PROCEDURAL IMPACT OF GIOS-SAMAR, INC. V. DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS ON *CERTIORARI* IN THE TRADITIONAL AND THE EXPANDED FORM*

*Kent Almadro Alonzo***

ABSTRACT

The landmark decision of *Gios-Samar, Inc. v. Department of Transportation and Communications* clarified the extent of the Supreme Court's jurisdiction and power of judicial review. Said decision also has necessary implications on how the extraordinary writ of *certiorari* is applied in both the traditional and expanded form. Proceeding from the framework on *certiorari* provided by Rule 65 of the Rules of Court (traditional), Article VIII, Section 5, paragraph 1 (expanded), and *Association of Medical Clinics for Overseas Workers v. GCC Approved Medical Centers Association*, this Note will enumerate the necessary allegations that must properly be pleaded when *certiorari* is resorted to as a legal vehicle, as a consequence of *Gios-Samar*.

> *"For the first time and breaking all traditions in the history of the judiciary in our country, judicial power is now expressly defined in the Constitution as to include the duty of the courts of justice to settle actual controversies involving rights which are legally*

* *Cite as* Kent Almadro Alonzo, *Procedural Impact of Gios-Samar, Inc. v. Department of Transportation and Communications on Certiorari in the Traditional and Expanded Form*, 94 PHIL. L.J. 705, [page cited] (2021).

** J.D., University of the Philippines (UP) College of Law (2021); B.A. Philosophy, *cum laude*, UP College of Social Sciences and Philosophy; Editor, Student Editorial Board, PHILIPPINE LAW JOURNAL Vol. 92; Student Editorial Assistant, PHILIPPINE LAW JOURNAL, Vol. 91.

The author would like to thank his colleagues for their insights, especially Augustine Diaz, Rainier David, and Alfred Mendoza. The Author also expresses his eternal gratitude to his mentor and dear friend, Dr. Onofre "Pagsi" Pagsanghan, who inspires the same to contribute to legal scholarship.

> *demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction."*
>
> — Justice Cecilia Muñoz-Palma[1]

I. BRIEF ORIGIN OF THE EXPANDED *CERTIORARI* JURISDICTION

Our Republic is divided into three great departments: the Executive, the Legislative, and the Judiciary. Ours is a system of government imbued with checks and balances, which "allows one branch to restrain abuse by another."[2] Thus, in the celebrated case of *Angara v. Electoral Commission*,[3] the Court eloquently stated its duty, given this concept of checks and balances, which permeates the very fundamental spirit of government and governance:

> [T]he Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative, and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes make it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.[4]

---

[1] Closing remarks of the President of the Constitutional Commission at the final session, October 15, 1986, *available at* https://www.officialgazette.gov.ph/1986/10/15/closing-remarks-of-the-president-of-the-constitutional-commission-at-the-final-session-october-15-1986/.

[2] DANTE GATMAYTAN, CONSTITUTIONAL LAW IN THE PHILIPPINES: GOVERNMENT STRUCTURE 27 (2015). Gatmaytan notes three underlying characteristics under the doctrine of separation of powers: (1) allows the "blending" of some of the executive, legislative, or judicial powers in one body; (2) does not prevent one branch of government from inquiring into the affairs of the other branches to maintain the balance of power; but (3) ensures that there is no encroachment on matters within the exclusive jurisdiction of the other branches.

[3] [Hereinafter "*Angara*"], 63 Phil. 139 (1936).

[4] *Id.* at 157.

Angara is often credited as the "quintessential example of a valid direct recourse to this Court on constitutional questions."[5] Furthermore, the concepts enumerated in *Angara* are in line with the concept of judicial review first articulated in *Marbury v. Madison*,[6] where Chief Justice John Marshall of the U.S. Supreme Court stated that:

> It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.
>
> Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that *courts*, as well as other departments, are bound by that instrument.[7]

Simply put, the Court has the power of judicial review, which is "the power [...] to test the validity of executive and legislative acts in light of their conformity with the Constitution."[8] Judicial review is necessary for our constitutional form of government, because it is how the judiciary, as the third great organ of government, asserts itself in the arena of checks of balances. As succinctly put by former Associate Justice Florentino Feliciano:

> In addition to the specific consent of our people, there is, to my mind, another basis or justification for judicial review in our jurisdiction. That basis is a functional one: judicial review is essential for the maintenance and enforcement of the separation of powers and the balancing of power among the three great departments of authority and control between them. Judicial review is the chief, indeed the only, medium of participation—or instrument of intervention—of the judiciary in that balancing operation. That balance of power in turn is indispensable for maintaining the limited and democratic character of governmental power and, ultimately, for articulating and developing and safeguarding the fundamental rights and liberties of our people.[9]

---

[5] Gios-Samar, Inc. v. Dep't of Transp. and Commc'n [hereinafter "*Gios-Samar*"], G.R. No. 217158, 896 SCRA 213, 256, Mar. 12, 2019.

[6] 5 U.S. 137 (1803).

[7] *Id.* at 180.

[8] ANTONIO NACHURA, REVIEWER IN POLITICAL LAW 17 (2016).

[9] Florentino P. Feliciano, *The Application of Law: Some Recurring Aspects of The Process of Judicial Review and Decision Making*, 37 AM. J. JURIS. 17, 23 (1992).

Now, especially in relation to judicial review, the 1987 Constitution contains a novel legal vehicle: the *expanded certiorari jurisdiction* as provided for in the second clause of Article VIII, Section 1, paragraph 2 of the Constitution. Of note would be two departures from the definition of judicial power in the 1935[10] and 1973[11] Constitutions. First, Section 1 in the current constitution defined judicial power as inclusive of "the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable."[12] Second, as mentioned, the text in Section 1 now included the novel expanded *certiorari* jurisdiction, ensconced in the second clause of Section 1, paragraph 2.[13] Article VIII, Section 1 reads:

> 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.

Former Chief Justice Roberto Concepcion provides a clear insight as to why, through this second clause, the Court's power was "expanded" under the 1987 Constitution:

> 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 questions and got away with it. As a consequence, certain

---

[10] Article VIII, Section 1 of the 1935 Constitution provides the following: "Section 1. The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law."

[11] Article X, Section 1, of the 1973 Constitution provides the following: "The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law. The Batasang Pambansa shall have the power to define, prescribe, and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section five hereof."

[12] CONST. art. VIII, § 1. This first clause was not present in the 1935 and 1973 Constitutions.

[13] CONST. art. VIII, § 1. This second clause was also not present in the 1935 and 1973 Constitutions.

> 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
>
> * * *
>
> 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.*[14]

Thus, as explained by former Chief Justice Concepcion, the concept of expanded certiorari jurisdiction grants the Court the power 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."[15] Now, the Court is not limited by the political question doctrine,[16] often invoked by the Court during the martial law regime "as an

---

[14] 1 RECORD CONST. COMM'N 434–36 (July 10, 1986). (Emphasis supplied.)

[15] CONST. art. VIII, § 1.

[16] *See* Tañada v. Cuenco, 103 Phil. 1051, 1067 (1957). "In short, the term 'political question' connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, in the language of Corpus Juris Secundum (supra), it refers to 'those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government.' It is concerned with issues dependent upon the wisdom, not legality, of a particular measure." *See also* Belgica v. Exec. Sec'y [hereinafter "*Belgica*"], G.R. No. 208566, 701 SCRA 1, Nov. 19, 2013, where the Supreme Court traced the classic formulation of the political question doctrine from Baker v. Carr, 396 U.S. 186 (1962), stated as follows: "When there is found, among others, 'a textually demonstrable constitutional

excuse not to question the acts of the administration."[17] Such was the potency before of the political question doctrine in stifling judicial review, because courts relied upon this rationale to "demur to the decisions of the political branches or the people themselves."[18] This was addressed by the addition of the concept of expanded certiorari jurisdiction, which ensures the "potency of [...] judicial review to curb grave abuse of discretion by 'any branch or instrumentalit[y] of government[.]'"[19]

A party seeking to invoke this vehicle will need to satisfy these four requisites:[20]

1) Actual case or controversy

2) *Locus standi,* or standing

3) The issue of constitutionality is raised at the earliest possible opportunity

4) The issue of constitutionality is the *lis mota* of the case

Absent these requirements, the case is deemed to be non-justiciable. Consequently, many litigants have used the expanded certiorari mode vis-à-vis judicial review, resulting in a myriad of cases that have been instituted directly before the Supreme Court.[21]

---

commitment of the issue to a coordinate political department,' 'a lack of judicially discoverable and manageable standards for resolving it' or 'the impossibility of deciding without an initial policy determination of a kind clearly for non- judicial discretion.' Cast against this light, respondents submit that 'the political branches are in the best position not only to perform budget-related reforms but also to do them in response to the specific demands of their constituents' and, as such, 'urge the Court not to impose a solution at this stage.'"

[17] GATMAYTAN, *supra* note 2 at 40.

[18] Skarlit Labastilla, *Dealing with Mutant Judicial Power: The Supreme Court and its Political Jurisdictions,* 84 PHIL. L.J. 2, 4–5 (2009). Labastilla notes that the doctrine is an "adjudicative tool of restraint." *See also* Javellana v. Exec. Sec'y, G.R. No. 36142, 50 SCRA 30, Mar. 31, 1973, as an example of the political question doctrine. Here the Supreme Court refused to exercise judicial review to check if the requisite provisions on amending the 1935 Constitution were complied with, ruling instead that the people, as a body politic, has accepted the 1973 Constitution.

[19] Francisco v. House of Representatives, G.R. No. 160261, 415 SCRA 44, 124, Nov. 10, 2003.

[20] S. Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, G.R. No. 178552, 632 SCRA 146, 166-67, Oct. 5, 2010.

[21] *See* Association of Med. Clinics for Overseas Workers, Inc. (AMCOW) vs. GCC Approved Med. Centers Ass'n, Inc. [hereinafter "*AMCOW*"], G.R. No. 207132, 812 SCRA 452, 479 n.36, Dec. 6, 2016.

