

ASSOCIATION OF MEDICAL CLINICS FOR OVERSEAS WORKERS, INC., (AMCOW), REPRESENTED HEREIN BY ITS PRESIDENT, DR. ROLANDO VILLOTE, PETITIONER, VS. GCC APPROVED MEDICAL CENTERS ASSOCI...

G.R. No. 207132. December 06, 2016

Ponente: BRION, J.

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BRION, J.:

In these consolidated petitions for review on certiorari[1] filed under Rule 45 of the Rules of Court, by the Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) in GR No. 207132, and by Secretary Enrique T. Ona (Secretary Ona) of the Department of Health (DOH) in GR No. 207205, we resolve the challenge to the August 10, 2012 decision[2] and the April 12, 2013 order[3] of the Regional Trial Court (RTC) of Pasay City, Branch 108, in Sp. Civil Action No. R-PSY-10-04391-CV.[4]

The August 10, 2012 decision and April 12, 2013 order declared null and void ab initio the August 23, 2010 and November 2, 2010 orders issued by the DOH directing respondent GCC Approved Medical Centers Association, Inc. (GAMCA) to cease and desist from implementing the referral decking system (these orders shall be alternately referred to as DOH CDO letters).

I. The Antecedents

On March 8, 2001, the DOH issued Administrative Order No. 5, Series of 2001[5] (AO 5-01) which directed the decking or equal distribution of migrant workers among the several clinics who are members of GAMCA.

AO 5-01 was issued to comply with the Gulf Cooperative Countries (GCC) States' requirement that only GCC-accredited medical clinics/hospitals' examination results will be honored by the GCC States' respective embassies. It required an OFW applicant to first go to a GAMCA Center which, in turn, will refer the applicant to a GAMCA clinic or hospital.

Subsequently, the DOH issued AO No. 106, Series of 2002[6] holding in abeyance the implementation of the referral decking system. The DOH reiterated its directive suspending the referral decking system in AO No. 159, Series of 2004.[7]

In 2004, the DOH issued AO No. 167, Series of 2004[8] repealing AO 5-01, reasoning that the referral decking system did not guarantee the migrant workers' right to safe and quality health service. AO 167-04 pertinently reads:

WHEREAS, after a meticulous and deliberate study, examination, and consultation about the GAMCA referral decking system, the DOH believes that its mandate is to protect and promote the health of the Filipino people by ensuring the rights to safe and quality health service and reliable medical examination results through the stricter regulation of medical clinics and other health facilities, which the referral decking system neither assures nor guarantees.

NOW, THEREFORE, for and in consideration of the foregoing, the DOH hereby withdraws, repeals and/or revokes Administrative Order No. 5, series of 2001, concerning the referral decking system. Hence, all other administrative issuances, bureau circulars and memoranda related to A.O. No. 5, series of 2001, are hereby withdrawn, repealed and/revoked accordingly.

In Department Memorandum No. 2008-0210,[9] dated September 26, 2008, then DOH Secretary Francisco T. Duque III expressed his concern about the continued implementation of the referral decking system despite the DOH's prior suspension directives. The DOH directed the "OFW clinics, duly accredited/licensed by the DOH and/or by the Philippine Health Insurance Corporation (PHILHEALTH) belonging to and identified with GAMCA x x x to forthwith stop, terminate, withdraw or otherwise end the x x x 'referral decking system.'"[10]

GAMCA questioned the DOH's Memorandum No. 2008-0210 before the Office of the President (OP). In a decision[11] dated January 14, 2010, the OP nullified Memorandum No. 2008-0210.

On March 8, 2010, Republic Act (RA) No. 10022[12] lapsed into law without the President's signature. Section 16 of RA No. 10022 amended Section 23 of RA No. 8042, adding two new paragraphs - paragraphs (c) and (d). The pertinent portions of the amendatory provisions read:

Section 16. Under Section 23 of Republic Act No. 8042, as amended, add new paragraphs (c) and (d) with their corresponding subparagraphs to read as follows:

(c) Department of Health. - The Department of Health (DOH) shall regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations, hereinafter referred to as health examinations, on Filipino migrant workers as requirement for their overseas employment. Pursuant to this, the DOH shall ensure that:

(c.1) The fees for the health examinations are regulated, regularly monitored and duly published to ensure that the said fees are reasonable and not exorbitant;

(c.2) The Filipino migrant worker shall only be required to undergo health examinations when there is reasonable certainty that he or she will be hired and deployed to the jobsite and only those health examinations which are absolutely necessary for the type of job applied for or those specifically required by the foreign employer shall be conducted;

(c.3) No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations on migrant workers for certain receiving countries;

(c.4) Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his or her rights as a patient are respected. The decking practice, which requires an overseas Filipino worker to go first to an office for registration and then farmed out to a medical clinic located elsewhere, shall not be allowed;

(c.5) Within a period of three (3) years from the effectivity of this Act, all DOH regional and/or provincial hospitals shall establish and operate clinics that can serve the health examination requirements of Filipino migrant workers to provide them easy access to such clinics all over the country and lessen their transportation and lodging expenses; and

(c.6) All DOH-accredited medical clinics, including the DOH- operated clinics, conducting health examinations for Filipino migrant workers shall observe the same standard operating procedures and shall comply with internationally accepted standards in their operations to conform with the requirements of receiving countries or of foreign employers/principals.

Any Foreign employer who does not honor the results of valid health examinations conducted by a DOH-accredited or DOH-operated clinic shall be temporarily disqualified from participating in the overseas

employment program, pursuant to POEA rules and regulations.

In case an overseas Filipino worker is found to be not medically fit upon his/her immediate arrival in the country of destination, the medical clinic that conducted the health examinations of such overseas Filipino worker shall pay for his or her repatriation back to the Philippines and the cost of deployment of such worker.

Any government official or employee who violates any provision of this subsection shall be removed or dismissed from service with disqualification to hold any appointive public office for five (5) years. Such penalty is without prejudice to any other liability which he or she may have incurred under existing laws, rules or regulations. [emphases and underscoring supplied]

On August 13, 2010, the Implementing Rules and Regulations[13] (IRR) of RA No. 8042, as amended by RA No. 10022, took effect.

Pursuant to Section 16 of RA No. 10022, the DOH, through its August 23, 2010 letter-order,[14] directed GAMCA to cease and desist from implementing the referral decking system and to wrap up their operations within three (3) days from receipt thereof. GAMCA received its copy of the August 23, 2010 letter-order on August 25, 2010.

On August 26, 2010, GAMCA filed with the RTC of Pasig City a petition for certiorari and prohibition with prayer for a writ of preliminary injunction and/or temporary restraining order (GAMCA's petition).[15] It assailed: (1) the DOH's August 23, 2010 letter-order on the ground of grave abuse of discretion; and (2) paragraphs c.3 and c.4, Section 16 of RA No. 10022, as well as Section 1 (c) and (d), Rule XI of the IRR, as unconstitutional.

Meanwhile, the DOH reiterated - through its November 2, 2010 order - its directive that GAMCA cease and desist from implementing the referral decking system.[16]

On November 23, 2010, AMCOW filed an urgent motion for leave to intervene and to file an opposition-in-intervention, attaching its opposition--in-intervention to its motion.[17] In the hearing conducted the following day, November 24, 2010, the RTC granted AMCOW's intervention; DOH and GAMCA did not oppose AMCOW's motion.[18] AMCOW subsequently paid the docket fees and submitted its memorandum.[19]

In an order[20] dated August 1, 2011, the RTC issued a writ of preliminary injunction[21] directing the DOH to cease and desist from implementing its August 23, 2010 and November 2, 2010 orders. The RTC likewise issued an order denying the motion for inhibition/disqualification filed by AMCOW.

On August 18, 2011, the DOH sought reconsideration of the RTC's August 1, 2011 order.

The assailed RTC rulings

In its August 10, 2012 decision,[22] the RTC granted GAMCA's certiorari petition and declared null and void ab initio the DOH CDO letters. It also issued a writ of prohibition directing "the DOH Secretary and all persons acting on his behalf to cease and desist from implementing the assailed Orders against the [GAMCA]."

The RTC upheld the constitutionality of Section 16 of RA No. 10022, amending Section 23 of RA No. 8042, but ruled that Section 16 of RA No. 10022 does not apply to GAMCA.

The RTC reasoned out that the prohibition against the referral decking system under Section 16 of RA No. 10022 must be interpreted as applying only to clinics that conduct health examination on migrant workers bound for countries that do not require the referral decking system for the issuance of visas to job applicants.

It noted that the referral decking system is part of the application procedure in obtaining visas to enter the GCC

States, a procedure made in the exercise of the sovereign power of the GCC States to protect their nationals from health hazards, and of their diplomatic power to regulate and screen entrants to their territories. Under the principle of sovereign equality and independence of States, the Philippines cannot interfere with this system and, in fact, must respect the visa-granting procedures of foreign states in the same way that they respect our immigration procedures.

Moreover, to restrain GAMCA which is a mere adjunct of HMC, the agent of GCC States, is to restrain the GCC States themselves. To the RTC, the Congress was aware of this limitation, pursuant to the generally accepted principles of international law under Article II, Section 2 of the 1987 Constitution, when it enacted Section 16 of RA No. 10022.

The DOH and AMCOW separately sought reconsideration of the RTC's August 10, 2012 decision, which motions the RTC denied.[23] The DOH and AMCOW separately filed the present Rule 45 petitions.

On August 24, 2013, AMCOW filed a motion for consolidation[24] of the two petitions; the Court granted this motion and ordered the consolidation of the two petitions in a resolution dated September 17, 2013.[25]

In the resolution[26] of April 14, 2015, the Court denied: (1) GAMCA's most urgent motion for issuance of temporary restraining order/writ of preliminary injunction/status quo ante order (with request for immediate inclusion in the Honorable Court's agenda of March 3, 2015, its motion dated March 2, 2015);[27] and (2) the most urgent reiterating motion for issuance of temporary restraining order/writ of preliminary injunction/status quo ante order dated March 11, 2015.[28]

The Court also suspended the implementation of the permanent injunction issued by the RTC of Pasay City, Branch 108 in its August 10, 2012 decision.

II. The Issues

The consolidated cases before us present the following issues:

First, whether the Regional Trial Court legally erred in giving due course to the petition for certiorari and prohibition against the DOH CDO letters;

Second, whether the DOH CDO letters prohibiting GAMCA from implementing the referral decking system embodied under Section 16 of Republic Act No. 10022 violates Section 3, Article II of the 1987 Constitution for being an undue taking of property;

Third, whether the application of Section 16 of Republic Act No.10022 to the GAMCA violates the international customary principles of sovereign independence and equality.

III. Our Ruling

A. The RTC legally erred when it gave due course to GAMCA's petition for certiorari and prohibition.

The present case reached us through an appeal by certiorari (pursuant to Rule 45) of an RTC ruling, assailing the decision based solely on questions of law. The RTC decision, on the other hand, involves the grant of the petitions for certiorari and prohibition (pursuant to Rule 65) assailing the DOH CDO letters for grave abuse of discretion.

The question before us asks whether the RTC made a reversible error of law when it issued writs of certiorari and prohibition against the DOH CDO letters.

AMCOW questions the means by which GAMCA raised the issue of the legality of RA No. 10022 before the RTC. AMCOW posits that GAMCA availed of an improper remedy, as certiorari and prohibition lie only against

quasi-judicial acts, and quasi-judicial and ministerial acts, respectively. Since the disputed cease and desist order is neither, the RTC should have dismissed the petition outright for being an improper remedy.

We agree with the petitioners' assertion that the RTC erred when it gave due course to GAMCA's petition for certiorari and prohibition, but we do so for different reasons.

1. Certiorari under Rules of Court and under the courts' expanded jurisdiction under Art VIII, Section 1 of the Constitution, as recognized by jurisprudence.

A.1.a. The Current Certiorari Situation

The use of petitions for certiorari and prohibition under Rule 65 is a remedy that judiciaries have used long before our Rules of Court existed.[29] As footnoted below, these writs - now recognized and regulated as remedies under Rule 65 of our Rules of Court - have been characterized a "supervisory writs" used by superior courts to keep lower courts within the confines of their granted jurisdictions, thereby ensuring orderliness in lower courts' rulings.

