and determined by the Court in banc shall be allotted between the two divisions thereof for trial and decision, and the concurrence of five members of the division shall be necessary for the pronouncement of a judgment. Whenever a division fails to reach a decision in a case submitted to it, or whenever such division shall so order, or whenever the Chief Justice, in the exercise of a sound discretion, so orders, or whenever the admiralty jurisdiction of the Court is involved, the case shall be heard and determined by the Court sitting in banc, the affirmative vote of a majority of at least six

Justices being necessary for the pronouncement of a judgment.

"The Court sitting in banc shall, from time to time, make proper orders or rules to govern the allotment of cases between the two divisions, the constitution of such divisions, the regular rotation of Justices between them, the filling of vacancies occurring therein, and other matters relating to the business of the Court. If the Chief Justice is present in any session of the Court sitting in banc or in division, he shall preside. In his absence, that one of the Justices attending in banc or in division shall preside who holds the senior commission.

✓ "SEC. 133-A. Place of holding sessions.—The Supreme Court shall hold its sessions in the City of Manila. Whenever the public interest so requires, it may hold its sessions in any other place within the Philippines.

"SEC. 134. Appointment of Justices of the Supreme Court.—The Chief Justice and the Associate Justices of the Supreme Court shall be appointed by the President of the Philippines, with the consent of the Commission on Appointments of the Congress of the Philippines. The Chief Justice of the Supreme Court

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shall be so designated in his commission; and the Associate Justices shall have precedence according to the dates of their respective commissions, or, when the commissions of two or more of them bear the same date, according to the order in which their commissions may have been issued by the President of the Philippines.

"SEC. 134-A. Vacancy in office of Chief Justice.

In case of a vacancy in the office of Chief Justice of the Supreme Court, or of his inability to perform the duties and powers of his office, they shall devolve upon the Associate Justice who is first in precedence, until such disability is removed, or another Chief Justice is appointed and duly qualified. This provision shall apply to every Associate Justice who succeeds to the office of Chief Justice."

2. That all Acts or parts of Acts which are inconsistent with the provisions of this executive order are hereby repealed.

Done at the City of Washington, D. C., U. S. A. (for the City of Manila, Philippines), this 4<sup>th</sup> day of May, in the year of Our Lord, nineteen hundred and forty-five, and of the Commonwealth of the Philippines, the tenth.

  
SERGIO OSMEÑA