On March 12, 2019, 32 years after the ratification of the 1987 Constitution, the Supreme Court released a landmark decision: *Gios-Samar, Inc. v. Department of Transportation and Communications.* Aside from ruling on the factual matters and allegations presented by the petitioners and respondents therein, the Court issued an unequivocal announcement that impacted *certiorari* as a remedy in relation to when it can be used as a direct recourse:

> The 1987 Constitution and the Rules of Court promulgated, pursuant to its provisions, granted us original jurisdiction over certain cases. In some instances, this jurisdiction is shared with Regional Trial Courts (RTCs) and the Court of Appeals (CA). *However, litigants do not have unfettered discretion to invoke the Court's original jurisdiction.* The doctrine of hierarchy of courts dictates that, direct recourse to this Court is allowed only to resolve questions of law, notwithstanding the invocation of paramount or transcendental importance of the action. This doctrine is not mere policy, rather, it is a constitutional filtering mechanism designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land.[22]

In this case, the Court sought to synthesize decades worth of jurisprudence pertaining to its original jurisdiction, judicial review, and the doctrine of hierarchy of courts. It also addressed and corrected misperceptions and misinterpretations surrounding "transcendental importance" from a perspective honed by years of cases filed directly before it. It is a landmark decision reframing our understanding of our Court's jurisdiction and how it wields judicial power. Necessarily, this decision has implications on how the extraordinary writ of *certiorari* may be availed under Rule 65 as traditionally intended or under the expanded *certiorari* jurisdiction as a novel vehicle in the 1987 Constitution, given that Rule 65 is the *main procedural vehicle used when litigants attempt direct recourse to the Court.*

Therefore, this Note will determine the procedural implications on *certiorari* as a consequence of the clarifications in *Gios-Samar* when it comes to filing *certiorari* petitions under both the traditional and expanded modes. However, it will not delve into the legal history of judicial review *per se* at length, nor will it discuss in depth the remedy of appeal under Rules 40 – 45 of the Rules of Court. The procedural implications discussed here will be confined to *what must be alleged and properly pleaded in a petition for certiorari, both in the traditional and expanded form, and distinguish the differences when it is filed before a lower court versus when direct recourse is made to the Supreme Court.*

---

[22] *Gios-Samar*, 896 SCRA 213, 227. (Emphasis supplied).

With that said, a background on the procedural distinction between Article VIII, Section 1, paragraph 2 of the Constitution and Rule 65 of the Rules of Court is necessary.

II. UNDERSTANDING EXPANDED AND TRADITIONAL CERTIORARI

A. Textual Comparison of Rule 65 and Article VIII, Section 1

The concept of expanded *certiorari* jurisdiction is found in Article VIII, Section 1 of the Constitution, which provides:

> 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.

On the other hand, Rule 65, Section 1, of the Rules of Court on Petition for *Certiorari* provides:

> 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.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

Rule 65 is the remedial vehicle to operationalize both Article VIII, Section 5(1) of the Constitution and Batas Pambansa (B.P.) No. 129, which gives the Supreme Court, the Court of Appeals (CA), and the Regional Trial Courts (RTC) concurrent original jurisdiction over the extraordinary writ of certiorari, prohibition, mandamus, quo warranto, and habeas corpus.[23]

From an initial perusal of these provisions, the most apparent distinction between the two legal vehicles would be their applicability depending on the source of the acts sought to be challenged. Under expanded certiorari, the Court may review the acts of "any branch or instrumentality of the Government,"[24] whereas under Rule 65, the Court may review only the acts of "any tribunal, board or officer exercising judicial or quasi-judicial functions." In both cases, the inquiry is focused on determining whether there was grave abuse of discretion. Regarding the requisites before filing, expanded certiorari does not present any initial requisites aside from involving "actual controversies involving rights which are legally demandable and enforceable of controversy." On the other hand, a petition under Rule 65 specifically requires that there must also be "no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law" before one can file a petition. The following table summarizes these provisions' distinction.

TABLE 1: Textual Comparison of Expanded *Certiorari* versus Petition for *Certiorari* in the Rules of Court

	Expanded *Certiorari*	Petition for *Certiorari*
Grounds	Grave abuse of discretion amounting to lack or excess of jurisdiction	Without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction
Antecedent Requisites	Actual controversies involving rights which are legally demandable and enforceable of controversy[25]	

[23] A brief note on jurisdiction. Article VIII, Section 5(5) of the Constitution grants the Supreme Court original jurisdiction "over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus." On the other hand, B.P. 129, Section 21, grants the Regional Trial Courts original jurisdiction "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 region" while B.P. 129 Section 9 grants the Court of Appeals "[o]riginal 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." Since none of these courts have exclusive jurisdiction over the same, such can be understood as concurrent jurisdiction among the three.

[24] CONST. art. VIII, § 1.

[25] This is judicial power in general, regardless of the mode of exercise. *See infra* note 41.

		No appeal or any plain, speedy, and adequate remedy in the ordinary course of law
Subject of the Inquiry	Any branch or instrumentality of the Government	Tribunal, board, or officer exercising judicial or quasi-judicial functions

Thus, the availability of either remedy would depend on the nature of a government instrumentality's act. For example, if it is an act of the Department of Environment and Natural Resources (DENR) Secretary cancelling a mining permit, one must first determine if it was done under its administrative power or under its quasi-judicial power. If it was done under its administrative power, the proper legal vehicle would be invoking the expanded certiorari doctrine before the Court. On the other hand, if it was done under its quasi-judicial power, a petition for certiorari would be the proper remedy. Likewise, if a party seeks to question a proclamation issued by the President, done in its executive plenary power,[26] an expanded *certiorari* would be the proper remedy. In relation, if a party thus went before the Supreme Court and assails the act of the legislature done in the exercise of its legislative plenary power, the party must invoke the Supreme Court's power under Article VIII, Section 5, not Rule 65. Otherwise, that would warrant an outright dismissal on the grounds of applying the wrong mode of review.

With these simple examples, the distinction seems clear. However, law students and practitioners alike can attest to the fact that when reading decisions of the Supreme Court, the distinction is not apparent. Cases will mention that the case is brought before the Supreme Court via a petition for certiorari, but in the body of the decision, the Court will proceed to enumerate the four requisites for judicial review and invoke expanded certiorari under Article VIII, Section 1. Another example are cases elevated through Rule 65 certiorari, but the respondent is the President and the controversy surrounds an act of the president, while the Court proceeds to discuss and apply the expanded *certiorari* jurisdiction because the President acted with grave abuse of discretion.[27] Thus, even the table above—though based on the text of the law

[26] BLACK'S LAW DICTIONARY 1288 (9TH ed.). Plenary Power is "[p]ower that is broadly construed; esp., a court's power to dispose of any matter properly before it." Power, on the other hand, is either "1. The ability to act or not act; esp., a person's capacity for acting in such a manner as to control someone else's responses. 2. Dominance, control, or influence over another; control over one's subordinates. 3. The legal right or authorization to act or not act; a person's or organization's ability to alter, by an act of will, the rights, duties, liabilities, or other legal relations either of that person or of another."

[27] *See Belgica*, 701 SCRA 1; Araullo v. Aquino [hereinafter "*Araullo*"], G.R. No. 209287, 728 SCRA 1, July 1, 2014.

itself—does not seem to clarify the seemingly[28] inconsistent application of the two legal vehicles. *A comparison confined solely to the text of the law is inadequate, and as a result, this table is not accurate.*[29]

B. Historical Analysis: The Impact of Expanded *Certiorari* and Overlap with Traditional *Certiorari*

Justice Arturo Brion's *ponencia* in *Association of Medical Clinics for Overseas Workers Inc. (AMCOW) v. GCC Approved Medical Centers Association Inc. (GCC)* is instructive in understanding *certiorari*. He provides a framework and context crucial in understanding the interplay of these two remedies beyond the initial distinctions that a perusal of the texts of the remedies provide in themselves.

Justice Brion noted that the remedies of *certiorari* and prohibition, as now provided in Rule 65, have existed even long before its codification in the Rules. By nature, certiorari is a supervisory writ, "used by superior courts to keep lower courts within the confines of their granted jurisdictions, thereby ensuring orderliness in lower courts' rulings."[30] In fact, the original jurisdiction of the Court over these writs "predates the 1935 Constitution."[31] Currently, the applicable statutory basis for jurisdiction over the writ of certiorari is found in Article VIII, Section 5(1) of the Constitution in relation to Batas Pambansa (B.P.) No. 129, which grants the Supreme Court, the Court of Appeals, and Regional Trial Courts original and concurrent jurisdiction over extraordinary writs such as certiorari.[32]

Prior to the ratification of the 1987 Constitution and the introduction of expanded certiorari jurisdiction, a distinction can be made: If the error is of jurisdiction of judicial or quasi-judicial bodies, the proper remedy is the writ of certiorari or prohibition, now under Rule 65 of the Rules of Court. The doctrine of exhaustion of administrative remedies may apply in certain cases. If the error consists of law or fact, the proper remedy is filing an original action at the lowest court, whose decision may be subject to an appeal

---

[28] The term "seemingly" is used because there is, arguably, a clear explanation given the recent jurisprudence of the Court from 2016 onward, from *AMCOW* and *Gios-Samar*.

[29] At this point, disregard Table 1.

[30] *AMCOW*, 812 SCRA 452, 476, *citing* Madrigal Transport v. Lapanday Holdings Corp. [hereinafter "*Madrigal*"], G.R. No. 156067, 436 SCRA 123, Aug. 11, 2004.

[31] *Gios-Samar*, 896 SCRA 213, 250. As early as Act No. 136 (1901), the Supreme Court was granted original jurisdiction over the writ of *certiorari*, prohibition, *habeas corpus*, and *quo warranto*.

[32] *Supra* note 23.

generally found in Rules 40 – 45 of the Rules of Court.[33] The doctrine of exhaustion of administrative remedies may also apply in certain cases. This is outside the purview of the extraordinary writ of certiorari.

The first point refers to the traditional conception of *certiorari* prior to its expansion in the 1987 Constitution—an extraordinary writ limited to examining errors of jurisdiction of judicial and quasi-judicial bodies.

Now, the expanded certiorari jurisdiction changed this view. In effect, certiorari should now be understood as the following:

TABLE 2: *Certiorari* in the Traditional and Expanded View

Traditional	If the error is of jurisdiction of judicial or quasi-judicial bodies, the proper remedy is the writ of certiorari or prohibition, now under Rule 65 of the Rules of Court. The doctrine of exhaustion of administrative remedies and hierarchy of courts should generally apply in certain cases.
Expanded	If the error is *grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government*, expanded certiorari is available. There is however no exclusive remedial procedure for this mode of certiorari that is distinct and separate from the pre-existing Rule 65.

The addition of the second sentence in Article VIII, Section 1, created the expanded certiorari jurisdiction of the Court.

To reiterate and stress the impact of this "expansion"—in light of an inadequate textual comparison—consider a situation wherein then President Marcos issues a contentious Presidential Proclamation that prohibits bars to stay open beyond 9 p.m. on the ground that according to intelligence reports, that is when insurgents usually hold clandestine meetings.

The traditional power of the Court under Rule 65, in itself, would not be the proper legal remedy to that proclamation made under executive plenary power. Courts then invoked the political question doctrine, deferring to the wisdom of the Executive Department's intelligence capacities, which the Judiciary does not have. However, if there was, hypothetically speaking, an expanded *certiorari* jurisdiction in the 1973 Constitution, the courts would have been able to scrutinize the proclamation. With expanded *certiorari*, it would

[33] *AMCOW*, 812 SCRA at 476, *citing Madrigal*, 436 SCRA at 134.

have been the judiciary's duty[34] to investigate if grave abuse of discretion attended the issuance of the proclamation and would have had the power to annul the same if it has been attended with grave abuse of discretion.