We confirmed this characterization in *Madrigal Transport v. Lapanday Holdings Corporation*,[30] when we held that a writ is founded on the supervisory jurisdiction of appellate courts over inferior courts, and is issued to keep the latter within the bounds of their jurisdiction. Thus, the writ corrects only errors of jurisdiction of judicial and quasi-judicial bodies, and cannot be used to correct errors of law or fact. For these mistakes of judgment, the appropriate remedy is an appeal.[31]

This situation changed after 1987 when the new Constitution "expanded" the scope of judicial power by providing that -

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (italics supplied)[32]

In *Francisco v. The House of Representatives*,[33] we recognized that this expanded jurisdiction was meant "to ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government.'" Thus, the second paragraph of Article VIII, Section 1 engraves, for the first time in its history, into black letter law the "expanded certiorari jurisdiction" of this Court, whose nature and purpose had been provided in the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion:

x x x x

The first section starts with a sentence copied from former Constitutions. It says:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

I suppose nobody can question it.

The next provision is new in our constitutional law. I will read it first and explain.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the

government.

Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political question and got away with it. As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. x x x

x x x x

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.[34] (*italics in the original; emphasis and underscoring supplied*)

Meanwhile that no specific procedural rule has been promulgated to enforce this "expanded" constitutional definition of judicial power and because of the commonality of "grave abuse of discretion" as a ground for review under Rule 65 and the courts expanded jurisdiction, the Supreme Court based on its power to relax its rules[35] allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction based on its power to relax its Rules.[36] This is however an ad hoc approach that does not fully consider the accompanying implications, among them, that Rule 65 is an essentially distinct remedy that cannot simply be bodily lifted for application under the judicial power's expanded mode. The terms of Rule 65, too, are not fully aligned with what the Court's expanded jurisdiction signifies and requires.[37]

On the basis of almost thirty years' experience with the courts' expanded jurisdiction, the Court should now fully recognize the attendant distinctions and should be aware that the continued use of Rule 65 on an ad hoc basis as the operational remedy in implementing its expanded jurisdiction may, in the longer term, result in problems of uneven, misguided, or even incorrect application of the courts' expanded mandate.

The present case is a prime example of the misguided reading that may take place in constitutional litigation: the procedural issues raised apparently spring from the lack of proper understanding of what a petition for certiorari assails under the traditional and expanded modes, and the impact of these distinctions in complying with the procedural requirements for a valid petition.

2. The Basic Distinctions

A.2.a. Actual Case or Controversy

Basic in the exercise of judicial power whether under the traditional or in the expanded setting - is the presence of an actual case or controversy. For a dispute to be justiciable, a legally demandable and enforceable right must exist as basis, and must be shown to have been violated.[38]

Whether a case actually exists depends on the pleaded allegations, as affected by the elements of standing (translated in civil actions as the status of being a "real-party-in-interest," in criminal actions as "offended party" and in special proceedings as "interested party"),^[39] ripeness,^[40] prematurity, and the moot and academic principle that likewise interact with one another. These elements and their interactions are discussed in greater detail below.

The Court's expanded jurisdiction - itself an exercise of judicial power - does not do away with the actual case or controversy requirement in presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act.

A.2.b. Actions Correctable by Certiorari

A basic feature of the expanded jurisdiction under the constitutional definition of judicial power, is the authority and command for the courts to act on petitions involving the commission by any branch or instrumentality of government of grave abuse of discretion amounting to lack or excess of jurisdiction.

This command distinctly contrasts with the terms of Rule 65 which confines court certiorari action solely to the review of judicial and quasi-judicial acts.^[41] These differing features create very basic distinctions that must necessarily result in differences in the application of remedies.

While actions by lower courts do not pose a significant problem because they are necessarily acting judicially when they adjudicate, a critical question comes up for the court acting on certiorari petitions when governmental agencies are involved - under what capacity does the agency act?

This is a critical question as the circumstances of the present case show. When the government entity acts quasi-judicially, the petition for certiorari challenging the action falls under Rule 65; in other instances, the petition must be filed based on the courts' expanded jurisdiction.

A.2.c. Grave Abuse of Discretion

Another distinction, a seeming one as explained below, relates to the cited ground of a certiorari petition under Rule 65 which speaks of lack or excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, as against the remedy under the courts' expanded jurisdiction which expressly only mentions grave abuse of discretion amounting to lack or excess of jurisdiction.

This distinction is apparently not legally significant when it is considered that action outside of or in excess of the granted authority necessarily involves action with grave abuse of discretion: no discretion is allowed in areas outside of an agency's granted authority so that any such action would be a gravely abusive exercise of power. The constitutional grant of power, too, pointedly addresses grave abuse of discretion when it amounts to lack or excess of jurisdiction,^[42] thus establishing that the presence of jurisdiction is the critical element; failure to comply with this requirement necessarily leads to the certiorari petition's immediate dismissal.^[43]

As an added observation on a point that our jurisprudence has not fully explored, the result of the action by a governmental entity (e.g., a law or an executive order) can be distinguished from the perspective of its legality as tested against the terms of the Constitution or of another law (where subordinate action like an executive order is involved), vis-a-vis the legality of the resulting action where grave abuse of discretion attended the governmental action or the exercise of the governmental function.

In the former, the conclusion may be plain illegality or legal error that characterized the law or exec order (as tested, for example, under the established rules of interpretation); no consideration is made of how the governmental entity exercised its function. In the latter case, on the other hand, it is the governmental entity's

exercise of its function that is examined and adjudged independently of the result, with impact on the legality of the result of the gravely abusive action.

Where the dispute in a case relates to plain legal error, ordinary court action and traditional mode are called for and this must be filed in the lower courts based on rules of jurisdiction while observing the hierarchy of courts.

Where grave abuse of discretion is alleged to be involved, the expanded jurisdiction is brought into play based on the express wording of the Constitution and constitutional implications may be involved (such as grave abuse of discretion because of plain oppression or discrimination), but this must likewise be filed with the lowest court of concurrent jurisdiction, unless the court highest in the hierarchy grants exemption. Note that in the absence of express rules, it is only the highest court, the Supreme Court, that can only grant exemptions.

From these perspectives, the use of grave abuse of discretion can spell the difference in deciding whether a case filed directly with the Supreme Court has been properly filed.

A.2.d. Exhaustion of Available Remedies

A basic requirement under Rule 65 is that there be "no other plain, speedy and adequate remedy found in law,"[44] which requirement the expanded jurisdiction provision does not expressly carry. Nevertheless, this requirement is not a significant distinction in using the remedy of certiorari under the traditional and the expanded modes. The doctrine of exhaustion of administrative remedies applies to a petition for certiorari, regardless of the act of the administrative agency concerned, i.e., whether the act concerns a quasi-judicial, or quasi-legislative function, or is purely regulatory.[45]

Consider in this regard that once an administrative agency has been empowered by Congress to undertake a sovereign function, the agency should be allowed to perform its function to the full extent that the law grants. This full extent covers the authority of superior officers in the administrative agencies to correct the actions of subordinates, or for collegial bodies to reconsider their own decisions on a motion for reconsideration. Premature judicial intervention would interfere with this administrative mandate, leaving administrative action incomplete; if allowed, such premature judicial action through a writ of certiorari, would be a usurpation that violates the separation of powers principle that underlies our Constitution.[46]

In every case, remedies within the agency's administrative process must be exhausted before external remedies can be applied. Thus, even if a governmental entity may have committed a grave abuse of discretion, litigants should, as a rule, first ask reconsideration from the body itself, or a review thereof before the agency concerned. This step ensures that by the time the grave abuse of discretion issue reaches the court, the administrative agency concerned would have fully exercised its jurisdiction and the court can focus its attention on the questions of law presented before it.

Additionally, the failure to exhaust administrative remedies affects the ripeness to adjudicate the constitutionality of a governmental act, which in turn affects the existence of the need for an actual case or controversy for the courts to exercise their power of judicial review.[47] The need for ripeness - an aspect of the timing of a case or controversy does not change regardless of whether the issue of constitutionality reaches the Court through the traditional means, or through the Court's expanded jurisdiction. In fact, separately from ripeness, one other concept pertaining to judicial review is intrinsically connected to it; the concept of a case being moot and academic.[48]

Both these concepts relate to the timing of the presentation of a controversy before the Court ripeness relates to its prematurity, while mootness relates to a belated or unnecessary judgment on the issues. The Court cannot preempt the actions of the parties, and neither should it (as a rule) render judgment after the issue has already been

resolved by or through external developments.

The importance of timing in the exercise of judicial review highlights and reinforces the need for an actual case or controversy an act that may violate a party's right. Without any completed action or a concrete threat of injury to the petitioning party, the act is not yet ripe for adjudication. It is merely a hypothetical problem. The challenged act must have been accomplished or performed by either branch or instrumentality of government before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.

In these lights, a constitutional challenge, whether presented through the traditional route or through the Court's expanded jurisdiction, requires compliance with the ripeness requirement. In the case of administrative acts, ripeness manifests itself through compliance with the doctrine of exhaustion of administrative remedies.

In like manner, an issue that was once ripe for resolution but whose resolution, since then, has been rendered unnecessary, needs no resolution from the Court, as it presents no actual case or controversy and likewise merely presents a hypothetical problem. In simpler terms, a case is moot and academic when an event supervenes to render a judgment over the issues unnecessary and superfluous.

Without the element of ripeness or a showing that the presented issue is moot and academic, petitions challenging the constitutionality of a law or governmental act are vulnerable to dismissal.

Not to be forgotten is that jurisprudence also prohibits litigants from immediately seeking judicial relief without first exhausting the available administrative remedies for practical reasons.[49]

From the perspective of practicality, immediate resort to the courts on issues that are within the competence of administrative agencies to resolve, would unnecessarily clog the courts' dockets. These issues, too, usually involve technical considerations that are within the agency's specific competence and which, for the courts, would require additional time and resources to study and consider.[50] Of course, the Supreme Court cannot really avoid the issues that a petition for certiorari, filed with the lower courts may present; the case may be bound ultimately to reach the Court, albeit as an appeal from the rulings of the lower courts.

3. Situations Where a Petition for Certiorari May Be Used

There are two distinct situations where a writ of certiorari or prohibition may be sought. Each situation carries requirements, peculiar to the nature of each situation, that lead to distinctions that should be recognized in the use of certiorari under Rule 65 and under the courts' expanded jurisdiction.

The two situations differ in the type of questions raised. The first is the constitutional situation where the constitutionality of acts are questioned. The second is the non-constitutional situation where acts amounting to grave abuse of discretion are challenged without raising constitutional questions or violations.

The process of questioning the constitutionality of a governmental action provides a notable area of comparison between the use of certiorari in the traditional and the expanded modes.

Under the traditional mode, plaintiffs question the constitutionality of a governmental action through the cases they file before the lower courts; the defendants may likewise do so when they interpose the defense of unconstitutionality of the law under which they are being sued. A petition for declaratory relief may also be used to question the constitutionality or application of a legislative (or quasi-legislative) act before the court.[51]

For quasi-judicial actions, on the other hand, certiorari is an available remedy, as acts or exercise of functions that violate the Constitution are necessarily committed with grave abuse of discretion for being acts undertaken outside the contemplation of the Constitution. Under both remedies, the petitioners should comply with the

traditional requirements of judicial review, discussed below.[52] In both cases, the decisions of these courts reach the Court through an appeal by certiorari under Rule 45.