Conceptually, the distinction is clear. However, the reason why litigants' invoked mode of *certiorari* is not apparent when one reads Supreme Court decisions is because there has been no specific remedial vehicle created through which expanded *certiorari* may be availed:

> 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 [...]*allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction based on its power to relax its Rules.* 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.
>
> 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.[35]

Since there is an absence of a remedial vehicle enforcing Article VIII, Section 1, paragraph 2, the Supreme Court adopts an "ad hoc approach" and allows Rule 65 as the procedural tool in "invoking the court's expanded jurisdiction based on its power to relax its rules."[36] However, as Justice Brion opines, this gung-ho approach "does not fully consider the accompanying implications," given that traditional certiorari through Rule 65 is "an essentially distinct remedy that cannot simply be bodily lifted for application

---

[34] *Id.* "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." (Emphasis in the original.)

[35] *Id.* at 479. (Emphasis supplied.)

[36] *Id.* The power to promulgate rules for pleading and practice is constitutionally granted to the judiciary under Article VIII, Section 5 of the Constitution.

under the judicial power's expanded mode."[37] This explains the initial confusion when reading some of the Court's decisions, in which the action is labeled as *Certiorari under Rule 65*, but the respondent is *not* a tribunal, body, or officer exercising judicial or quasi-judicial functions.

Coincidentally, the facts of *AMCOW* are a "prime example of the misguided reading that may take place in constitutional litigation[.]"[38] The case principally involved (1) assailing the cease and desist orders of the Department of Health (DOH) and (2) the constitutionality of Section 16, paragraphs c.3 and c.4 of Rep. Act No. 10022. The respondent filed a Rule 65 petition for *certiorari* and prohibition to assail these acts and the constitutionality of the law. The Court held that the respondent availed of the wrong legal remedy, as "*certiorari* and prohibition [under Rule 65] lie only against quasi-judicial acts and quasi-judicial and ministerial acts." Since the DOH did not act in a quasi-judicial or ministerial manner, Rule 65 was an improper remedy. The story would have been different if the petitioners explicitly alleged that they are invoking expanded certiorari through Rule 65.

Thus, a further examination between the two modes of *certiorari* is warranted.

C. Substantive Commonalities and Differences

These two distinct remedies, despite differences in ontology, origins, and applicability, have some similarities.

First, in both legal vehicles, there must be an actual case or controversy before the cases become justiciable. There must be a "legally demandable and enforceable right [...] as basis, and must be shown to have been violated."[39] Note that the Court clarified that the inclusion of expanded certiorari in Article VIII, Section 1 of the Constitution *did not* dispense of this requirement, since the exercise of expanded *certiorari* jurisdiction is in "itself an exercise of judicial power."[40] It only simplifies the requirement "by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act."[41] What expanded certiorari changes is that it permits a "*prima facie* showing of grave abuse of discretion" in compliance with the

---

[37] *Id.*
[38] *Id.* at 480.
[39] *Id.*
[40] *Id.* at 482.
[41] *Id.*

actual case or controversy requisite in attacking an act of government. This principle was affirmed later on in the cases of *Samahan ng mga Progresibong Kabataan v. Quezon City*.[42] and *Nicolas-Lewis v. Commission on Elections*.[43]

Second, in either legal vehicle, "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."[44] The Court explained that this requisite is common in both legal vehicles since both are fundamentally rooted in the judiciary's plenary power.[45]

Third, the Court stated that in either case, the ripeness requirement must be complied with. This implies that there must be exhaustion of all available remedies. In case of petitions involving administrative actions, "ripeness manifests itself through compliance with the doctrine of exhaustion of administrative remedies."[46] In turn, litigants are not permitted to directly seek judicial relief "without first exhausting the available administrative remedies." On the other hand, in cases involving the constitutionality of a law or governmental act, if a case is moot or academic, there is no actual case or controversy; therefore, the case is not ripe for adjudication. In sum, if there is no initial resort to administrative remedies, or if the petition is moot, it is still ripe. Consequently, there is no actual case or controversy, and this is so, regardless of the legal vehicle.

Fourth, both legal vehicles require the exercise of grave abuse of discretion. Despite the slight difference in wording between Rule 65, Section 1 and Article VIII, Section 1,[47] the Court clarified that such is not legally significant:

---

[42] [Hereinafter "*SPARK*"], G.R. No. 225442, 835 SCRA 350, 385, Aug. 8, 2017.

[43] [Hereinafter "*Nicolas-Lewis*"], G.R. No. 223705, Aug. 14, 2019.

[44] *AMCOW*, 812 SCRA 452, 493.

[45] *Id.* The Court stated the following: "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, or to be considered as a 'real-party-in-interest' in civil actions, as the 'offended party' in criminal actions and the 'interested party' in special proceedings." (Emphasis in the original.)

[46] *Id.* at 488.

[47] Under Article VIII, Section 1 Paragraph 2, the words are "*grave abuse of discretion amounting to lack or excess of jurisdiction*[,]" while under Rule 65, Section 1, the words are "*lack or excess of jurisdiction or 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*, 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.[48]

This is to be differentiated from plain legal errors, which are not within the ambit of both Rule 65 Certiorari or expanded certiorari jurisdiction. These are generally under Rules 40 to 45 of the Rules of Court on appeals.

Fifth, the principle of hierarchy of Courts must be complied with. Therefore, whether a party invokes Rule 65 or the expanded *certiorari* jurisdiction when grave abuse of discretion is invoked, the petition "must likewise be filed with the lowest of concurrent jurisdiction, unless the court highest in the hierarchy grants the exemption."[49] Absent any rule, it is only the Supreme Court that can grant the exemption.

With these commonalities, there are *two* principal differences between the two legal vehicles according to the Court in *AMCOW*: a difference in theory and a difference in practice.

First, there is a difference as to the subject of the inquiry. On this point, the Court reiterates the distinction that can already be inferred from the provisions of Rule 65 and Article VIII, Section 1, as worded. It notes that the key question would be determined "under what capacity does the agency act," *viz*:

> 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. These differing features create very

---

[48] *AMCOW*, 812 SCRA 452, 483. (Emphasis supplied.)

[49] *Id.* at 484.

> 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.*[50]

Simply, if the act is judicial or quasi-judicial, the remedy is traditional certiorari. In all other cases, it is expanded certiorari. The application of this distinction has been exhibited previously.

Second, there is also a comparable difference in practice when it comes to cases assailing the validity of certain government acts. When the questioned unconstitutional act is a quasi-judicial action, it is established that Rule 65 petition for *certiorari* is an available remedy. The Court explained that if the legal vehicle utilized is a Rule 65, *the petition must be filed first in the lowest court of concurrent jurisdiction,* in compliance with the hierarchy of courts as mentioned earlier.[51] Such a petition at the lowest court will eventually reach the Supreme Court via Rule 45 as a question of law, once the lower court has ruled on the Rule 65 petition.[52]

However, when the legal vehicle used is the expanded *certiorari* jurisdiction, experience has shown that the Court has allowed in multiple cases "*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] In these cases, the Court gave due course to petitions at the first instance directly before the Supreme Court, which questioned the acts of government that were not quasi-judicial or judicial in nature. Direct recourse has been allowed by the Supreme Court under expanded *certiorari* jurisdiction, whereas

---

[50] *Id.* at 482-83. (Emphasis supplied.)

[51] *Id.* at 484. *See also supra* note 23, which explains how the Supreme Court, Court of Appeals and Regional Trial Courts share concurrent jurisdiction. Thus, the doctrine of hierarchy of courts should apply.

[52] *Id.*

[53] *Id.* at 490. (Emphasis supplied.)

under the traditional Rule 65, there is a clearer and time-tested procedural flow consistent with the doctrine of hierarchy of courts.

This is perhaps a consequence of the first difference, because inasmuch as expanded *certiorari* can challenge more acts, procedural rules are not clear as to how challenging these acts should be on the lower levels. On the other hand, quasi-judicial bodies would necessarily have rules that explain how to reconsider or appeal their decisions. Hence, traditional *certiorari* is resorted to only when the procedures in these administrative rules have been exhausted.

D. Remaining Concerns: The Ambiguity of Transcendental Importance in Petitions for *Certiorari*

The multiple commonalities between the two remedies explain why the distinction between them is not immediately apparent. It seems straightforward from an initial perusal of the applicable provisions and with simple examples, but this gets muddled in more complicated factual circumstances and cases.

At this point, there is less confusion, but the Court in *AMCOW* noticed the effect of certain "exceptions" to judicial standards—with one of them the doctrine of transcendental importance.

The Court expressed *at that time* that it is unclear as to how and where the doctrine applies. In other words, it is still vague as to under which general rule does transcendental importance actually apply as an exception.

Traditionally, transcendental importance is invoked to relax the standing requirement. However, the Court noted that this traditional exception may result in the "dilution of the actual case or controversy requirement, because of the inextricable link between standing and the existence of an actual case or controversy."[54] The relaxation of standing may also affect the doctrine of hierarchy of courts, which may eventually "affect the constitutional standards for the exercise of judicial power," *viz*:

> 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

[54] *Id.* at 496.

> dispute over legal rights did indeed take place and is now the subject of the action before the court.
>
> In both the *traditional and the expanded modes, this relaxation carries a ripple effect under established jurisprudential rulings*, affecting not only the actual case or controversy requirement, but compliance with the doctrine of hierarchy of courts[.]
>
> * * *
>
> 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.*[55]

In relation to certiorari as a remedy in both traditional and expanded form, it is unclear how transcendental importance can be invoked by a litigant in his Rule 65 petition as an exception. Is it an exception to standing? To actual case or controversy? To the doctrine of hierarchy of courts? To extend this further, does the invocation of transcendental importance vest jurisdiction on the Court, even if Article VIII, Section 1 of the Constitution limits the jurisdiction of the Court to "actual cases and controversies"? Without knowing the answers to these questions, a litigant may gravely err when invoking transcendental importance without knowing where it actually applies.

Gios-Samar would synthesize these conflicts through the Court's attempt to directly address these concerns.

III. CLARIFICATIONS OF THE SUPREME COURT IN *GIOS-SAMAR* ON ITS JURISDICTION, JUDICIAL REVIEW, AND THE APPLICABLE EXCEPTIONS THERETO[56]

The Supreme Court in *Gios-Samar*, through Justice Francis Jardeleza, sought to clarify the principles concerning jurisdiction and direct recourse to it, which, in turn, created implications surrounding Rule 65 and the expanded *certiorari* jurisdiction. Specifically, its discussion on the hierarchy of courts and transcendental importance addresses the questions on the "ripple effect" noted by Justice Brion in *AMCOW*.

---

[55] *Id.* 497-99, 502. (Emphasis supplied.)

[56] The analysis of concepts in this part will be heavily borrowed from *Gios-Samar*.