In contrast, existing Court rulings in the exercise of its expanded jurisdiction have allowed the direct filing of petitions for certiorari and prohibition with the Court to question, for grave abuse of discretion, actions or the exercise of a function that violate the Constitution.[53] The governmental action may be questioned regardless of whether it is quasi-judicial, quasi-legislative, or administrative in nature. The Court's expanded jurisdiction does not do away with the actual case or controversy requirement for presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a prima facie showing of grave abuse of discretion in the exercise of the governmental act.[54]

To return to judicial review heretofore mentioned, in constitutional cases where the question of constitutionality of a governmental action is raised, the judicial power the courts exercise is likewise identified as the power of judicial review - the power to review the constitutionality of the actions of other branches of government.[55] As a rule, as required by the hierarchy of courts principle, these cases are filed with the lowest court with jurisdiction over the matter. The judicial review that the courts undertake requires:

1)

there be an actual case or controversy calling for the exercise of judicial power;

(2)

the person challenging the act must have "Standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3)

the question of constitutionality must be raised at the earliest possible opportunity; and

(4)

the issue of constitutionality must be the very lis mota of the case.[56]

The lower court's decision under the constitutional situation reaches the Supreme Court through the appeal process, interestingly, through a petition for review on certiorari under Rule 45 of the Rules of Court.

In the non-constitutional situation, the same requirements essentially apply, less the requirements specific to the constitutional issues. In particular, there must be an actual case or controversy and the compliance with requirements of standing, as affected by the hierarchy of courts, exhaustion of remedies, ripeness, prematurity, and the moot and academic principles.

A.3.a. The "Standing" Requirement

Under both situations, the party bringing suit must have the necessary "standing." This means that this party has, in its favor, the demandable and enforceable right or interest giving rise to a justiciable controversy after the right is violated by the offending party.

The necessity of a person's standing to sue derives from the very definition of judicial power. Judicial power includes the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable. Necessarily, the person availing of a judicial remedy must show that he possesses a legal interest or right to it, otherwise, the issue presented would be purely hypothetical and academic. This concept has been translated into the requirement to have "standing" in judicial review,[57] or to be considered as a

"real-party-in-interest" in civil actions,[58] as the "offended party" in criminal actions[59] and the "interested party" in special proceedings.[60]

While the Court follows these terms closely in both non-constitutional cases and constitutional cases under the traditional mode, it has relaxed the rule in constitutional cases harrdled under the expanded jurisdiction mode. in the latter case, a prima facie showing that the questioned governmental act violated the Constitution, effectively disputably shows an injury to the sovereign Filipino nation who approved the Constitution and endowed it with authority, such that the challenged act may be questioned by any Philippine citizen before the Supreme Court.[61] In this manner, the "standing" requirement is relaxed compared with the standard of personal stake or injury that the traditional petition requires.

The relaxation of the standing requirement has likewise been achieved through the application of the "transcendental importance doctrine" under the traditional mode for constitutional cases.[62] (Under the traditional mode, "transcendental importance" not only relaxes the standing requirement, but also allows immediate access to this Court, thus exempting the petitioner from complying with the hierarchy of courts requirement.)[63]

More importantly perhaps, the prima facie showing of grave abuse of discretion in constitutional cases also implies that the injury alleged is actual or imminent, and not merely hypothetical.

Through this approach, the Court's attention is directed towards the existence of an actual case or controversy - that is, whether the government indeed violated the Constitution to the detriment of the Filipino people without the distractions of determining the existence of transcendental importance indicators unrelated to the dispute and which do not at all determine whether the Court properly exercises its power of judicial review.

Parenthetically, in the traditional mode, the determination of the transcendental importance of the issue presented,[64] aside from simply relaxing the standing requirement, may result in the dilution of the actual case or controversy element because of the inextricable link between standing and the existence of an actual case or controversy.

Consider, in this regard, that an actual case or controversy that calls for the exercise of judicial power necessarily requires that the party presenting it possesses the standing to mount a challenge to a governmental act. A case or controversy exists when there is an actual dispute between parties over their legal rights, which remains in conflict at the time the dispute is presented before the court.[65] Standing, on the other hand, involves a personal and substantial interest in the case because the petitioner has sustained, or will sustain, direct injury as a result of the violation of its right.[66]

With the element of "standing" (or the petitioner's personal or substantial stake or interest in the case) relaxed, the practical effect is to dilute the need to show that an immediate actual dispute over legal rights did indeed take place and is now the subject of the action before the court.[67]

In both the traditional and the expanded modes, this relaxation carries a ripple effect under established jurisprudential rulings,[68] affecting not only the actual case or controversy requirement, but compliance with the doctrine of hierarchy of courts, discussed in greater detail below.

A.3.b. The Hierarchy of Courts Principle

Another requirement that a certiorari petition carries, springs from the principle of "hierarchy of courts" which recognizes the various levels of courts in the country as they are established under the Constitution and by law, their ranking and effect of their rulings in relation with one another, and how these different levels of court

interact with one another.[69] Since courts are established and given their defined jurisdictions by law, the hierarchy of the different levels of courts should leave very little opening for flexibility (and potential legal questions), but for the fact that the law creates courts at different and defined levels but with concurrent jurisdictions.

The Constitution itself has partially determined the judicial hierarchy in the Philippine legal system by designating the Supreme Court as the highest court with irreducible powers; its rulings serve as precedents that other courts must follow[70] because they form part of the law of the land.[71] As a rule, the Supreme Court is not a trial court and rules only on questions of law, in contrast with the Court of Appeals and other intermediate courts[72] which rule on both questions of law and of fact. At the lowest level of courts are the municipal and the regional trial courts which handle questions of fact and law at the first instance according to the jurisdiction granted to them by law.

Petitions for certiorari and prohibition fall under the concurrent jurisdiction of the regional trial courts and the higher courts, all the way up to the Supreme Court. As a general rule, under the hierarchy of courts principle, the petition must be brought to the lowest court with jurisdiction;[73] the petition brought to the higher courts may be dismissed based on the hierarchy principle. Cases, of course, may ultimately reach the Supreme Court through the medium of an appeal.

The recognition of exceptions to the general rule is provided by the Supreme Court through jurisprudence, i.e., through the cases that recognized the propriety of filing cases directly with the Supreme Court. This is possible as the Supreme Court has the authority to relax the application of its own rules.[74]

As observed above, this relaxation waters down other principles affecting the remedy of certiorari. While the relaxation may result in greater and closer supervision by the Court over the lower courts and quasi-judicial bodies under Rule 65, the effect may not always be salutary in the long term when it is considered that this may affect the constitutional standards for the exercise of judicial power, particularly the existence of an actual case or controversy.

The "transcendental importance" standard, in particular, is vague, open-ended and value-laden, and should be limited in its use to exemptions from the application of the hierarchy of courts principle. It should not carry any ripple effect on the constitutional requirement for the presence of an actual case or controversy.

4. The petition for certiorari and prohibition against the DOH Letter was filed before the wrong court.

In the present case, the act alleged to be unconstitutional refers to the cease and desist order that the DOH issued against GAMCA's referral decking system. Its constitutionality was questioned through a petition for certiorari and prohibition before the RTC. The case reached this Court through a Rule 45 appeal by certiorari under the traditional route.

In using a petition for certiorari and prohibition to assail the DOH-CDO letters, GAMCA committed several procedural lapses that rendered its petition readily dismissible by the RTC. Not only did the petitioner present a premature challenge against an administrative act; it also committed the grave jurisdictional error of filing the petition before the wrong court.

A.4.a. The DOH CDO letters were issued in the exercise of the DOH's quasi-judicial functions, and could be assailed through Rule 65 on certiorari and prohibition.

A cease and desist order is quasi-judicial in nature, as it applies a legislative policy to an individual or group within the coverage of the law containing the policy.

The Court, in *Municipal Council of Lemery, Batangas v. Provincial Board of Batangas*,^[75] recognized the difficulty of defining the precise demarcation line between what are judicial and what are administrative or ministerial functions, as the exercise of judicial functions may involve the performance of legislative or administrative duties, and the performance of administrative or ministerial duties may, to some extent, involve the exercise of functions judicial in character. Thus, the Court held that the nature of the act to be performed, rather than of the office, board, or body which performs it, should determine whether or not an action is in the discharge of a judicial or a quasi-judicial function.^[76]

Generally, the exercise of judicial functions involves the determination of what the law is, and what the legal rights of parties are under this law with respect to a matter in controversy. Whenever an officer is clothed with this authority and undertakes to determine those questions, he acts judicially.^[77]

In the administrative realm, a government officer or body exercises a quasi-judicial function when it hears and determines questions of fact to which the legislative policy is to apply, and decide, based on the law's standards, matters relating to the enforcement and administration of the law.^[78]

The DOH CDO letter directed GAMCA to cease and desist from engaging in the referral decking system practice within three days from receipt of the letter. By issuing this CDO letter implementing Section 16 of RA No. 10022, the DOH (1) made the finding of fact that GAMCA implements the referral decking system, and (2) applied Section 16 of RA No. 10022, to conclude that GAMCA's practice is prohibited by law and should be stopped.

From this perspective, the DOH acted in a quasi-judicial capacity: its CDO letter determined a question of fact, and applied the legislative policy prohibiting the referral decking system practice.

Notably, cease and desist orders have been described and treated as quasi-judicial acts in past cases, and had even been described as similar to the remedy of injunction granted by the courts.^[79]

A.4.b. The petitions for certiorari and prohibition against the DOH CDO letters fall within the jurisdiction of the Court of Appeals.

Since the CDO Letter was a quasi-judicial act, the manner by which GAMCA assailed it before the courts of law had been erroneous; the RTC should not have entertained GAMCA's petition.

First, acts or omissions by quasi-judicial agencies, regardless of whether the remedy involves a Rule 43 appeal or a Rule 65 petition for certiorari, is cognizable by the Court of Appeals. In particular, Section 4, Rule 65 of the Rules of Court provides:

Section 4. When and where petition filed. The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals. (emphasis, italics, and underscoring supplied)

Since the DOH is part of the Executive Department and has acted in its quasi-judicial capacity, the petition challenging its CDO letter should have been filed before the Court of Appeals. The RTC thus did not have jurisdiction over the subject matter of the petitions and erred in giving due course to the petition for certiorari and

prohibition against the DOH CDO letters. In procedural terms, petitions for certiorari and prohibition against a government agency are remedies available to assail its quasi-judicial acts, and should thus have been filed before the CA.

The provision in Section 4, Rule 65 requiring that certiorari petitions challenging quasi-judicial acts to be filed with the CA is in full accord with Section 9 of Batas Pambansa Blg. 129[80] on the same point. Section 9 provides:

Section 9. Jurisdiction.- The Court of Appeals shall exercise:

1. Original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

x x x x

3. Exclusive appellate jurisdiction over all final judgments, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commission, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph 4 of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

x x x x

(emphases, italics, and underscoring supplied)

Thus, by law and by Supreme Court Rules, the CA is the court with the exclusive original jurisdiction to entertain petitions for certiorari and prohibition against quasi-judicial agencies. In short, GAMCA filed its remedy with the wrong court.

A.4.c The petitions for certiorari and prohibition against the DOH CDO letters were premature challenges - they failed to comply with the requirement that there be "no other plain, speedy and adequate remedy" and with the doctrine of exhaustion of administrative remedies.

Second, the Regional Trial Court of Pasay City unduly disregarded the requirements that there be "no other plain, speedy and adequate remedy at law" and the doctrine of exhaustion of administrative remedies, when it gave due course to the certiorari and prohibition petition against the DOH's CDO.

Under Chapter 8, Book IV of Executive Order (EO) No. 292,[81] series of 1987, the DOH Secretary "shall have supervision and control over the bureaus, offices, and agencies under him"[82] and "shall have authority over and responsibility for x x x operation" of the Department.

Section 1, Chapter 1, Title I, Book III of EO No. 292 in relation with Article VII, Sections 1 and 17 of the Constitution,[83] on the other hand, provides that the "President shall have control of all the executive departments, bureaus, and offices."

These provisions both signify that remedies internal to the Executive Branch exist before resorting to judicial remedies: GAMCA could ask the DOH Secretary to reconsider or clarify its letter-order, after which it could appeal, should the ruling be unfavorable, to the Office of the President.

Significantly, this was what GAMCA did in the past when the DOH issued Memorandum Order No. 2008-0210 that prohibited the referral decking system. GAMCA then asked for the DOH Secretary's reconsideration, and

subsequently appealed the DOH's unfavorable decision with the Office of the President. The OP then reversed Memorandum Order No. 2008-0210 and allowed the referral decking system to continue.