Gios-Samar concerned the validity of the "bundling scheme" presented by the DOTC and the Civil Aviation Authority of the Philippines (CAAP) as to the development, operations, and maintenance of the Bacolod-Silay, Davao, Iloilo, Laguindingan, New Bohol (Panglao), and Puerto Princesa airports. The bidding process would be done via competitive bidding pursuant to the Build-Operate-Transfer Law[57] and its respective Implementing Rules.

The dispute began when the DOTC and CAAP "bundled" the projects in its Instructions to Prospective Bidders (ITPB) into two main groups: Bundle 1, covering the Bacolod-Silay and Iloilo Airports, and Bundle 2, covering the Davao, Laguindingan, and New Bicol (Panglao) Airports. Bidders were allowed to bid for one or both bundles respectively. The total cost of the bundled projects was PHP 116.23 billion.[58]

This "bundling" prompted the petitioner Gios-Samar, Inc.[59] to file a petition for prohibition. The petitioner *invoked his standing as a taxpayer* and the *transcendental importance doctrine* as applicable to the issue, meriting direct recourse to the Court through *certiorari*. It also assailed the constitutionality of the bundling of the projects and sought to enjoin the DOTC and the CAAP from proceeding with the bidding of the same.[60] *Crucially, the petitioner also alleged that the DOTC acted with grave abuse of discretion amounting to excess of jurisdiction "when it bundled the projects without legal authority."*

---

[57] Rep. Act No. 6957 (1990), *as amended.*

[58] The following were the costs surrounding the projects: Bundle 1 — Bacolod-Silay Airport (PHP 20.26 billion) and Iloilo Airports (PHP 30.4 billion); Bundle 2 — Davao (PHP 40.57 billion), Laguindinga (PHP 14.62 billion), and Panglao Airports (PHP 4.57 billion).

[59] Petitioner alleges "that it is a non-governmental organization composed of subsistence farmers and fisherfolk from Samar, who are among the victims of Typhoon Yolanda relying on government assistance for the rehabilitation of their industry and livelihood."

[60] On the substantive merits, the petitioners argued that the bundling scheme violated Article XII, Section 11 of the Constitution. It claimed that the scheme would indirectly subvert "constitutional prohibitions on the anti-dummy and the grant of opportunity to the general public to invest in public utilities" since "companies with questionable or shaky financial background to have direct access to the Projects 'by simply joining a consortium which under the bundling scheme adopted by the DOTC said Projects taken altogether would definitely be beyond the financial capability of any qualified, single Filipino corporation.'" The scheme would also violate Article XII, Section 19 of the Constitution against prohibiting monopolies, "because it would allow one winning bidder to operate and maintain several airports, thus creating a monopoly [...] enabling a single consortium to control as many as six airports." Petitioners claim that bundling will "surely perpetrate an undue restraint of trade. Mid-sized Filipino companies...will no longer have a realistic opportunity to participate in the bidding because the separate projects became two (2) gargantuan projects." They also allege that the bundling was a mockery of the bidding system "because it raised the reasonable bar to a level higher than what it would have been, had the projects been bidded out separately."

Substantive merits of the *certiorari* petition aside, of specific concern to this note would be the following concepts mentioned in the facts: (1) petition for prohibition; (2) constitutionality of the "bundling"; (3) grave abuse of discretion of the DOTC; and (4) the transcendental importance doctrine. When the petitioners alleged that "the[...] DOTC committed grave abuse of discretion amounting to excess of jurisdiction when it bundled the projects without legal authority," they explicitly invoked the expanded *certiorari* jurisdiction of the judiciary since the assailed act was allegedly not an exercise of the DOTC's quasi-judicial power. The petitioners also invoked the power of judicial review in presenting a constitutional challenge that concerns the bundling project.

Before proceeding to the clarifications presented by the Supreme Court in the *ratio decidendi* of *Gios-Samar*, the procedural strategy of the petitioner Gios-Samar Inc. must be analyzed. It is an example of a misappreciation of the concept of transcendental importance and, naturally, a misunderstanding of the jurisdiction of the Court. It is important to dissect these lapses to understand what prompted the Court to meticulously underline how a litigant can properly invoke its jurisdiction and judicial review.

It is clear that petitioner Gios-Samar Inc. brandished the transcendental importance doctrine, but not because it had no standing. In fact, it claimed that it had standing as a taxpayer.[61] Thus, the invocation of transcendental importance was a departure from the Court's traditional application of transcendental importance, which is usually invoked as an exception to standing. So why was this alleged by the petitioner in its Rule 65 petition?

One, perhaps the petitioner knew that it did not comply with the doctrine of the hierarchy of courts. It did not file its Rule 65 Prohibition first with the lowest court of concurrent jurisdiction then allowed the same to eventually reach the Supreme Court via appeal. This is reminiscent of the warning in *AMCOW*, wherein the Court stated by way of *obiter* that transcendental importance may eventually be used as an exception for other rules, such as actual case or controversy and the hierarchy courts. On this

---

[61] The standing of a taxpayer has already been affirmed by the Supreme Court. *See* Public Int. Ctr., Inc. v. Roxas, G.R. No. 125509, 513 SCRA 457, 470, Jan. 31, 2007. The Court therein stated the rule for petitioners claiming standing as taxpayers: "In the case of taxpayers' suits, the party suing as a taxpayer must prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation. Thus, taxpayers *have been allowed to sue* where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law."

point, however, the petitioners cannot be faulted because transcendental importance was recognized in *Diocese of Bacolod v. Commission on Elections*, and even here in *Gios-Samar* as an exception allowing direct recourse to the Court. Nonetheless, as will be noted later in *Gios-Samar*, the mere invocation of any of these "special and important reasons" enumerated in *Diocese of Bacolod* is not enough to go directly to the Supreme Court.

Two, the petitioner perhaps also knew that it did not have an "actual case or controversy." Even if this doctrine should not relax the constitutional requirement of "actual case and controversy" underscored in *AMCOW*, the petitioner probably assumed that the concept of transcendental importance applied as an exception to it. This is an illustration of that "ripple effect," which endangers "the constitutional standards for the exercise of judicial power."[62] Simply, even if petitioner Gios-Samar Inc. probably did not have a legally demandable right at that stage to challenge the "bundling" done by the DOTC, it used transcendental importance as a catch-all exception. In fact, the petitioners had not at that point presented any evidence that it would be injured by the bundling, nor did it participate in the bidding. On that point, the petitioner may be faulted, for failure to understand the jurisdiction of the Court over actual cases or controversies. In pleading an exception that does not apply, it already endangered its petition.

Three, perhaps it seemed to the petitioner that direct recourse is available when (1) a litigant alleges grave abuse of discretion of a government instrumentality, and (2) transcendental importance is invoked to set aside all procedural requisites under Rule 65 and some of the requisites for judicial review. Note that this is the same error committed by the petitioners in *Falcis v. Civil Registrar General*.[63] Again, the petitioner can be faulted. It misunderstood the jurisdiction of the Supreme Court as well as failed to allege and properly plead compliance with the requisites for a successful Rule 65 petition and a proper invocation of judicial review.

Inevitably, the Court dismissed the petition of Gios-Samar, Inc., clarifying that inasmuch as it had concurrent original jurisdiction over extraordinary writs (*certiorari*, *prohibition*, *mandamus*, *quo warranto*, and *habeas corpus*), direct recourse to the Supreme Court can be allowed only when seeking resolutions on questions of law. Otherwise, the requirement of hierarchy of courts has to be complied with. It likewise held that mere allegation of a monopoly does not immediately create an actual controversy.

---

[62] *AMCOW*, 812 SCRA 452, 502.

[63] [Hereinafter "*Falcis*"] G.R. No. 217190, Sept. 3, 2019. *See infra* Part IV(c)(1).

Such allegations must be factually substantiated. In this case, it was not, and the Court could not take cognizance as it was a question of fact.

In further explaining its decision, the Court proceeded to painstakingly discuss the scope of its jurisdiction and the power of judicial review. The Court began to elucidate on the propriety of direct recourse through this statement:

> In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus* (extraordinary writs), *direct recourse to this Court is proper only to seek resolution of questions of law*. Save for the single specific instance provided by the Constitution under Section 18, Article VII, *cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts*. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies. This is the *raison d'etre* behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. *It is a bright-line rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised.*[64]

From this, the Court went to clarify at length the nature of its judicial power, jurisdiction, and direct recourse vis-à-vis the concept of transcendental importance. It will be this clarification that presented implications on how *certiorari* should be properly invoked in both the traditional and expanded form.

A. The Jurisdiction of the Supreme Court is Limited to Pure Questions of Law as it is Not a Trier of Facts

The Court in *Gios-Samar* stated that the "direct invocation of the Court's original jurisdiction over the issuance of extraordinary writs started in 1936 with *Angara v. Electoral Commission*."[65] The invocation of judicial review was then allowed directly before the Supreme Court because (1) it involved a pure question of law and (2) there was a legal conflict between the two great agencies of the government as to who had jurisdiction over Angara's petition

---

[64] *Gios-Samar*, 896 SCRA 213, 248-49. (Emphasis supplied.)

[65] *Id.* at 256.

before the Electoral Commission. Thus, since *Angara,* traditional *certiorari* was only limited to questions of law.

Subsequent to *Angara* and the ratification of the 1987 Constitution, the Court, on the other hand, also noted a "common denominator" among the cases brought directly before it through expanded *certiorari*—"*the threshold questions... [were] ones of law.*"[66] Hence, even in the cases directly before the Court now through expanded *certiorari*, direct recourse was allowed. Expanded *certiorari* was still limited to questions of law.

From this survey of cases by the Court, it is clear that the ratification of the 1987 Constitution "did not result [in] the abandonment of the *Angara* model...[because] [d]irect recourse to the Court, on [the] grounds of grave abuse of discretion, was still allowed only when the questions presented were legal."[67] This rule conforms with the principle that the Court is not a trier of facts.[68] Therefore, since the jurisdiction of the Supreme Court is limited to questions of law, *certiorari* directly before it must also be limited to questions of law. This is in consonance with the current Rule 3, Section 2 of the Supreme Court's Internal Rules, which states that the Court is not a trier of facts—a rule that should apply to both traditional or expanded *certiorari*.

In fact, the Court has complied with this principle even in the remedies it formulated, such as the Writ of *Amparo*, Writ of *Habeas Data*, and Rules of Procedure for Environmental Cases. Even if these remedies allow the petitioners to go directly to the Court, "in practice [...] petitions for writ of *amparo*, writ of *habeas data*, and writ of *kalikasan* which were originally filed before this Court invariably found their way to the [Court of Appeals] for hearing and decision, with the [Court of Appeals'] decision to be later on brought before us on appeal."[69] This is because the Court of Appeals was more equipped to receive evidence. To stress this point, Justice Jardeleza enumerated particular cases[70] that prayed for these remedies and were

---

[66] *Id.* at 260. (Emphasis supplied.) The Court enumerated cases such as Imbong v. Ochoa, G.R. No. 204819, 721 SCRA 146, Apr. 8, 2014; *Araullo*, 728 SCRA 1; Padilla v. Congress, G.R. No. 231671, 832 SCRA 282, July 25, 2017, to name a few.

[67] *Gios-Samar*, 896 SCRA at 273.

[68] *Id.* at 244. *See also* Chemplex (Phil.) Inc. v. Pamatian, G.R. No. L-37427, 57 SCRA 408, June 25, 1974 (Makalintal, *C.J., concurring*).

[69] *Gios-Samar*, 896 SCRA at 277.

[70] *Id.* "Thus, in Secretary of National Defense v. Manalo, the first ever *amparo* petition, this Court ordered the remand of the case to the CA for the conduct of hearing, reception of evidence, and decision. We also did the same in: (1) Rodriguez v.

remanded to the [Court of Appeals]. Such instances "[are] a tacit recognition by the Court itself that it is not equipped to be a trier of facts."[71]

Reference by the Court in *Gios-Samar* to a statement in *Mafinco Trading Corp. v. Ople*[72] also serves as a guide for when a petition for traditional *certiorari* is filed before a lower court:

> In a *certiorari* and prohibition case, like the instant case, *only legal issues affecting the jurisdiction of the tribunal, board or officer involved may be resolved on the basis of undisputed facts*. Sections 1, 2 and 3, Rule 65 of the Rules of Court require that in the verified petition for *certiorari, mandamus* and prohibition the petitioner should allege "facts with certainty"[73]

This statement in *Mafinco* was based on Rule 65 in the 1964 Rules of Court, which contains the requirement of alleging facts with certainty—a requirement in the Rules existing to this day.[74]

The author submits that based on the statement of the Court in *Mafinco*, as quoted in *Gios-Samar*, traditional *certiorari* via a Rule 65 petition is *also limited to questions of law* involving the jurisdiction of a tribunal, board or officer, *even when it is filed before the lower level courts*. An analysis of the Court's disposition of the jurisdictional issue in *Mafinco* and a plain reading of the text in Rule 65 lend credence to this submission.

First, a brief reference to the facts in *Mafinco* shows that the Court then knew that a Rule 65 petition, which was then only extant for traditional *certiorari* in 1976, was only limited to legal issues of jurisdiction. In this case, the Solicitor General claimed that the determination of whether or not the respondents were "independent contractors or employees [of Mafinco Trading Corporation] is factual in character and cannot be resolved by merely construing the peddling contracts."[75] The Solicitor General was perhaps angling to dismiss the case at this point, since *certiorari* would not be the proper

---

Macapagal-Arroyo; (2) Saez v. Macapagal-Arroyo, and (3) International Service for the Acquisition of Agri-Biotech Applications, Inc., v. Greenpeace Southeast Asia (Philippines). The consistent practice of the Court in these cases (that is, referring such petitions to the CA for the reception of evidence) is a tacit recognition by the Court itself that it is not equipped to be a trier of facts."

[71] *Id.*

[72] Mafinco Trading Corp. v. Ople [hereinafter "*Mafinco*"], G.R. No. L-37790, 70 SCRA 139, Mar. 25, 1976.

[73] *Id.* at 160. (Emphasis supplied.)

[74] *Gios-Samar*, 896 SCRA 213, 267.

[75] *Mafinco*, 70 SCRA 139, 160.

remedy given these factual contentions. However, this was belied by the Court in *Mafinco*, noting that even if the case had become "highly controversial"[76] from the "factual angle,"[77] it could resolve the petition on the basis of the "peddling contracts,"[78] the execution of which was not contested by both parties.[79] In fact, the Court said that should they act on the petition for *certiorari* based on facts outside of the peddling contracts, it would be led "astray into the field of factual controversy where its legal pronouncements would not rest on solid grounds."[80] These show that the Court knew that it could resolve the petition given pure questions of law, since the other factual allegations were immaterial. Such discussion was necessary to establish the jurisdiction of the Court over the petition to give legitimacy to its disposition of the merits in *Mafinco*.

Second, the text of the present Rule 65 Section 1 requires that the facts stated in the petition are alleged "with certainty."[81] This was also the position of the Court in *Mafinco*. Thus, the author submits that the aforementioned discussion on the first point is applicable to lower courts since it is the same Rule 65 for litigants regardless if the petition is filed before the RTC or the Supreme Court—*ubi lex non distinguit, nec nos distinguere debemus.*

Third, the restating of this specific statement in *Gios-Samar* implies that the Court adheres to this principle as the standard for Rule 65.

Thus, theoretically, when a Rule 65 petition is filed before the lower court, there should be no factual dispute as to the jurisdiction of the court, tribunal, or officer.

B. The Hierarchy of Courts as a "Constitutional Imperative"

Even if the Supreme Court has original and concurrent jurisdiction with the Court of Appeals and the Regional Trial Courts over the extraordinary writs, this does not mean that direct recourse is immediate. The Supreme Court clarified that since it is a court of last resort, petitions must first be filed with the "lowest ranked court;" otherwise, it is a cause for dismissal. This is pursuant to the doctrine of the hierarchy of courts, which

---

[76] *Id.* at 160.
[77] *Id.*
[78] *Id.* at 161.
[79] *Id.*
[80] *Id.*
[81] RULES OF COURT, Rule 65, § 1.

"guides litigants as to the proper venue of appeals and/or the appropriate forum for the issuance of extraordinary writs."[82]

However, this rule has exceptions—which the Court in *Gios-Samar* enumerated:

> 1) When there are genuine issues of constitutionality that must be addressed at the most immediate time;
>
> 2) When the issues involved are of transcendental importance;
>
> 3) Cases of first impression;
>
> 4) The constitutional issues raised are better decided by the Court;
>
> 5) Exigency in certain situations;
>
> 6) The filed petition reviews the act of a constitutional organ;
>
> 7) When petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]
>
> 8) The petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[83]

Therefore, the next inquiry would be, why are these exceptions entertained by the Court?

It is because these exceptions are still within the jurisdiction of the Court, being *purely legal questions.* Jurisprudence that invoked these exceptions reveal a "common denominator": the issues for resolution of the Court are purely legal:

---

[82] *Gios-Samar*, 896 SCRA 213, 270.

[83] *Id.* at 278.

> A careful examination of the jurisprudential bases of the foregoing exceptions would reveal a common denominator - *the issues for resolution of the Court are purely legal.* Similarly, the Court in *Diocese* decided to allow direct recourse in said case because, just like *Angara*, what was involved was the resolution of a question of law, namely, whether the limitation on the size of the tarpaulin in question violated the right to free speech of the Bacolod Bishop.
>
> We take this opportunity to clarify that *the presence of one or more of the so-called "special and important reasons" is not the decisive factor* considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. *Rather, it is the nature of the question raised by the parties in those "exceptions" that enabled us to allow the direct action before us.*[84]

Since these "special and important questions" only delve into questions of law, they are within the jurisdiction of the Supreme Court.

To expound, say a litigant invoked the third "special and important reason": that his or her case is one of "first impression." Under this clarification in *Gios-Samar*, that is insufficient. It must also be shown that the case only delves into a question of law without any factual disputes or contentions. Should there be any factual disputes, a party cannot go directly to the Supreme Court whether through traditional *certiorari* or expanded *certiorari*. A party cannot also immediately file a Rule 65 petition before a trial court, as clarified in *Mafinco*; the hierarchy of courts must be complied with. Hence the litigant must first resolve the factual issues in the applicable tribunal or court before filing a petition for *certiorari* with the lowest concurrent court or the Supreme Court.

At this stage, the Court in *Gios-Samar* is unequivocal: only when these "special and important questions"—one of which is the question of transcendental importance—involve pure questions of law can resort to the Supreme Court be had.

Two permutations can now be imagined. First, consider that a "special and important question" is invoked in a petition directly before the Supreme Court but there are still questions of fact. In this permutation, the petition will be dismissed because the Supreme Court cannot decide on these questions of fact. These questions of fact must be resolved first in the proper tribunal or court through an original action, not *certiorari*. Second, consider a

---

[84] *Id.* at 279-81. (Emphasis supplied.)

petition for *certiorari* involving a question of law directly filed before the Supreme Court, but the case does not fall under any of these "special and important questions." The petition will be dismissed. The litigant should have filed the petition for *certiorari* either before the Regional Trial Court or the Court of Appeals, with which the Supreme Court has concurrent original jurisdiction for *certiorari*. In this second permutation, the doctrine of hierarchy of courts must be complied with since there is no "special and important question" alleged and properly pleaded. The petition must instead be filed with the lowest concurrent court. Note that the doctrine of transcendental importance is part of those "special and important questions" likewise enumerated.

As a closing note on this point, Justice Jardeleza pointed out that the hierarchy of courts is a "constitutional imperative", which serves as a "filtering mechanism." It is a constitutional imperative "given (1) the structure of our judicial system and (2) the requirements of due process." It serves as a filtering mechanism as it aids in decongesting the already clogged dockets of the Court.[85]

C. Addressing a Misconception: The Proper Use of the "Transcendental Importance" Doctrine

The Court specifically addressed the misconception and misapplication of "transcendental importance," as a "special and important question" because the petitioners in *Gios-Samar* invoked this as their basis for direct recourse. As discussed earlier, it is an exception to the standing requirement, with a cautionary reminder from the Court in *AMCOW* that such had the capacity to spill over as an exception to the requirements of actual case or controversy and the hierarchy of courts.[86] The Court in *Gios-Samar* also acknowledged that this doctrine was applied in some cases as "an independent justification for direct recourse to this Court."[87]

---

[85] *Id.* at 290-91. The Court noted as a way of example that "[a]s of December 31, 2016, 6,526 new cases were filed to the Court. Together with the reinstated/revived/reopened cases, the Court has a total of 14,491 cases in its docket. Of the new cases, 300 are raffled to the Court *En Banc* and 6,226 to the three Divisions of the Court. The Court *En Banc* disposed of 105 cases by decision or signed resolution, while the Divisions of the Court disposed of a total of 923 by decision or signed resolution."

[86] *AMCOW*, 812 SCRA 452, 509.

[87] *Gios-Samar*, 896 SCRA 213, 260 n.98.