That GAMCA had earlier taken this course indicates that it was not unaware of the administrative remedies available to it; it simply opted to disregard the doctrine of exhaustion of administrative remedies and the requirement that there be no other plain, speedy, and adequate remedy in law when it immediately filed its petition for certiorari with the RTC.

This blatant disregard of the Rule 65 requirements clearly places GAMCA's petition outside the exceptions that we recognized in the past in relaxing strict compliance with the exhaustion of administrative remedies requirement.

Jurisprudence[84] shows that this Court never hesitated in the past in relaxing the application of the rules of procedure to accommodate exceptional circumstances when their strict application would result in injustice. These instances, founded as they are on equitable considerations, do not include the undue disregard of administrative remedies, particularly when they are readily available.[85]

A.4.d. The petitions for certiorari and prohibition against the DOH CDO letters should have been dismissed outright, as Rule 65 Petitions for Certiorari and Prohibition are extraordinary remedies given due course only upon compliance with the formal and substantive requirements.

Note, at this point, that Rule 65 petitions for certiorari and prohibition are discretionary writs, and that the handling court possesses the authority to dismiss them outright for failure to comply with the form and substance requirements. Section 6, Rule 65 of the Rules of Court in this regard provides:

Section 6. Order to comment. - If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct together with a copy of the petition and any annexes thereto. (emphasis, italics, and underscoring supplied)

Thus, even before requiring the DOH to comment, the RTC could have assessed the petition for certiorari and prohibition for its compliance with the Rule 65 requirements. At that point, the petition for certiorari and prohibition should have been dismissed outright, for failing to comply with Section 1 and Section 4 of Rule 65. When the court instead took cognizance of the petition, it acted on a matter outside its jurisdiction.

Consequently, the RTC's resulting judgment is void and carries no legal effect. The decision exempting GAMCA from the application of the referral decking system should equally have no legal effect.

Noncompliance with the Section 1, Rule 65 requirement that there be no other plain, speedy, and adequate remedy in law, on the other hand, is more than just a pro-forma requirement in the present case. Since the petitions for certiorari and prohibition challenge a governmental act - i.e. action under the DOH CDO letters, as well as the validity of the instruments under which these letters were issued - compliance with Section 1, Rule 65 and the doctrine of exhaustion of administrative remedies that judicial review requires is also mandatory. To recall a previous discussion, the exhaustion of administrative remedies is also an aspect of ripeness in deciding a constitutional issue.

Thus, GAMCA's disregard of the Rules of Court not only renders the petition dismissible for failure to first exhaust administrative remedies; the constitutional issues GAMCA posed before the RTC were not also ripe for adjudication.

5. The Regional Trial Court erred in finding grave abuse of discretion on the part of the DOH's issuance of the DOH CDO letters.

On the merits, we find that the RTC of Pasay reversibly erred in law when it held that the DOH acted with grave abuse of discretion in prohibiting GAMCA from implementing the referral decking system.

In exempting GAMCA from the referral decking system that RA No. 10022 prohibits, the RTC of Pasay City noted that the regulation per se was not unconstitutional, but its application to GAMCA would violate the principle of sovereign equality and independence.

While we agree with the RTC's ultimate conclusion upholding the constitutionality of the prohibition against the referral decking system under RA No. 10022, our agreement proceeds from another reason; we disagree that the prohibition does not apply to GAMCA and with the consequent ruling nullifying the DOH's CDO Letter.

A.5.a. The prohibition against the referral decking system under Section 16, RA No. 10022, is a valid exercise of police power.

In its comment, GAMCA asserts that implementing the prohibition against the referral decking system would amount to an undue taking of property that violates Article II, Section 2 of the 1987 Constitution.

It submits that the Securities and Exchange Commission had in fact approved its Articles of Incorporation and Bylaws that embody the referral decking system; thus, the DOH cannot validly prohibit the implementation of this system.

GAMCA further claims that its members made substantial investments to upgrade their facilities and equipment. From this perspective, the August 23, 2010 order constitutes taking of property without due process of law as its implementation would deprive GAMCA members of their property.

AMCOW responded to these claims with the argument that the DOH CDO letters implementing RA No. 10022 are consistent with the State's exercise of the police power to prescribe regulations to promote the health, safety, and general welfare of the people. Public interest justifies the State's interference in health matters, since the welfare of migrant workers is a legitimate public concern. The DOH thus merely performed its duty of upholding the migrant workers' freedom to consult their chosen clinics for the conduct of health examinations.

We agree with AMCOW.

The State's police power^[86] is vast and plenary^[87] and the operation of a business,^[88] especially one that is imbued with public interest (such as healthcare services),^[89] falls within the scope of governmental exercise of police power through regulation.

As defined, police power includes (1) the imposition of restraint on liberty or property, (2) in order to foster the common good.^[90] The exercise of police power involves the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."^[91]

By its very nature, the exercise of the State's police power limits individual rights and liberties, and subjects them to the "far more overriding demands and requirements of the greater number."^[92] Though vast and plenary, this State power also carries limitations, specifically, it may not be exercised arbitrarily or unreasonably. Otherwise, it defeats the purpose for which it is exercised, that is, the advancement of the public good.^[93]

To be considered reasonable, the government's exercise of police power must satisfy the "valid object and valid means" method of analysis: first, the interest of the public generally, as distinguished from those of a particular class, requires interference; and second, the means employed are reasonably necessary to attain the objective

sought and not unduly oppressive upon individuals.[94]

These two elements of reasonableness are undeniably present in Section 16 of RA No. 10022. The prohibition against the referral decking system is consistent with the State's exercise of the police power to prescribe regulations to promote the health, safety, and general welfare of the people. Public interest demands State interference on health matters, since the welfare of migrant workers is a legitimate public concern.

We note that RA No. 10022 expressly reflects the declared State policies to "uphold the dignity of its citizens whether in the country or overseas, in general, and Filipino migrant workers," and to "afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers." The prohibition against the referral decking system in Section 16 of RA No. 10022 is an expression and implementation of these state policies.

The guarantee under Section 16 for OFWs to be given the option to choose a quality healthcare service provider as expressed in Section 16 (c)[95] of RA No. 10022 is guaranteed by the prohibition against the decking practice and against monopoly practices in OFW health examinations.[96]

Section 16 likewise requires employers to accept health examinations from any DOH-accredited health facility; a refusal could lead to their temporary disqualification under pertinent rules to be formulated by the Philippine Overseas Employment Authority (POEA).[97]

These rules are part of the larger legal framework to ensure the Overseas Filipino Workers' (OFW) access to quality healthcare services, and to curb existing practices that limit their choices to specific clinics and facilities.

Separately from the Section 16 prohibition against the referral decking system, RA No. 10022 also prohibits and penalizes the imposition of a compulsory exclusive arrangement requiring OFWs to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons. Section 5, in relation to Section 6 of RA No. 10022, penalizes compulsory, exclusive arrangements[98] by imprisonment and fine and by the automatic revocation of the participating medical clinic's license.

The DOH's role under this framework is to regulate the activities and operations of all clinics conducting health examinations on Filipino migrant workers as a requirement for their overseas employment. The DOH is tasked to ensure that:

(c.3) No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations on migrant workers for certain receiving countries;

(c.4) Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his or her rights as a patient are respected. The decking practice, which requires an overseas Filipino worker to go first to an office for registration and then farmed out to a medical clinic located elsewhere, shall not be allowed;[99]

While Section 16 of RA No. 10022 does not specifically define the consequences of violating the prohibition against the referral decking system, Republic Act No. 4226 (Hospital Licensure Act), which governs the licensure and regulation of hospitals and health facilities, authorizes the DOH to suspend, revoke, or refuse to renew the license of hospitals and clinics violating the law.[100]

These consequences cannot but apply to the violation of the prohibition against the referral decking system under RA No. 10022. If, under the law, the DOH can suspend, revoke, or refuse to renew the license of these hospitals upon the finding that they violated any provision of law (whether those found in RA No. 4226 or in RA No.

10022), it follows- as a necessarily included lesser power - that the DOH can likewise order these clinics and their association to cease and desist from practices that the law deems to be undesirable.

A.5.b. The DOH did not gravely abuse its discretion in issuing the assailed DOH CDO letters.

As discussed above, the letter-order implementing the prohibition against the referral decking system is quasi-judicial in nature. This characteristic requires that procedural due process be observed - that is, that the clinics concerned be given the opportunity to be heard before the standard found in the law can be applied to them.

Thus, prior to the issuance of the disputed CDO letter, the DOH should have given GAMCA the opportunity to be heard on whether the prohibition applies to it. Lest this opportunity to be heard be misunderstood, this DOH obligation raises an issue different from the question of whether Congress can, under the exercise of police power, prohibit the referral decking system; this latter issue lies outside the scope of the DOH to pass upon. The required hearing before the DOH relates solely to whether it properly implemented, based on the given standards under the law, the prohibition that Congress decreed under RA No. 10022.

Under normal circumstances, the issuance of a CDO without a prior hearing would violate GAMCA's procedural due process rights, and would amount to more than a legal error, i.e., an error equivalent to action without jurisdiction. Rendering a decision quasi-judicial in nature without providing the opportunity to be heard amounts to a grave abuse of discretion that divests a quasi-judicial agency of its jurisdiction.

Factual circumstances unique to the present case, however, lead us to conclude that while it was an error of law for the DOH to issue a CDO without complying with the requirements of procedural due process, its action did not amount to a grave abuse of discretion.

Grave abuse of discretion amounts to more than an error of law; it refers to an act that is so capricious, arbitrary, and whimsical that it amounts to a clear evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[101]

Prior to the issuance of its CDO Letter, the DOH had more than sufficient basis to determine that GAMCA practices the prohibited referral decking system under RA No. 10022. Notably, the DOH had earlier allowed and recognized the referral decking system that GAMCA practiced through AO 5-01. This recognition was made with GAMCA's practice in mind. The subsequent administrative orders and department memorandum suspending and terminating the referral decking system, respectively, all pertain to the practice that the DOH had authorized under AO 5-01. Even the subject matter of these issuances do not just pertain to any other referral decking system, but to the "GAMCA referral decking system."

GAMCA likewise had more than several opportunities to contest the suspension and eventual revocation of the referral decking system initially permitted under AO 5-01. Its appeal even reached the Office of the President, which overturned the DOH Memorandum Order terminating the referral decking system.

That the referral decking system had been subsequently prohibited by law shows the intent of Congress to prevent and prohibit the practice that GAMCA initiated and which the President had allowed. The President's duty under our political system is to implement the law; hence, when Congress subsequently prohibited the practice that GAMCA initiated, the Executive - including the President - has no choice but to implement it.

Based on these circumstances, while the DOH erred when it issued its CDO letters without first giving GAMCA the opportunity to prove whether the practice conducted by GAMCA is the same practice prohibited under RA No. 10022, the DOH conclusion to so act, in our view, did not constitute grave abuse of discretion that would

have divested it of jurisdiction.

We note that the DOH had sufficient basis when it determined that the referral decking system prohibited under RA No. 10022 was the same decking system practiced by GAMCA. To reiterate, the referral decking system was not something new; it was an old system that GAMCA practiced and was known to all in its scope and operating details. That GAMCA had previously questioned the DOH prohibition and had been given ample opportunity to be heard when it filed an appeal before the OP, negate the conclusion that GAMCA had been aggrieved by precipitate and unfair DOH action.

To be sure, these factual circumstances do not make the CDO letter compliant with procedural due process. They mitigate, however, the error committed and render it less than the capricious, arbitrary, and patent refusal to comply with a positive legal duty that characterizes an act committed with grave abuse of discretion.

The Court furthermore, in several instances,[102] has recognized that an administrative agency may issue an ex parte cease and desist order, where vital public interests outweigh the need for procedural due process." In these instances, the Court noted that the affected establishment may contest the ex parte order, upon which the administrative agency concerned must conduct a hearing and allow the establishment to be heard. While jurisprudence has so far used the "vital public interests" standard to pollution cases, it had not been a grave abuse of discretion on the part of the DOH to consider that GAMCA's referral decking practice falls within this category. The DOH has long made the factual finding that the referral decking system hinders our Filipino seafarers' access to quality and affordable healthcare in its A.O. No. 106, series of 2002.