The concept of transcendental importance was first raised in the 1949 case of *Araneta v. Dinglasan*.[88] Over the objections of the respondents that the petitioners had no standing in this case, the Court ruled that "the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure." However, the Court in *Gios-Samar* clarified that this case was still in line with the doctrine in *Angara*, because it involved a pure question of law: the validity of a Presidential Proclamation pursuant to a law. It was only in *Chavez v. PEA* where the Court stated that transcendental importance "*could* [...] stand as a justification for disregarding the proscription against direct recourse to the Court."[89]

To resolve this concern, Justice Jardeleza examined cases where transcendental importance was invoked to "excuse violation of the principle of the hierarchy of courts," and noted that "[i]n all these cases, there were no disputed facts and the issues involved were ones of *law*."[90]

With that said, the Court in *Gios-Samar* was unequivocal: transcendental importance, when invoked, only serves to relax the general rule on standing. The only case when it can be invoked to override the doctrine of the hierarchy courts is when the questions raised involve only pure questions of law. It is the same when any of the other "serious and important reasons"[91] are invoked: the petitions that invoke them must concern questions of law. In all cases, however, the Supreme Court is explicit in *Gios-Samar*—transcendental importance cannot be invoked to justify non-compliance with

---

[88] 84 Phil. 368 (1949). This case involved "the validity of the President's orders issued pursuant to Com. Act No. 671, or 'An Act Declaring a State of Total Emergency as a Result of War Involving the Philippines and Authorizing the President to Promulgate Rules and Regulations to Meet such Emergency.' Petitioners rested their case on the theory that Com. Act No. 671 had already ceased to have any force and effect."

[89] *Id.* at 262 n.98.

[90] *Id.* at 282. (Emphasis supplied.) The Court in *Gios-Samar* cited the following cases that invoked transcendental importance: Chavez v. Phil. Exp. Authority, G.R. No. 133250, 384 SCRA 152, July 9, 2002; Agan v. Phil. Int'l Air Terminals Co., Inc., G.R. No. 155001, 402 SCRA 612, May 5, 2003; Jaworski v. Phil. Gaming Corp., G.R. No. 144463, 419 SCRA 317, Jan. 14, 2004; Province of Batangas v. Romulo, G.R. No. 152774, 429 SCRA 736, May 27, 2004; Aquino v. COMELEC, G.R. No. 189793, 617 SCRA 623, Apr. 7, 2010; DFA v. Falcon, G.R. No. 176657, 629 SCRA 644, Sept. 1, 2010; Capalla v. COMELEC, G.R. No. 201112, 673 SCRA 1, June 13, 2012; Kulayan v. Tan, G.R. No. 187298, 675 SCRA 482, July 3, 2012; Funa v. MECO, G.R. No. 193462, 715 SCRA 247, Feb. 4, 2014; Ferrer, v. Bautista, G.R. No. 210551, 760 SCRA 652, June 30, 2015; Ifurung v. Carpio-Morales, G.R. No, 232131, 862 SCRA 684, Apr. 24, 2018.

[91] *Gios-Samar*, 896 SCRA at 278 n.134.

the doctrine of hierarchy of courts when there are indispensable questions of fact.[92] It is not a "talismanic license to justify direct recourse to the Court."[93]

From this discussion, transcendental importance only functions as an exception meriting non-compliance with (1) standing; or (2) hierarchy of courts. But in both cases when invoked in a Rule 65 petition, there must only be questions of law. However, it is not and never will be an exception for "actual case and controversy," which is a jurisdictional requirement the Constitution itself provided in Article VIII, Section 1.

D. The Four Requisites of Judicial Review and the Requisite of a Pure Question of Law as Indispensable for Direct Recourse to the Supreme Court

The Court, in closing, also clarified the requisites of judicial review in relation to its jurisdiction as a trier of only questions of law: "Thus, the exercise of our power of judicial review *is subject to these four requisites and the further requirement that we can only resolve pure questions of law.* These limitations, when properly and strictly observed, should aid in the decongestion of the Court's workload."[94]

This acknowledges that the Supreme Court can only exercise its power of judicial review when it is acting within its jurisdiction. Since its jurisdiction is limited to questions of law, the Supreme Court may only entertain petitions for judicial review involving pure questions of law. Otherwise, it would be acting outside its jurisdiction. Thus, in addition to the four requisites previously mentioned, *the fact that the Supreme Court can only resolve questions of law is indispensable.* Relatedly, the Supreme Court reminded the bench and the bar that it would not take cognizance of cases with

---

[92] *Id.* at 283-84. The Court stated: "To be clear, the transcendental importance doctrine does not clothe us with the power to tackle factual questions and play the role of a trial court. The only circumstance when we may take cognizance of a case *in the first instance*, despite the presence of factual issues, is in the exercise of our constitutionally-expressed task to review the sufficiency of the factual basis of the President's proclamation of martial law under Section 18, Article VII of the 1987 Constitution. The case before us does not fall under this exception."

[93] *Nicolas-Lewis*, at 3 (Jardeleza, *J., separate and concurring*). This pinpoint citation refers to the copy of the decision released by the Court on its website.

[94] *Gios-Samar*, 896 SCRA at 295. (Emphasis supplied.)

indispensable factual issues, "*regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case.*[95]

From this, there is only one exception: when the factual issue is not indispensable to the legal issue. In these cases, the Court may directly proceed with resolving the legal issues as the factual issues are immaterial. Otherwise, it will refuse to entertain the petition. The ruling in *Aala v. Uy*[96] illustrates this, in which the Court held that an ordinance cannot be challenged by way of *certiorari* directly before the Supreme Court so long as there remained factual issues "which [the] Court [deemed] indispensable for the proper disposition of [the] case."[97]

These clarifications will be the basis for the procedural implications on *certiorari* as the primary remedial vehicle when litigants invoke the Supreme Court's original jurisdiction. The clarification made by the Court through *Mafinco* likewise has an effect on how *certiorari* is utilized in lower courts.

IV. PROCEDURAL ADJUSTMENTS IN TRADITIONAL AND EXPANDED *CERTIORARI*, IN LIGHT OF *GIOS-SAMAR*

A distinction will first be made between instances when recourse is with the lower courts and instances of direct recourse to the Supreme Court. In the former, it is presumed that the hierarchy of courts has been followed; in the latter, it is presumed violated, with the litigant having the burden to allege the proper exception in explaining why he or she went directly to the Supreme Court.

A. Recourse to Lower Courts[98]

1. Rule 65 in its Traditional Sense

When Rule 65 is invoked in its traditional sense, the guidelines are clear. Principally, the litigant must allege and properly plead the following:

1) That the decision emanated from a tribunal, board, or officer;

---

[95] *Id.* at 296. (Emphasis supplied.)

[96] G.R. No. 202781, 814 SCRA 41, Jan. 10, 2017.

[97] *Id.* at 64.

[98] "Lower Courts" include both the trial and appellate courts below the Supreme Court.

2) Such tribunal, board, or officer exercises judicial or quasi-judicial functions;

3) That the tribunal, board, or officer acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction;

4) There is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law;[99] and

5) That the petition only involves a question of law. Should there be any question of fact, it must be specifically alleged and pleaded that such is *not indispensable* to the questions of law pleaded therein.

These allegations are crucial, pursuant to the time-honored principle that jurisdiction is based on the allegations of the pleading.[100] As an effect of *Gios-Samar*, citing the case of *Mafinco*, there must be *no question of fact indispensable to the legal issues* under Rule 65. "[O]nly *legal issues* affecting the jurisdiction of the tribunal, board or officer involved may be resolved on the basis of undisputed facts,"[101] thus the final requisite. If this is not alleged and properly pleaded, the lower court will not have jurisdiction over the petition; the same will be dismissed for lack of subject matter jurisdiction.

Under the 2019 Rules of Civil Procedure, a lower court can dismiss a pleading *motu proprio* "when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter."[102] Thus, the factual issues indispensable to the legal issues presented must first be resolved before the "tribunal, board or officer exercising judicial or quasi-judicial functions."[103]

In other words, if Rule 65 in the traditional sense is utilized, it must only be limited to a question of law concerning the lack or grave abuse of discretion by a tribunal, body, or officer. Should there be any question of fact indispensable to the legal issue or issues involved, the proper recourse, pursuant to *Gios-Samar* and *Mafinco*, would depend on whether the tribunal exercises judicial or quasi-judicial functions.

---

[99] RULES OF COURT, Rule 65, § 1.

[100] Tumpag v. Tumpag [hereinafter "*Tumpag*"], G.R. No. 199133, 737 SCRA 62, 68, Sept. 29, 2014.

[101] *Mafinco*, 70 SCRA 139, 160. (Emphasis supplied.)

[102] RULES OF COURT, Rule 9, § 1.

[103] Rule 65, § 1.

If the tribunal exercises *judicial functions*, such as the RTC, a Motion for New Trial under Rule 37 will be available, on the ground that either "(a) [f]raud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or (b) [n]ewly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result."[104] This must be filed within 15 days or 30 days, if a record of appeal is required, from the receipt of the final order or judgment being appealed from.[105] If the case is already before the CA, Rule 53 also provides a remedy of new trial based on "newly discovered evidence which could not have been discovered prior to the trial in the court below by the exercise of due diligence and which is of such a character as would probably change the result."[106] Such must be filed "[a]t any time after the appeal from the lower court has been perfected and before the Court of Appeals loses jurisdiction over the case."[107]

On the other hand, if the tribunal exercises *quasi-judicial functions*, as long as there is still a remedy under the applicable administrative procedure to allow reception of evidence and reconsideration, then the litigant must show that he or she has judiciously availed of such. For example, consider a decision of a Voluntary Arbitrator in a case involving unfair labor practices. Such a decision may be first subject to reconsideration within 10 days under Article 276 of the Labor Code, then may be appealed to the CA via Rule 43 within 15 days from notice of the decision.[108] A litigant who goes directly to the Court of Appeals after the decision of a Voluntary Arbitrator, without attempting a motion for reconsideration, risks that the petition be dismissed since there is still a "remedy in the ordinary course of law." Inversely, if there is no longer any remedy to resolve factual issues, Rule 65 will be available on the ground that "[t]here is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."[109]

---

[104] Rule 37, § 1.

[105] Rule 37, § 1, *in relation to* Rule 41, § 3.

[106] Rule 53, § 1.

[107] Rule 53, § 1.

[108] Guagua Nat'l Coll. v. Ct. of Appeals, G.R. No. 188492, 878 SCRA 362, 384, Aug. 28, 2018. Through former Chief Justice Bersamin, the Court stated: "The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice. Where Congress has not clearly required exhaustion, sound judicial discretion governs, guided by congressional intent." *Id.* at 383.

[109] RULES OF COURT, Rule 65, § 1.

As a final note, a Rule 65 petition must be filed within "sixty (60) days from notice of the judgment, order or resolution."[110] 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 the said motion.[111] However, jurisprudence has also clarified that a Rule 65 petition is not a substitute for a lost appeal. Hence, if a litigant fails to show that he or she has appealed, then a recourse under Rule 65 will also not prosper.[112] Likewise, a party must have filed a motion for reconsideration before the lower court before pursuing an action under Rule 65, subject to specific exceptions.[113]

If the litigant has lost the opportunity to file a Rule 65 petition, another available remedy would be an Annulment of Judgment under Rule 47, filed before the Court of Appeals.[114]

2. Expanded Certiorari Jurisdiction

When Rule 65 is invoked in its expanded jurisdictional sense, the guidelines are provided by both Rule 65 and the Constitution. Note that since

---

[110] Rule 65, § 4.