These circumstances further mitigate whatever legal error the DOH has committed and render the conclusion that grave abuse of discretion had taken place misplaced.

Since the writs of certiorari and prohibition do not issue against legal errors, but to acts of grave abuse of discretion, the RTC erred in issuing these writs against the DOH CDO letters.

6. The prohibition against the referral decking system against GAMCA does not violate the principle of sovereign equality and independence.

The RTC based its decision to grant the writs of certiorari and prohibition against the DOH letter-order on the principle of sovereign equality and independence; applying the referral decking system prohibition against GAMCA violates this principle.

The RTC reasoned out that the prohibition against the referral decking system under Section 16 of RA No. 10022 must be interpreted to apply only to clinics conducting health examinations on migrant workers bound for countries that do not require the referral decking system for the issuance of visas to job applicants.

The RTC observed, too, that the referral decking system is part of the application procedure in obtaining visas to enter the GCC States, a procedure made in the exercise of the sovereign power of the GCC States to protect their nationals from health hazards, and of their diplomatic power to regulate and screen entrants to their territories.

It also reasoned out that under the principle of sovereign equality and independence of States, the Philippines cannot interfere with this system and in fact must respect the visa-granting procedures of foreign states in the same way that they respect our immigration procedures. Moreover, to restrain GAMCA which is a mere adjunct of HMC (an agent of GCC States) is to restrain the GCC States themselves.

AMCOW contests the RTC's conclusion, arguing that the principles of sovereign equality and independence of States do not apply to the present case. According to AMCOW, the subject matter of this case pertains to a domestic concern as the law and the regulations that GAMCA assails relate to the operation of medical clinics in

the Philippines.

It points out that the Philippines gave GAMCA and its members the privilege of conducting their businesses domestically; hence, their operations are governed by Philippine laws, specifically by RA No. 10022 which serves as one of the limitations on the privilege granted to them. GAMCA's right to engage in business should yield to the State's exercise of police power. In legal contemplation, therefore, the DOH CDO letters did not prejudice GAMCA's right to engage in business; nor did they hamper the GAMCA members' business operations.

AMCOW further insists that the August 23, 2010 and November 2, 2010 orders are consistent with the State's exercise of the police power to prescribe regulations to promote the health, safety, and general welfare of the people. Public interest demands State interference on health matters, since the welfare of migrant workers is a legitimate public concern. The DOH thus merely performed its duty of upholding the migrant workers' freedom to choose any of its accredited or operated clinics that will conduct health examinations.

The DOH, for its part, adds that the implementation of RA No. 10022 cannot be defeated by agreements entered into by GAMCA with the GCC States. The GCC States, the DOH points out, are not empowered to determine the Philippines' courses of action with respect to the operation, within Philippine territory, of medical clinics; the conduct of health examinations; and the freedom of choice of Filipino migrant workers.

GAMCA responds to these arguments by asserting that the referral decking system is a part of the application procedure for obtaining visas to enter the GCC States. Hence, it is an exercise of the sovereign power of the GCC States to protect their nationals from health hazards, and their diplomatic power to regulate and screen entrants to their territories. To restrain an agent of the GCC States under the control and acting in accordance with the direction of these GCC States, restrains the GCC States.

GAMCA also points out that the OFWs would suffer grave and irreparable damage and injury if the DOH CDO letters would be implemented as the GCC States would not issue working visas without the GAMCA seal attesting that the OFWs had been medically examined by GAMCA member clinics.

After considering all these arguments, we find that the RTC's decision misapplied the principle of sovereign independence and equality to the present case. While the principles of sovereign independence and equality have been recognized in Philippine jurisprudence, our recognition of this principle does not extend to the exemption of States and their affiliates from compliance with Philippine regulatory laws.

A.6. The principle of sovereign equality and independence of states does not exempt GAMCA from the referral decking system prohibition under RA No. 10022.

In *Republic of Indonesia v. Vinzon*,^[103] we recognized the principle of sovereign independence and equality as part of the law of the land. We used this principle to justify the recognition of the principle of sovereign immunity which exempts the State - both our Government and foreign governments - from suit. We held:

International law is founded largely upon the principles of reciprocity, comity, independence, and equality of States which were adopted as part of the law of our land under Article II, Section 2 of the 1987 Constitution. The rule that a State may not be sued without its consent is a necessary consequence of the principles of independence and equality of States. As enunciated in *Sanders v. Veridiano II*, the practical justification for the doctrine of sovereign immunity is that there can be no legal right against the authority that makes the law on which the right depends. In the case of foreign States, the rule is derived from the principle of the sovereign equality of States, as expressed in the maxim *par in parem non habet imperium*. All states are sovereign equals and cannot assert jurisdiction over one another. A contrary attitude would "unduly vex the peace of nations."

Our recognition of sovereign immunity, however, has never been unqualified. While we recognized the principles

of independence and equality of States to justify a State's sovereign immunity from suit, we also restricted state immunity to acts *jus imperii*, or public acts. We said that once a State enters into commercial transactions (*jus gestionis*), then it descends to the level of a private individual, and is thus not immune from the resulting liability and consequences of its actions.[104]

By this recognition, we acknowledge that a foreign government acting in its *jus imperii* function cannot be held liable in a Philippine court. Philippine courts, as part of the Philippine government, cannot and should not take jurisdiction over cases involving the public acts of a foreign government. Taking jurisdiction would amount to authority over a foreign government, and would thus violate the principle of sovereign independence and equality.[105]

This recognition is altogether different from exempting governments whose agents are in the Philippines from complying with our domestic laws.[106] We have yet to declare in a case that the principle of sovereign independence and equality exempts agents of foreign governments from compliance with the application of Philippine domestic law.

In the present case, GAMCA has not adduced any evidence in the court below, nor has it presented any argument before us showing that the principle of sovereign equality and independence has developed into an international custom shielding state agents from compliance with another state's domestic laws. Under this situation, the Court is in no position to determine whether the practice that GAMCA alleges has indeed crystallized into an international custom.

GAMCA has never proven in this case, too, that the GCC has extended its sovereign immunity to GAMCA. Sovereign immunity belongs to the State, and it must first be extended to its agents before the latter may be considered to possess sovereign immunity.

Significantly, the Court has even adopted a restrictive approach in recognizing state immunity, by distinguishing between a State's *jus imperii* and *jus gestionis*. It is only when a State acts in its *jus imperii* function that we recognize state immunity.[107]

We point out furthermore that the prohibition against the referral decking system applies to hospitals and clinics, as well as to OFW employers, and does not seek to interfere with the GCC's visa requirement processes. RA 10022 prohibits hospitals and clinics in the Philippines from practicing the referral decking system, and employers from requiring OFWs to procure their medical examinations from hospitals and clinics practicing the referral decking system.

The regulation applies to Philippine hospitals and clinics, as well as to employers of OFWs. It does not apply to the GCCs and their visa processes. That the regulation could affect the OFWs' compliance with the visa requirements imposed by GCCs does not place it outside the regulatory powers of the Philippine government.

In the same manner, GCC states continue to possess the prerogative to apply their visa requirements to any foreign national, including our OFWs, who seeks to enter their territory; they may refuse to grant them entry for failure to comply with the referral decking system, or they may adjust to the prohibition against the referral decking system that we have imposed. These prerogatives lie with the GCC member-states and do not affect at all the legality of the prohibition against the referral decking system.

Lastly, the effect of the prohibition against the referral decking system is beyond the authority of this Court to consider. The wisdom of this prohibition has been decided by Congress, through the enactment of RA No. 10022. Our role in this case is merely to determine whether our government has the authority to enact the law's prohibition against the referral decking system, and whether this prohibition is being implemented legally.

Beyond these lies the realm of policy that, under our Constitution's separation of powers, this Court cannot cross.

WHEREFORE, in the light of these considerations, we hereby GRANT the petitions. Accordingly, we REVERSE and SET ASIDE the orders dated August 10, 2012 and April 12, 2013 of the Regional Trial Court of Pasay City, Branch 108, in Sp. Civil Action No. R-PSY-10-04391-CV.

Costs against respondent GAMCA.

SO ORDERED.

Sereno, C. J., Carpio, Velsco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Perez, Mendoza, Reyes, and Perlas-Bernabe, JJ., concur.

Leonen, J., In the result. See separate opinion.

Jardeleza, [*] J., No part prior OSG action.

Caguioa, J., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on December 6, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on January 6, 2017 at 10:55 a.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[*] No part due to prior action as Solicitor General.

[1] G.R. No. 207132, rollo, pp. 13-55; G.R. No. 207205, id. at 8-37. G.R. No. 207132 is entitled Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) represented herein by its President, Dr. Rolando Villote v. GCC Approved Medical Centers Association, Inc. et al.; while G.R. No. 207205 is entitled Hon. Enrique T. Ona, in his capacity as Secretary of the Department of Health v. GCC Approved Medical Centers Association, Inc. and Christian E. Cangco.

[2] Penned by Judge Maria Rosario B. Ragasa, id. at 56-66 (G.R. No. 207132) and at 38-48 (G.R. No. 207205).

[3] Id. at 68 (G.R. No. 207132) and at 49 (G.R. No. 207205).

[4] The case was originally ralled to RTC, Branch 110 under Judge Petronilo A. Sulla, Jr.; it was reraffled to Branch 108 alter Judge Sulla inhibited himself from the case on GAMCA's petition for inhibition (per the Republic's petition in G.R. No. 207205), rollo, p. 14). See G.R. No. 207132, id. at 223-228 for copy of the resolution on the motion for inhibition (dated June 2011) issued by Judge Sulla.

[5] Id. at 50 (G.R. No. 207205).

[6] Dated April 26, 2002, G.R. No. 207205, rollo, p. 52.

[7] Dated July 16, 2004, G.R. No. 207205, id. at 53.

[8] Dated August 30, 2004, G.R. No. 207205, id. at 54-55.

[9] Id. at 349-350 (G.R. No. 207132) and at 56-57 (G.R. No. 207205).

[10] Id. at 349.

[11] Id. at 363-367 (G.R. No. 207132) and at 58-62 (G.R. No. 207205).

[12] An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purpose.

[13] Omnibus Rules and Regulations Implementing the Migrant Workers And Overseas Filipino Act of 1995. As Amended by Republic Act No. 10022.

[14] Signed by Alexander A. Padilla, Undersecretary of Health, Head of Health Regulation Cluster, id. at 139-140 (G.R. No. 207132) and at 63-64 (G.R. No. 207205).

[15] Id. at 141-173 (G.R. No. 207132).

The case was originally raffled to RTC, Branch 110 (RTC Br. 110) whose presiding judge was Judge Petronilo A. Sulla, Jr. On GAMCA's motion for inhibition, the case was subsequently re-raffled to RTC, Branch 108 under Judge Maria Rosario B. Ragasa.

[16] Signed by Alexander A. Padilla, Undersecretary of Health, Head of Health Regulation Cluster, id. at 192 (GR. No. 207132) and at 65 (G.R. No. 207205).

[17] Id. at 193-204 (G.R. No. 207132).

[18] Id. at 214 (G.R. No. 207132).

The November 24, 2010 order reads in full:

There being no opposition from the opposing Counsels to the 'Urgent Motion For Leave to Intervene and File Opposition-in-Intervention', movant's Counsel or Intervenor is hereby allowed to file said Opposition or Comment to the Application for Temporary Restraining Order and as a matter of fact, the Court takes notice that said Comment/Opposition is already attached to the said Urgent Motion, and since the petitioner and the respondent's [sic] Counsels, respectively, are no longer adducing further arguments in support of their respective positions relative to the Application for TRO, Jet the said application together with the respective opposition thereto of the respondents and intervenor be submitted for resolution. Let the hearing on the Application for Preliminary Injunction be tentatively scheduled on February 16, 2011 at 8:30 a.m.

[19] In an order dated March 14, 2011 (rollo, p. 215 [G.R. No. 207132]), the RTC, Branch 110 ordered AMCOW to pay the docket fees within ten days from receipt of the order, and to file a memorandum until March 17, 2011. AMCOW complied with the order to submit memorandum and the directive to pay the docket fees (id. at 216-218 [G.R. No. 207132]).

[20] Id. at 229-232 (G.R. No. 207132) and at 66-69 (G.R. No. 207205).

[21] Dated August 2, 2011, id. at 233-234 (G.R. No. 207132) and at 70-71 (G.R. No. 207205).

[22] Supra note 2.

[23] Supra note 3.

[24] Rollo, pp. 312-314 (G.R. No. 207132) and pp. 72-74 (G.R. No. 207205).

[25] Id. at 95-96 (G.R. No. 207205).

[26] Id. at 472-479 (G.R. No. 207132).

[27] Id. at 442-446 (G.R. No. 207132).

[28] Id. at 451-453 (G.R. No. 207132).

[29] See: Landbank of the Philippines v. Court of Appeals, G.R. No. 129368, August 25, 2003, 409 SCRA 455 where the Court held:

A writ of certiorari has been called a "supervisory or superintending" writ. It was a common law writ of ancient origin. Its earliest use was in the crown or criminal side of the Court of King's Bench. Its use on the civil side later came into general use. Certiorari is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop.

See also: Barangay Blue Ridge "A" of QC v. Court of Appeals, 377 Phil. 49, 53 (1999); Lalican v. Vergara, 342 Phil. 485 (1997); Silverio v. Court of Appeals, G.R. No. L-39861, March 17, 1986, 141 SCRA 527.

[30] 479 Phil. 768 (2004).

[31] Id. at 779-780.

[32] CONSTITUTION, Art. VIII, Sec. 1.

[33] 460 Phil. 830 (2003).

[34] Id. at 883, 909-910, citing I Record of the Constitutional Commission 434-436 (1986).

[35] Tiangco v. Land Bank of the Philippines, GR. No. 153998, October 6, 2010, 632 SCRA 256, 271, Villanueva v. People, G.R. No. 188630, February 23, 2011, 644 SCRA 358, 368.

[36] See, for instance, the following cases where the Court gave due course to certiorari petitions that question, at the first instance, the constitutionality of governmental acts that are not quasi-judicial or judicial in nature: Belgica v. Executive Secretary, 721 Phil. 416 (2013), questioning the constitutionality of the Disbursement Acceleration Program; Disini v. Secretary of Justice, questioning the constitutionality of the Cybercrime Prevention Act; Imbong v. Ochoa, 732 Phil. 1 (2014) questioning the constitutionality of the Reproductive Health Law; Araullo v. Aquino, 737 Phil. 457 (2014), questioning the constitutionality of the Priority Development Assistance Fund; Diocese of Bacolod v. Comelec, 747 SCRA 1 (2015), questioning the Commission on Election's administrative actions against the Diocese of Bacolod; and Saguisag v. Executive Secretary, available at sc.judiciary.gov.ph/jurisprudence/2016/toc/January.php, questioning the constitutionality of the Philippine government's Enhanced Defense Cooperation Agreement with the United States.

[37] Cf Section 1 of Rule 65 of the Rules of Court, which provides a remedy "When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction" with the more general grant of jurisdiction "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government" in Article VIII, Section 1 of the 1987 Constitution.

[38] This requirement is reflected from the text of the 1987 Constitution, from its definition of judicial power in Article VIII, Section 1, which requires "actual controversies" and its enumeration of the Supreme Court's jurisdiction in Article VIII, Section 5, which pertains to "cases."

See also Justice Arturo Brion's Separate Concurring Opinion in Villanueva v. JBC, G.R. No. 211833, April 7, 2015, sc.judiciary.gov.ph.

[39] Note the pattern in our Rules of Civil Procedure requiring a party to be a "real party in interest" to lodge an action, and for parties to have "a legal interest" in order to intervene.

Thus, Rule 3, Section 2 provides:

Section 2. Parties in interest. - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

Rule 19, Section 1, provides:

Section 1. Who may intervene. - A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. (2[a], [b]a, R12)

Note, too, that criminal actions initiated against the accused, the People of the Philippines has been recognized as "the offended party". *People of the Philippines v. Santiago*, 255 Phil. 851 (1989).

Lastly, the Rules of Court on Special Proceedings require that parties have an interest in the proceeding they initiate to establish a status, a right, or a particular fact.

[40] While "ripeness" is a concept found in constitutional litigation, it is not without counterparts in other proceedings. In civil proceedings, for instance, the failure to exhaust administrative remedies before availing of judicial relief renders a civil action immediately dismissible for being premature. *Laguna CATV Network, Inc. v. Maraan (DOLE)*, 440 Phil. 734 (2002). Too, the failure to comply with the requisite barangay mediation prior to initiating certain cases also renders the action premature and dismissible. LOCAL GOVERNMENT CODE, Chapter VII.

[41] The writ of prohibition can be sought when the tribunal, board or body exercises judicial, quasi-judicial or ministerial functions. RULES OF COURT, Rule 65, Sec. 1.

[42] *Ysidro v. Leonardo-de Castro*, 681 Phil. 1, 14-17 (2012).

[43] RULES OF COURT, Rule 65, Sec. 6.

[44] RULES OF COURT, Rule 65, Sec. 1.

[45] The doctrine of exhaustion of administrative remedies applies regardless of the kind of suit initiated before the courts. Courts, for reasons of law, comity and convenience, should not entertain suits unless the available administrative remedies have first been resorted to and the proper authorities have been given an appropriate opportunity to act and correct their alleged errors, if any, committed in the administrative forum. *Factoran, Jr. v. Court of Appeals*, G.R. No. L-93540, December 13, 1999, 320 SCRA 530, 539, citing *University of the Philippines v. Catungal, Jr.*, G.R. No. 121863, May 5, 1997, 272 SCRA 221, 240; *Carale v. Abarintos*, 336 Phil.

126, 137 (1997).

[46] Merida Water District et al. v. Bacarro, et al., G.R. No. 165993, September 30, 2008, sc.judiciary.gov.ph, citing Sunville Timber Products, Inc. v. Abad, G.R. No. 85502, February 24, 1992, 206 SCRA 482, 486-487.

[47] See the Court's discussion in Abakada Guro Partylist v. Purisima, G.R. No. 166715, August 14, 2008, 562 SCRA 251, viz:

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial adjudication. A closely related requirement is ripeness, that is, the question must be ripe for adjudication. A constitutional question is ripe for adjudication when the challenged government act has a direct and existing adverse effect on the individual challenging it. Thus, to be ripe for judicial adjudication, the petitioner must show an existing personal stake in the outcome of the case or an existing or imminent injury to himself that can be redressed by a favorable decision of the Court.

[48] A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. *Carpio v. CA*, G.R. No. 183102, February 27, 2013, 692 SCRA 162, 174, citing *Osmeña III v. Social Security System of the Philippines*, 559 Phil. 723, 735 (2007).

[49] *ACWS, Ltd. v. Dumlao*, 440 Phil. 787, 801-802 (2002); *Zabat v. Court of Appeals*, 393 Phil. 195, 206 (2000).

[50] See *Antipolo Realty Corporation v. National Housing Authority*, G.R. No. L-50444, August 31, 1987, 153 SCRA 399; *University of the Philippines v. Catungal*, supra note 45.

[51] See Rules of Court, Rule 63.

[52] See Rules of Court, Rule 65.

[53] Supra note 36.

[54] See Justice Arturo Brion's discussion on the expanded jurisdiction of the Court in *Imbong v. Ochoa*, supra note 36 at 279, 281-294; *Araullo v. Aquino*, supra note 36, at 641, 681-696; and *Saguisag v. Executive Secretary*, supra note 36, at 5-12.

In *Imbong*, Justice Brion pointed out:

Under the expanded judicial power, justiciability expressly depends only on the presence or absence of grave abuse of discretion, as distinguished from a situation where the issue of constitutional validity is raised within a traditionally justiciable case where the elements of actual controversy based on specific legal rights must exist. In fact, even if the requirements for strict justiciability are applied, these requisites can already be taken to be present once grave abuse of discretion is prima facie shown to be present. Supra note 36, at 286.

[55] *Congressman Enriquez v. Executive Secretary*, 602 Phil. 64 (2009).

Judicial review was introduced as part of the colonial control of legislation in the Philippines. The Organic Acts (Philippine Bill of 1902 and Jones Law of 1916) defined the authority and limit of the powers of the government in the Philippines. In this sense they were like constitutions, albeit they did not proceed from the sovereign will of the Filipino people, but were statutes enacted by the US Congress.

These organic acts provided for the review by the US Supreme Court of decisions of the Philippine Supreme

Court "in all actions, cases, causes and proceedings ... in which the Constitution or any statute, treaty, title, right or privilege of the United States is involved."

On this basis, in *Casanovas v. Hord* (8 Phil. 125), the Court declared Section 134 of Internal Revenue Act No. 1189 void for violating Section 5 of the Philippine Bill of 1902, which in turn provided that "no law impairing the obligation of contracts shall be enacted."

The Commonwealth of the Philippines, in adopting the 1935 Constitution, impliedly recognized judicial review as part of judicial power, Article VIII, Section 2, viz:

SEC. 2. x x x the Supreme Court of its original jurisdiction over cases affecting ambassadors, other public ministers, and consuls, nor of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in -

(1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question.

x x x x (emphasis supplied)

Similar language has been used in Section 5, Article X of the 1973 Constitution on the jurisdiction of the Supreme Court, and in Section 4, Article VIII of the 1987 Constitution.

To this day, judicial review has been part of the Philippine legal system, and *Angara v. Electoral Commission's* (63 Phil. 139) exposition on the power of judicial review still holds doctrinal value, viz:

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.

[56] *Id.* at 73 citing *Francisco, Jr. v. House of Representatives*, *supra* note 33, at 892-893, citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[57] As established by jurisprudence, standing involves a personal and substantial interest in the case such that the petitioner has sustained, or will sustain, direct injury as a result of the violation of its rights. *Kilosbayan, Inc. v. Morato*, G.R. No. 118910, July 17, 1995, 246 SCRA 540, 562-563, citing *Baker v. Carr*, 369 U.S. 186, 7 L. Ed. 633 (1962); *Bayan v. Zamora*, G.R. No. 138570, October 10, 2000, 342 SCRA 449, 478; *Galicto v. Aquino*, 683 Phil. 141, 170-174 (2012).

[58] RULES OF COURT, Rule 3, Sec. 2.

[59] *People of the Philippines v. Santiago*, *supra* note 39.

[60] See the following provisions of the Rules of Court on Special Proceedings: Rule 74, Sec. 2; Rule 76, Sec. 1; Rule 79, Sec.1; Rule 89, Sec. 1; Rule 90, Sec. 1; Rule 93, Sec. 4; Rule 107 Sec. 1; Rule 108, Section 1; and Rule 109 Sec. 1.

[61] *Supra* note 54.

[62] *David v. Gloria Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, sc.judiciary.gov.ph.

[63] Notably, Justice Arturo Brion's Separate Opinion in *Araullo v. Aquino*, supra note 36 at 661, 684 pointed out that "The traditional rules on hierarchy of courts and transcendental importance, far from being grounds for the dismissal of the petition raising the question of unconstitutionality, are necessarily reduced to rules relating to the level of court that should handle the controversy, as directed by the Supreme Court."

[64] The Court has yet to determine what falls within the general description of "transcendental importance". Note that despite the vagueness of this concept, its application has resulted in the relaxation of recognized rules in constitutional litigation and has led to a non-uniform approach in exercising judicial review.

In other words, no element of predictability definitively exists in applying the transcendental importance doctrine. The Court has merely been using "determinants" of transcendental importance in place of a clear definition of the term. These "determinants" include:

(1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised. *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 39-40; and *Francisco v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, G.R. No. 160261, November 10, 2003, 415 SCRA 44, 139, citing *Kilosbayan v. Guingona*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 155-157.

These determinants, however, are largely irrelevant to the existence of an actual case or controversy and as such should not be made the basis of relaxing the standing requirement.