[111] Rule 65, § 4.

[112] Butuan Dev. Corp. v. Ct. of Appeals, G.R. No. 197358, 822 SCRA 352, 360-61, Apr. 5, 2017. "A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari*. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse [...] Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion."

[113] Phil. Bank of Communications v. Ct. of Appeals, G.R. No. 218901, 818 SCRA 68, 78-79, Feb. 15, 2017. The Court enumerated the following exceptions: "(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved."

[114] RULES OF COURT, Rule 47. Such may be filed before the Court of Appeals provided that the party is not yet barred by laches or estoppel.

there is no specific remedial vehicle for expanded *certiorari*, Rule 65 remains to be the "ad hoc" procedural tool.[115] Thus, principally, the litigant must allege and properly plead the following:

1) That the plaintiff is invoking the expanded *certiorari* jurisdiction of the Court under Article VIII, Section 1 of the Constitution;

2) That the decision or act emanated from any branch or instrumentality of the government;[116]

3) That the branch or instrumentality of the government acted with grave abuse of discretion amounting to lack or excess of jurisdiction;[117]

4) That the petition involves only a question of law. Should there be any question of fact, it must be specifically alleged and pleaded that such is *not indispensable* to the questions of law pleaded therein; and

5) There is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[118]

Since there is no explicit remedial tool for expanded *certiorari*, the author submits that the other requisites provided in Rule 65 should apply suppletorily. Simply put, expanded *certiorari* only provides additional grounds, but the other procedural requirements as to form and reglementary period are still determined by Rule 65. Hence, echoing *Mafinco* and *Gios-Samar*, there must also be no factual issue indispensable to the legal issues once the issue is brought before the lower court. The issue must simply be whether or not the government instrumentality acted with grave abuse of discretion—a pure legal question. If there are unresolved factual issues, the other remedies mentioned in the previous section still apply. Such petition must also be filed within 60 days and is also not a substitute for a lost appeal.

As expanded *certiorari*, not traditional *certiorari*, is the proper remedy if the act is neither judicial or quasi-judicial,[119] it is also necessary that the litigant

---

[115] *AMCOW*, 812 SCRA 452, 479.
[116] CONST. art. VIII, § 1.
[117] Art. VIII, § 1.
[118] RULES OF COURT, Rule 65, § 1.
[119] *AMCOW*, 812 SCRA 452, 474.

explicitly allege in his or her pleading that he or she is invoking expanded *certiorari* under Article VIII, Section 1 of the Constitution for the court to have jurisdiction to review the acts of the instrumentality of government. It will be careless for a litigant to simply allege the grounds for certiorari found in the sections of Rule 65 and assume that the Court will understand that it is actually expanded *certiorari* being invoked, because the respondent therein does not exercise judicial or quasi-judicial power. The Court will not read into what is not there, and jurisdiction will not be assumed over that which that is not alleged. Failure to allege this may warrant the pleading's dismissal on its face for lacking subject matter jurisdiction.[120]

For example, a litigant challenging an order of the Secretary of Department of Tourism (DOT) must state in his or her pleading that (1) he or she is invoking expanded certiorari, and that (2) he or she is assailing an act not judicial or quasi-judicial in nature but a delegated power from the executive. If the litigant only alleges that he or she is only invoking Rule 65 *per se*, the petition may be dismissed outright for availing of the wrong remedy. The Court will not read beyond what is alleged in the pleadings.

B. Recourse to the Supreme Court

When direct recourse to the Supreme Court is pursued, two concepts must be distinct to the litigant: jurisdiction and justiciability. This distinction is necessary because, as explained earlier, the Supreme Court cannot exercise its power of judicial review if the case at hand is not within its jurisdiction.

Jurisdiction is vested by law and determined by the allegations in the pleading.[121] The Supreme Court, therefore, has original concurrent jurisdiction over *certiorari* in the traditional and expanded form, as conferred by Article VIII, Section 1 and Section 5(5) of the Constitution. *Gios-Samar* also clarifies that the Supreme Court only has jurisdiction over pure questions of law; should there be questions of fact, they must be immaterial to the resolution of the question of law.

Meanwhile, justiciability is a determination of whether or not the power of judicial review may be exercised by the Court.[122] Therefore, both the determination of justiciability and the exercise of judicial review are

---

[120] RULES OF COURT, Rule 9, § 1.

[121] *Tumpag*, 737 SCRA 62, 68. The Court stated herein that "jurisdiction over a subject matter is conferred by law, not by the parties' action or conduct, and is, likewise, determined from the allegations in the complaint." *Id.* at 69.

[122] *Gios-Samar*, 896 SCRA 213, 301. (Leonen, *J.*, *concurring*).

exercises of jurisdiction. Thus, even if a case before it is justiciable and may be the subject of judicial review, the Supreme Court may decline to exercise jurisdiction when it sees fit.[123]

Consequently, a litigant must allege the facts and the law showing that the Supreme Court has jurisdiction. He or she must also properly plead the undisputed facts that show compliance with the four requisites that make a case justiciable and a proper subject of judicial review. To reiterate, these are (1) actual case or controversy; (2) *locus standi*, or standing; (3) that the issue of constitutionality is raised at the earliest possible opportunity; and (4) that constitutionality is the *lis mota* of the case. These two are indispensable in both forms of certiorari since they are both exercises of judicial power.[124]

With that established, the specific nuances of the traditional and expanded mode of certiorari are discussed below.

1. Under the Traditional Sense

If a Rule 65 petition for *certiorari* is brought before the Supreme Court in the traditional sense, the same rules as to grounds before the lower court apply when it comes to the Supreme Court.

Crucial, however, would be how a litigant would manage to argue why the doctrine of the hierarchy of courts was dispensed with. This is because naturally, a Rule 65 petition directly with the Supreme Court means that the lower courts were foregone. In the normal course of procedural law considering the hierarchy of courts, a Rule 65 petition would be filed with either the RTC (if the assailed decision is from the Municipal/City/Metropolitan Trial Court or a quasi-judicial agency) or with the Court of Appeals (if the assailed decision is from the RTC), subject to certain exceptions.[125] Only after the litigation on that level may the case reach the Supreme Court under Rule 45 on pure questions of law. Thus, strictly

---

[123] *Id.* Justice Marvic M.V.F. Leonen stated that "[d]etermining whether the case, or any of the issues raised, is justiciable is an exercise of the power granted to a court with jurisdiction over a case that involves constitutional adjudication. *Thus, even if this Court has jurisdiction, the canons of constitutional adjudication in our jurisdiction allow us to disregard the questions raised at our discretion.*" (Emphasis supplied.)

[124] *Nicolas-Lewis*, at 4-5.

[125] One exception would be Rule 64 of the Rules of Court, which governs the review of judgments from the Commission on Audit or the COMELEC. In this case, the petition for review will be in the nature of a traditional certiorari through Rule 65, and will be directly filed before the Supreme Court.

speaking, there should be no Rule 65 petitions directly brought before the Supreme Court.

Therefore, a convincing argument justifying non-compliance with the hierarchy of courts is key to persuading the Supreme Court to exercise its jurisdiction through its power of judicial review. A possible strategy would be to allege and plead that one of the eight exceptions in *Diocese of Bacolod* exists.

Hence, under *certiorari* of the traditional mode, the following must be alleged and properly pleaded:

1) That the decision emanated from a tribunal, board, or officer;

2) Such tribunal, board, or officer exercises judicial or quasi-judicial functions;

3) That the tribunal, board, or officer acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction;[126]

4) That the petition only involves a question of law, as the Supreme Court's jurisdiction is limited to errors of law.[127] Should there be any question of fact, it must be specifically alleged and pleaded that such is *not indispensable* to the questions of law pleaded therein; and

5) That direct recourse was necessary before the Supreme Court because of the presence of any of these "special and important reasons":

    a) There are genuine issues of constitutionality that must be addressed at the most immediate time; or

    b) The issues involved are of transcendental importance;

    c) It is a case of first impression;

---

[126] RULES OF COURT, Rule 65, § 1.

[127] Parcon-Song v. Parcon [hereinafter "*Parcon-Song*"], G.R. No. 199582, July 7, 2020.

d) The constitutional issues raised are better decided by the Court;

e) Exigency in certain situations;

f) The filed petition reviews the act of a constitutional organ;

g) When petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]

h) The petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."[128]

As noted in *Gios-Samar*, since the decisive factor that led the Court to take cognizance of cases involving these circumstances was that they involved pure questions of law, a litigant must explicitly plead that the presence of these circumstances only concern questions of law and no questions of fact indispensable to the questions of law are involved.

Finally, the procedural requisites as to form and reglementary periods in Rule 65 likewise apply to the Supreme Court. However, given that the Supreme Court has the constitutional power to "promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice,"[129] special periods or extensions may be granted by the same. However, relying on the Court's liberality and generosity would be unwise, impractical, and injudicious for a litigant.

---

[128] *Gios-Samar*, 896 SCRA 213, 278.

[129] CONST. art. VIII, § 5(5).

2. Expanded Certiorari

The same necessity of arguing why the hierarchy of courts was not complied with applies to expanded *certiorari*. The only main difference under expanded *certiorari* is that the grounds under Article VIII, Section 1 would apply, since this mode of certiorari applies in assailing acts that are not judicial or quasi-judicial in nature. Therefore, the following must be pleaded:

1) That the plaintiff is invoking the expanded *certiorari* jurisdiction of the Court under Article VIII, Section 1 of the Constitution;

2) That the decision or act emanated from any branch or instrumentality of the government;[130]

3) That the branch or instrumentality of the government acted with grave abuse of discretion amounting to lack or excess of jurisdiction; a *prima facie* showing of grave abuse will suffice,[131] however the mere passage of law is not sufficient in this regard;[132]

4) That the petition only involves a question of law, as the Supreme Court's jurisdiction is limited to errors of law;[133] should there be any question of fact, it must be specifically alleged and pleaded that such is *not indispensable* to the questions of law pleaded therein; and

---

[130] Art. VIII, § 1.

[131] Art. VIII, § 1. *See also SPARK*, 835 SCRA 350, 385, where the Court said the following: "According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified *"by merely requiring a prima facie showing of grave abuse of discretion in the assailed governmental act."* This was again cited with approval in *Nicolas-Lewis*.

[132] *Falcis*, at 85–86. The Court stated that "[i]t is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned. The judiciary interprets and applies the law. 'It does not formulate public policy, which is the province of the legislative and executive branches of government.' Thus, it does not—by the mere existence of a law or regulation—embark on an exercise that may render laws or regulations inefficacious." *Id.* at 22. This pinpoint citation refers to the copy of the decision released by the Court on its website.