That the funds or assets involved in the case has a "character" - presumably public or that which the public has an interest in - does not have any connection to whether the petition presents an actual controversy. That there is no other party with a more direct and specific interest in raising the questions raised is an even more bothersome determinant: the fact that there is no party with a direct and specific interest necessarily implies that there is no dispute to begin with.

Concededly, there may be incidents where a governmental agency's disregard of clear constitutional and statutory prohibitions imply the existence of a dispute. The determinant, however, is too vague and does not require that the disregard relate to the issues raised in the petition.

The standing requirement may seem innocuous at first glance, but it is inextricably linked to the presence of an actual case or controversy so that it should not be relaxed on grounds that are outside of the issues presented before the Court. By relaxing the standing requirement, we also relax the case or controversy requirement. Without a showing of direct injury on the part of the petitioner, his legal right in the dispute is also questionable. How could there be a legal right subject of a dispute, when the party putting it forward failed to show that he has been injured, or is about to be injured by the governmental act? When we use determinants outside of and irrelevant to the existence of an actual case or controversy, we run the risk of deciding cases that may not have a justiciable issue to begin with, and thus go outside the bounds of judicial review.

[65] Supra note 55.

[66] *Kilosbayan, Inc. v. Morato*, supra note 57; *Bayan v. Zamora*, G.R. No. 138570, supra note 57; *Galicto v. Aquino*, supra note 57.

See also Justice Arturo D. Brion's Dissenting Opinion in *Diocese of Bacolod v. Comelec*, supra note 36, pointing out that:

Failure to meet any of these requirements [for judicial review] justifies the Court's refusal to exercise its power of judicial review under the Court's traditional power. The Court, however, has, in several instances, opted to relax one or more of these requirements to give due course to a petition presenting issues of transcendental importance to the nation.

In these cases, the doctrine of transcendental importance relaxes the standing requirement, and thereby indirectly relaxes the injury embodied in the actual case or controversy requirement. Note at this point that an actual case or controversy is present when the issues the case poses are ripe for adjudication, that is, when the act being challenged has had a direct adverse effect on the individual challenging it. Standing, on the other hand, requires a personal and substantial interest manifested through a direct injury that the petitioner has or will sustain as a result of the questioned act.

Thus, when the standing is relaxed because of the transcendental importance doctrine, the character of the injury presented to fulfill the actual case or controversy requirements likewise tempered.

When we, for instance, say that the petitioners have no standing as citizens or as taxpayers but we nevertheless give the petition due course, we indirectly acknowledge that the injury that they had or will sustain is not personally directed towards them, but to the more general and abstract Filipino public.

[68] See, for example, Justice Arturo D. Brion's Opinion in *Cawad v. Abad*, G.R. No. 207145, July 28, 2015, 764 SCRA 32, noting problems when the Court relaxes the rules on certiorari to accommodate quasi-legislative acts, because of the "paramount importance" of the case, viz:

In several cases, however, we reversed the decision of the Court of Appeals denying a petition for certiorari against a quasi-legislative act based on the terms of the Rules of Court. In these reversals, we significantly noted the paramount importance of resolving the case on appeal and, on this basis, relaxed the requirements of the petition for certiorari filed in the lower court.

This kind of approach, to my mind, leads to an absurd situation where we effectively hold that the CA committed an error of law when it applied the rules as provided in the Rules of Court.

To be sure, when we so act, we send mixed and confusing signals to the lower courts, which cannot be expected to know when a certiorari petition may or should be allowed despite being the improper remedy.

Additionally, this kind of approach reflects badly on the Court as an institution, as it applies the highly arbitrary standard of 'paramount importance' in place of what is written in the Rules. A suspicious mind may even attribute malicious motives when the Court invokes a highly subjective standard such as "paramount importance."

The public, no less, is left confused by the Court's uneven approach. Thus, it may not hesitate to file a petition that violates or skirts the margins of the Rules or its jurisprudence, in the hope that the Court would consider its presented issue to be of paramount importance and on this basis take cognizance of the petition.

[69] See *Rayos, et al. v. City of Manila*, 678 Phil. 952 (2011).

[70] See Section 1, Article VIII of the 1987 Constitution, vesting judicial power in one Supreme Court and other courts as may be created by law. Presently, Batas Pambansa Blg. No. 129 established the courts of general jurisdiction in the Philippines, and provides for their hierarchy.

[71] See Section 4, paragraph 3 of the 1987 Constitution impliedly recognizing the binding effect of the doctrines created by the cases promulgated by the Court; note, too, Article 8 of the Civil Code providing that "Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

[72] *Far Eastern Surety and Insurance Co. Inc. v. People of the Philippines*, G.R. No. 170618, November 20, 2013, sc.judiciary.gov.ph.

[73] Thus, in *Rayos, et. al. v. City of Manila*, *supra* note 69, at 957, the Court held:

Indeed, this Court, the Court of Appeals and the Regional Trial Courts exercise concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction. However, such concurrence in jurisdiction does not give petitioners unbridled freedom of choice of court forum. In *Heirs of Bertuldo Hinog v. Melicor*, citing *People v. Cuaserna*, the Court held:

This Court's original jurisdiction to issue writs of certiorari is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. (Emphasis supplied, citations omitted)

[74] Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket. Nonetheless, the invocation of this Court's original jurisdiction to issue writs of certiorari has been allowed in certain instances on the ground of special and important reasons clearly stated in the petition, such as, (1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case. (emphasis supplied) *Dy v. Bibat-Palamos*, 717 Phil. 776, 782-783 (2013).

[75] 56 Phil. 260 (1931).

[76] *Id.* at 268. This statement finds full support from the current wording of the Rule on Certiorari, Rule 65 whose Section 1 provides:

Section 1. Petition for certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[77] *Santiago, Jr. v. Bautista*, G.R. No. L-25024, March 30, 1970, 32 SCRA 188, 198, citing *In State ex rel. Board of Commrs. v. Dunn* (86 Minn. 301, 304).

[78] *Bedol v. Comelec*, G.R. No. 179830, December 3, 2009, 606 SCRA 554.

[79] The Court has consistently recognized the grant of the power to issue a cease and desist order as an exercise

of a government agency's quasi-judicial function. See: *The Honorable Monetary Board v. Philippine Veterans Bank*, G.R. No. 189571, January 21, 2015, sc.judiciary.gov.ph; *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*, G.R. No. 191424, August 7, 2013, 703 SCRA 290, 304; *Bank of Commerce v. Planters Development Bank And Bangko Sentral Ng Pilipinas*, G.R. Nos. 154470-71, September 24, 2012, 681 SCRA 521, 555 citing *United Coconut Planters Bank v. E. Ganzon, Inc.*, G.R. No. 168859, June 30, 2009, 591 SCRA 321, 338-341; *Freedom from Debt Coalition et al. v. Energy Regulatory Commission et al.*, G.R. No. 161113, June 15, 2004, 432 SCRA 157; and *Laguna Lake Development Authority v. Court of Appeals*, G.R. No. 110120, March 16, 1994, 231 SCRA 292.

[80] The Judiciary Reorganization Act of 1980.

[81] Administrative Code of 1987, enacted on July 25, 1987.

[82] Section 38, Chapter 7, Book IV of Executive Order No. 292 defines supervision and control in this wise:

Supervision and Control. - Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "control" shall encompass supervision and control as defined in this paragraph.

[83] Article VII, Section 1 of the Constitution states that:

Section 1. The executive power shall be vested in the President of the Philippines.

Article VII, Section 17, on the other hand, provides:

Section 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

[84] See, among others, *Cipriano v. Marcelino*, 150 Phil. 336 (1972); *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255; *Buston-Arendain v. Gil*, G.R. No. 172585, June 26, 2008, 555 SCRA 561; *Vigilar v. Aquino*, G.R. No. 180388, January 18, 2011, 639 SCRA 77.

[85] See *Abe-abe, et al. v. Manta*, G.R. No. L-4827, May 31, 1979, 90 SCRA 524; *Sandoval v. Caneba*, G.R. No. 90503, September 27, 1990, 190 SCRA 77; *Merida Water District et al. v. Bacarro, et al.*, *supra* note 46; *Cabungcal et al. v. Lorenzo et al.*, 623 Phil. 329 (2009); *Addition Hills v. Megaworld Properties*, 686 Phil. 76 (2012), *Samar II Electric Cooperative v. Seludo*, 686 Phil. 786 (2012).

[86] Police power is the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare *Gerochi v. Department of Energy*, 554 Phil. 563, 579 (2007); *Didipio Earth-Savers' Multi-Purpose Association, Inc. (DESAMA) v. Gozun*, G.R. No. 157882, March 30, 2006, 485 SCRA 586, 604, citing *U.S. v. Torribio*, 15 Phil. 85, 93 (1910) and *Rubi v. The Provincial Board of Mindoro*, 39 Phil. 660, 708 (1919). Under the police power of the State, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government *Social Justice Society (SJS) v. Atienza, Jr.*, G.R. No. 156052, February 13, 2008, 545 SCRA 92, 139. The only limitation is that the restriction imposed should be reasonable, not oppressive *Mirasol v. Department of Public Works and Highways*, 523 Phil. 713, 747 (2006).

[87] It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxims *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others).

As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319, 324.

[88] The State may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare [as long as] the interference [is] reasonable and not arbitrary. *Social Justice Society (SJS) v. Atienza, Jr.*, *supra* note 86, at 139-140; *Patalinghug v. Court of Appeals*, G.R. No. 104786, January 27, 1994, 229 SCRA 554, 559, citing *Sangalang v. Intermediate Court*, G.R. Nos. 71169, 76394, 74376 and 82281, December 22, 1988, 168 SCRA 634; *Ortigas & Co. Ltd. Partnership v. Feati Bank and Trust Co.*, No. L-24670, December 14, 1989, 94 SCRA 533.

[89] See *Pharmaceutical and Healthcare Association of the Philippines v. Duque, et al.*, G.R. No. 173034, October 9, 2007, 535 SCRA 265; *St. Lukes's Medical Center Employees Association-AFW v. National Labor Relations Commission*, G.R. No. 162053, March 7, 2007, 517 SCRA 677; *Beltran v. Secretary of Health*, G.R. No. 133640, November 25, 2005, 476 SCRA 168, 196; *Pollution Adjudication Board v. Court of Appeals*, G.R. No. 93891, March 11, 1991, 195 SCRA 112, 123-124; *Tablarin v. Gutierrez*, G.R. No. L-78164, July 31, 1987, 152 SCRA 730, 741; *Lorenzo v. Director of Health*, 50 Phil. 595, 597 (1927); and *Rivera v. Campbell*, 34 Phil. 348, 353-354 (1916).

[90] *Basco et al. v. Philippine Amusement and Gaming Corporation*, 274 Phil. 323 (1991).

[91] *Id.*

[92] *Philippine Association of Service Exporters v. Drilon*, 246 Phil. 393, 399 (1988).

[93] *Id.*

[94] *US. v. Toribio*, 15 Phil. 85; *Fabie v. City of Manila*, 21 Phil. 486; *Case v. Board of Health*, 24 Phil. 256; *Bautista v. Juinio*, 127 SCRA 329; *Ynot v. IAC*, 148 SCRA 659.

[95] Section 16. Under Section 23 of Republic Act No. 8042, as amended, add new paragraphs (c) and (d) with their corresponding subparagraphs to read as follows:

(c) Department of Health. - The Department of Health (DOH) shall regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations, hereinafter referred to as health examinations, on Filipino migrant workers as requirement for their overseas employment. Pursuant to this, the DOH shall ensure that:

(c.1) The fees for the health examinations are regulated, regularly monitored and duly published to ensure that the said fees are reasonable and not exorbitant;

(c.2) The Filipino migrant worker shall only be required to undergo health examinations when there is reasonable certainty that he or she will be hired and deployed to the jobsite and only those health examinations which are absolutely necessary for the type of job applied for or those specifically required by the foreign employer shall be conducted;

(c.3) No group or groups of medical clinics shall have a monopoly of exclusively conducting Health examinations on migrant workers for certain receiving countries;

(c.4) Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his or her right as a patient are respected. The decking practice, which requires an overseas Filipino worker to go first to an office for

registration and then farmed out to a medical clinic located elsewhere, shall not be allowed; x x x (Emphasis supplied)

[96] Supra note 95.

[97] The pertinent part of the provision reads: Any Foreign employer who does not honor the results of valid health examinations conducted by a DOH-accredited or DOH-operated clinic shall be temporarily disqualified from the participating in the overseas employment program, pursuant to POEA rules and regulations.

[98] Section 5 of Republic Act No. 8042, as amended by Republic Act 1022 now includes:

In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

x x x x

(4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;

x x x x

[99] Supra note 95.

[100] Section 11 of Republic Act No. 4226 provides:

Section 11. Revocation of License. - The licensing agency may suspend or revoke a license already issued for any of the following grounds: (a) repeated violation by the licensee of any provision of this Act or of any other existing law; (b) repeated violation of rules and regulations prescribed in the implementation of this Act; or (c) repeated failure to make necessary corrections or adjustments required by the licensing agency in the improvement of facilities and services.

[101] Office of the Ombudsman v. Magno, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 286-287 citing Microsoft Corporation v. Best Deal Computer Center Corporation, 438 Phil. 408, 414 (2002); Suliguin v. Commission on Elections, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233; Natalia Realty, Inc. v. Court of Appeals, 440 Phil. 1, 19-20 (2002); Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr., 512 Phil. 729, 733-734 (2005) citing Land Bank of the Philippines v. Court of Appeals, 456 Phil. 755, 786 (2003); Duera v. Court of Appeals, 424 Phil. 12, 20 (2002), citing Cuison v. Court of Appeals, G.R. No. 128540, April 15, 1998, 289 SCRA 159, 171.

[102] Laguna Lake Development Authority v. Court of Appeals, G.R. No. 110120, March 16, 1994, 231 SCRA 292, Pollution Adjudication Board v. Court of Appeals, 272-A Phil. 66 (1991).

[103] G.R. No. 154705, June 26, 2003, 405 SCRA 126.

[104] China National Machinery & Equipment Corp. v. Santamaria, et al., G.R. No. 185572, February 7, 2012, sc.judiciary.gov.ph; Holy See v. Rosario, G.R. No. 101949, December 1, 1994, 238 SCRA 524, 535; JUSMAG v. National Labor Relations Commission, G.R. No. 108813, December 15, 1994, 239 SCRA 224, 231-232.

[105] Arigo v. Swift, G.R. No. 206510, September 16, 2014, 735 SCRA 208, citing Minucher v. Court of Appeals, 445 Phil. 250 (2003).

[106] x x x the privilege is not an immunity from the observance of the law of the territorial sovereign or from ensuing legal liability; it is, rather, an immunity from the exercise of territorial jurisdiction. Id. at 132.

[107] United States of America v. Ruiz, 221 Phil. 179, 182-183 & 184 (1985).

CONCURRING AND DISSENTING OPINION

LEONEN, J:

I concur in the result.

I.

The special civil actions filed with the Regional Trial Court were both for the issuance of a writ of certiorari and a writ of prohibition. Thus, in the very opening paragraph of the discussion of the Regional Trial Court in question:

The present Petition for Certiorari and Prohibition seeks: a) the issuance of a writ of prohibition to enjoin and prohibit respondent Secretary from enforcing and implementing Department of Health (DOH) Order dated August 23, 2010 on the ground that it was issued with grave abuse of discretion amounting to lack or excess of jurisdiction; and b) the declaration of Paragraphs c.3 and c.4, Section 16, of Republic Act (R.A.) No. 10022 and Section 1(c) and 1(d), Rule XI of the Implementing Rules and Regulations (IRR) as unconstitutional for being contrary to the generally accepted principles of international law, i.e., the principle of sovereign equality and independence of states.[1]

The dispositive portion of the Regional Trial Court's questioned Decision[2] reads:

WHEREFORE, the petition is hereby granted. Accordingly, the writ of CERTIORARI is hereby issued declaring null and void ab initio the August 23, 2010 Order and November 2, 2010 reiterating Order of the respondent DOH secretary. A writ of Prohibition is likewise issued directing the respondent DOH Secretary and all persons acting on his behalf to cease and desist from implementing the assailed Orders against the petitioners. The August 1, 2011 writ of preliminary injunction is hereby made permanent. Civil Case No. 04-0670 is hereby dismissed for being moot and academic.[3] (Emphasis supplied)

Section 21 of Batas Pambansa No. 129 provides:

Section 21. Original jurisdiction in other cases. - Regional Trial Courts shall exercise original jurisdiction:

(1) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions[.] (Emphasis supplied)

The Regional Trial Court of Pasay had jurisdiction over the remedies invoked, which were petitions for a writ of certiorari and a writ of prohibition. However, it did not have jurisdiction to enjoin to issue the writs for its intended scope.

The Order of the Department of Health dated August 23, 2010[4] and its reiterative Order dated November 2, 2010[5] was nationwide in its scope. After all, the Department of Health is a nationwide agency. The respondent GCC Approved Medical Centers Association, Inc. did not clearly and convincingly show that all its members were located only within the territorial jurisdiction of the Regional Trial Court of Pasay City.

For these reasons alone, the decision of the court a quo is null and void for having been issued without jurisdiction. Thus, the Petitions should be granted.

II.

In my view, it is not necessary to bifurcate the Special Civil Action for certiorari into a "traditional" track and an "expanded" mode. The present rules are already sufficient for this Court to exercise its fundamental power of judicial review described in part in Article VIII, Section 1.[6]

Neither would it be correct to limit any of our certiorari powers, even on an "expanded" basis, to questions, which only raise constitutional issues. An act of any government branch, agency, or instrumentality that violates a statute or a treaty is grave abuse of discretion. The Constitution does not distinguish the cause for grave abuse.[7] Neither should this Court, unless, in the guise of promulgating rules of procedure, we wish to effect an amendment of the Constitution.

Finally, I express my reservations relating to the absolute necessity for a decision of this Court before any other organ of government can act on its rational belief in the bending nature of any customary international norms or a general principle of international law. Our constitutional adherence to international law is by virtue of incorporation through Article II, Section 2[8] or Article VII, Section 21 of the Constitution.[9] Judicial action is not required for these norms to be binding. Neither of these modes of incorporation require it.

III.

Fundamental to constitutional litigation is the assurance that judicial review should only happen when there is an actual case or controversy. That is, the judiciary is not an advisory body to the President, Congress, or any other branch, instrumentality, or agency of the government. Thus, absent any actual or sufficiently imminent breach, which will cause an injury to a fundamental right, a provision of law or an administrative regulation cannot be challenged. This Court is co-equal with the other branches of government.[10] The Constitution is a legible, written document capable of being read by all. Its ambiguity may only be clarified through judicial review when it becomes apparent through the existence of an actual situation. The mere existence of subordinate norms - in the form of a statute, treaty or administrative rule - is not enough. There has to be parties who tend to be directly and substantially injured under a specific concrete set of facts.[11]

The confusion with certiorari in my view, is brought about by instances in the recent past where actions, which should have been considered as ones for declaratory relief, were acted upon by this Court as if they were certiorari actions. For example, in *James M. Imbong, et al. v. Hon. Paquito N. Ochoa, Jr., et al.*[12] or the Reproductive Health (RH) cases, this Court took cognizance of the Petitions even if there were still no Implementing Rules, no doctor or health practitioner threatened with sanctions, no couple or spouse whose prerogatives were to be curtailed. In my dissent, I pointed to the dangers of speculative arguments, mainly, that our imagination substituted for actual facts. Imagination took precedence over actual controversy.

The same with the case of *Jose Jesus M. Disini, et al. v. The Secretary of Justice, et al.*[13] In that case, there was no cybercrime committed. There was no cybercrime threatened to be committed, no social media part removed, no advertising in cyberspace prohibited. Again, although denominated as certiorari actions, the petitions were in actuality actions for declaratory relief.

Petitions for certiorari as provided in Rule 65 are available only to correct acts done in a judicial or quasi-judicial procedure.[14] This ensures that the power of judicial review can only be exercised when there is an actual controversy. No judicial action can happen without interested parties, who suffer injury and therefore ready to plead the facts that give actual rise to their real injury. This is the same with quasi-judicial actions.

Ministerial or administrative actions, which will cause or threaten to cause injury can be corrected through a Writ

of Prohibition, not a Writ of Certiorari. In both cases, the requirement of the absence of a plain, speedy, and adequate remedy in the ordinary course of the law conforms with the deferential nature of judicial review in constitutional cases. The requirement in both cases that there be a clear finding of grave abuse of discretion amounting to lack of jurisdiction is sufficient to meet the scope of all our powers of judicial review.

The suggestion to expand the present rules on Petitions for Certiorari opens a very dangerous road towards changing our place in the Constitutional order. It will transform this Court to a virtual overload that will review legislative and executive acts, even without the presence of an actual controversy, simply because in our collective and subjective view, there may be some amorphous and undefined but gut feeling transcendental interest involved.

It is in this respect that I wage this Court to tread with an abundance of all caution even as I respect the erudite observations of Justice Arturo Brion. This Court must clothe itself with humility as it reviews its past cases in the light of a full understanding of our constitutional role if and when we do exercise our power to amend the rules.

In my view, discussions are thus premature.

IV.

In *Restituto Ynot v. Intermediate Appellate Court, et al.*,^[15] this Court called a trial court to task when it hesitated to decide on the constitutionality of an Executive Order in the presence of a clearly pleaded actual case. After all, the plain text of Article VIII, Section 5 (2) (a) states:

Section 5. The Supreme Court shall have the following powers:

....

(2) Review, revise, reverse, modify or affirm an appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or the validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order instruction, ordinance, or regulation is in question. (Emphasis provided)

To limit constitutional questions only for the determination of this Court at first instance and even in its "expanded" mode is not consistent with this provision. It may also be inconsistent with Article VIII, Section 2 of the Constitution:

Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.

As earlier pointed out, Section 21 of Batas Pambansa Bilang 129 grants jurisdiction to the Regional Trial Court in Petitions for Certiorari and Prohibition. The only qualification is that the writs "... may be enforced in any part of their respective jurisdictions."^[16]

For this Court to reduce this jurisdiction further is to amend Batas Pambansa Bilang 129, therefore breaching our solemn commitment to a Constitution that removes from us the power to prescribe jurisdiction.

V.

I join Justice Lucas Bersamin's observations that the issuance of a Cease and Desist Order does not per se mean that the actions taken by the Department of Health is quasi-judicial in nature. In my view, the executive department in applying and implementing the law does not only do so by mere advice or persuasion to those who

do not follow its provisions. The executive is not without its own set of legally mandated coercive powers short of any kind of adjudication. The issuance of an order to cease and desist in the Petitioners' continuing violation of the law is one of them. The type of cease and order in the case was therefore an administrative act. If at all, the proper action to question its constitutionality is a Petition for a Writ of Prohibition not a Writ of Certiorari. However, due to the scope of the writ requested, it should have been filed with the Court of Appeals, not the Regional Trial Court.

ACCORDINGLY, I vote to DISMISS the Petitions.

[1] Rollo, p. 56.

[2] Id. at 56-66. The Regional Trial Court Decision was promulgated on August 10, 2012 and penned by Judge Maria Rosario B. Ragasa of Branch 108 of the Regional Trial Court of Pasay City.

[3] Id. at 66.

[4] Id. at 19-20.

[5] Id. at 20.

[6] CONST., art. VIII, sec. 1 states:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[7] CONST., art. VIII, sec. 1.

[8] CONST., art. VIII, sec. 1 states:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[9] CONST., art. VII, sec. 21 states:

Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

[10] Jose Alejandrino v. Manuel L. Quezon, et al., 46 Phil. 83 (1924) [Per J. Malcolm, En Banc].

[11] The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), 589 Phil. 387 (2008) [Per J. Carpio Morales, En Banc].

[12] 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

[13] 727 Phil. 28 (2014) [Per J. Abad, En Banc].

[14] RULES OF COURT, Rule 65, sec. 1 states that:

Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[15] 232 Phil. 615 (1987) [Per J. Cruz, En Banc].

[16] Batas Blg. 129, sec. 21.

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