[133] *Parcon-Song*, at 9. This pinpoint citation refers to the copy of the decision released by the Court on its website.

5) That direct recourse was necessary before the Supreme Court because of the presence of any of these "special and important reasons":

    a) There are genuine issues of constitutionality that must be addressed at the most immediate time; or

    b) The issues involved are of transcendental importance;

    c) It is a case of first impression;

    d) The constitutional issues raised are better decided by the Court;

    e) Exigency in certain situations;

    f) The filed petition reviews the act of a constitutional organ;

    g) When petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]

    h) The petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."[134]

If there are any questions of fact, the Court will immediately refuse to take cognizance of the same, unless the question of fact is not indispensable or is immaterial to the resolution of the legal issues in the case. If there are also issues of constitutionality, the requisites of judicial review must be properly alleged and pleaded.

---

[134] *Gios-Samar*, 896 SCRA 213, 278.

C. Illustrative Jurisprudence Promulgated After *Gios-Samar*[135]

The proposed procedural synthesis will be seen as applied in two illustrative decisions rendered by the Court after *Gios-Samar*: *Falcis v. Civil Registrar General* and National *Federation of Hog Farmers Inc. v. Board of Investments.*

1. Falcis v. Civil Registrar General

In this case, Jesus Nicardo M. Falcis III filed a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court. He "sought to 'declare Articles 1 and 2 of the Family Code as unconstitutional and, as a consequence, nullify Articles 46(4) and 55(6) of the Family Code.'"[136] In essence, petitioner Falcis argued that limiting marriage between a man and a woman was unconstitutional. Of importance to this Note is the argument of the petitioner that the "mere passage of [law] [...] was a *prima facie* case of grave abuse of discretion [ ] and that the issues he raised were of such transcendental importance as to warrant the setting side of procedural niceties."[137] He also alleged that his petition "complied with the requisites of judicial review."[138]

The Court denied the petition on the absence of an actual case or controversy. It stated that "it does not issue advisory opinions;" a law's mere passage does not automatically constitute as an actual case or controversy. The Court unequivocally said that "[i]t is not enough that laws or regulations have been passed or are in effect when their constitutionality is questioned."[139] Elucidating further:

> Ultimately, petitions before this Court that challenge an executive or legislative enactment must be based on actual facts, sufficiently for a proper joinder of issues to be resolved. If litigants wish to assail a statute or regulation on its face, the burden is on them to prove that the narrowly-drawn exception for an extraordinary judicial review of such statute or regulation applies.

---

[135] The cases enumerated therein are some of those mentioned by Justice Leonen during the first day of Oral Arguments concerning the petition for certiorari assailing the constitutionality of the Anti-Terror Law. These cases were mentioned during the interpellation between Justice Leonen and Prof. Alfredo B. Molo III. An audio recording is available through the following link: https://www.youtube.com/watch?v=QhAFRSrOIMU, with the interpellation between Justice Leonen and Professor Molo beginning at the 2:24:09 mark.

[136] *Falcis*, at 3.

[137] *Id.* at 4.

[138] *Id.*

[139] *Id.* at 22.

> When faced with speculations—situations that have not yet fully ripened into clear breaches of legally demandable rights or obligations—this Court shall refrain from passing upon the case. Any inquiries that may be made may be roving, unlimited, and unchecked. In contrast to political branches of government, courts must deal with specificities[.][140]

From here, it can be seen that the Court recognized that a facial challenge is a *narrow exception* to the requirement "that litigants must only present their own cases, their extant factual circumstances, to the courts."[141]

In this case, the Court held that petitioner Falcis' petition did not qualify as a facial challenge. His petition, therefore, was an "as applied" challenge. Thus, he had to allege actual facts that would show how the assailed legislation specifically affected him as a petitioner. The Court's clarification, citing *AMCOW*, on the applicability of actual case or controversy under both modes of *certiorari* is noteworthy:

> *Even now, under the regime of the textually broadened power of judicial review articulated in Article VIII, Section 1 of the 1987 Constitution, the requirement of an actual case or controversy is not dispensed with.* In Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*:*
>
> > 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

---

[140] *Id.* at 29.

[141] *Id.* at 26. The Court defined facial challenge as '"an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities.' It is distinguished from 'as-applied' challenges, which consider actual facts affecting real litigants [...] To be entertained by this Court, a facial challenge requires a showing of curtailment of the right to freedom of expression, because its basis is that an overly broad statute may chill otherwise constitutional speech." *Id.* at 26-28. *See also* Disini v. Sec'y of Justice, G.R. No. 203335, 716 SCRA 237, 328, Apr. 22, 2014, where the Court allowed a facial challenge on the grounds of overbreadth or vagueness: "A petitioner may for instance mount a 'facial' challenge to the constitutionality of a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute. The rationale for this exception is to counter the 'chilling effect' on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence."

> right must exist as basis, and must be shown to have been violated.
>
> * * *
>
> 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.[142]

Since Falcis failed to allege "actual facts that present a real conflict between the parties of this case[,] [t]he Petition presents no actual case or controversy."[143] *Falcis* reminds us as well of a very narrow exception: the facial challenge.[144] However, that warrants a different discussion entirely.

2. National Federation of Hog Farmers, Inc. v. Board of Investments[145]

This case involved the assailed resolutions issued by the Board of Governors of the Board of Investments (BOI), "which granted the application for registration filed by Charoen PokPhand Foods Philippines Corporation (Charoen)." Charoen is 100% foreign-owned corporation based in Thailand, and registered with the Securities and Exchange Commission. The three resolutions of the BOI approved Charoen's applications as a producer of Aqua Feeds, producer of new hogs on a pioneer status, and a producer of chickens, likewise on pioneer status.

The dispute arose when the request of "some members of the local swine, poultry and aquaculture industries"[146] for a copy of the documents submitted by Charoen in support of its three applications were denied by the BOI. Because of this, the petitioners filed a petition for *certiorari*, alleging that the resolutions of the BOI granting the application of Charoen were issued with grave abuse of discretion.

---

[142] *Falcis*, at 31.

[143] *Id.* at 46.

[144] For further reference, *see Nicolas-Lewis* as an illustrative example of the facial challenge. In relation to the strict exception stated by the Court in *Falcis*, the Court allowed in *Nicolas-Lewis*, direct recourse because the assailed governmental act infringed on the right to freedom of expression.

[145] G.R. No. 205835, June 23, 2020.

[146] *Id.* at 5. This pinpoint citation refers to the copy of the decision released by the Court on its website.

The Court denied the petition on two grounds. First, it held that under the doctrine of primary administrative jurisdiction,[147] "jurisdiction over the approval of applications for registration lies exclusively with the Board of Investments, subject to appeal to the Office of the President."[148] Specifically, under Article 36 of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, "actions made by the Board of Investments over applications for registration under the Investment Priorities Plan are appealable to the [...] President."[149] Second, the Court also held that the petitioner had no standing. The petitioners in this case "failed to show that they suffered or stood to suffer from private respondent's registration as a new producer."[150] They also failed to substantiate their allegations on unfair competition.

The Court specifically cited *Gios-Samar* because both cases hinged on the issue on monopolization and unfair competition as a basis for their "injury." In light of this, the Court clarified that in cases where the petitioners claim monopolization or abuse of dominant position, such claims are "not treated as fact [ ] and had to be substantiated."[151] Therefore, an alleged injury based on any of the foregoing requires a factual finding.[152] Since, in this case, the facts were still unsubstantiated, the petition was premature.

Conformably with the model in *Gios-Samar*, direct recourse was not available since it did not involve a pure question of law. The question of fact was indispensable in determining whether or not the petitioners had standing. Since this could not be resolved, there was a lack of standing, and as a result, a defect in one of the four requisites for judicial review.

---

[147] *Id.* at 14. This must not be confused with the doctrine of exhaustion of administrative remedies. The Court stated that the doctrine of exhaustion of administrative remedies "is a form of courtesy, where the court defers to the administrative agency's expertise and waits for its resolution before hearing the case. This doctrine assumes that the matter is within the court's jurisdiction, or the court exercises concurrent jurisdiction with the administrative agency; however in its discretion, the court deems the case not justiciable or declines to exercise jurisdiction. Meanwhile under the doctrine of primary administrative jurisdiction, jurisdiction lies exclusively with the administrative agency to act on a quasi-judicial matter. Hence the court has no alternative but to dismiss a case for lack of jurisdiction.

[148] *Id.* at 18.

[149] *Id.* at 17.

[150] *Id.* at 20.

[151] *Id.* at 23.

[152] *Id.* at 24.

V. CONCLUSION

In clarifying the potency and extent of judicial power, *Gios-Samar* provided an instructive model as to how to invoke the Court's power. Incidentally, the decision also presented a yardstick through which *certiorari* in both the traditional and expanded modes can be understood and applied by litigants, academicians, and practitioners alike.

By consistently referring to the original iteration of judicial review in our jurisdiction through *Angara*, the Court in *Gios-Samar* reminded us that expanded *certiorari* is not limitless in its reach. It is still bound by the constitutional imperatives of actual controversies and constrained to the exercise of jurisdiction over questions of law, as a consequence of a judicial structure ordained by the fundamental law of our land.

- o0o -

PHILIPPINE
LAW JOURNAL

THE LAW ON ELECTIONS, PARTIES, AND REPRESENTATION

VOLUME 94 SEPTEMBER 2021 NO. 4

UNIVERSITY OF THE PHILIPPINES
COLLEGE OF LAW

ADMINISTRATION

BOARD OF REGENTS

HON. J. PROSPERO E. DE VERA III,
Chairperson, Commission on Higher Education
HON. JOEL VILLANUEVA,
Chairperson, Senate Committee on Higher, Technical, and Vocational Education
HON. REYNALDO C. LASERNA, *Alumni Regent*
HON. RAMON G. GUILLERMO, *Faculty Regent*
HON. MYLAH R. PEDRANO, *Staff Regent*
HON. ROBERTO M. J. LARA,
Secretary of the University and the Board of Regents

HON. DANILO L. CONCEPCION,
Co-Chairperson, President of the University
HON. MARK O. GO,
Chairperson, House Committee on Higher and Technical Education
HON. ANGELO A. JIMENEZ
HON. FRANCIS C. LAUREL
HON. MARIA ARLISSA AGUILUZ
HON. RENEE LOUISE CO,
Student Regent

THE UNIVERSITY

OFFICE OF ADMINISTRATION — UP SYSTEM

DANILO L. CONCEPCION, B.S., LL.B., LL.M., *President*
CYNTHIA ROSE B. BAUTISTA, B.A., M.S., Ph.D., *Vice-President for Academic Affairs*
LISA GRACE S. BERSALES, B.S., M.S., Ph. D., *Vice-President for Planning & Finance*
NESTOR G. YUNQUE, B.S., M.S., *Vice-President for Administration*
ELVIRA A. ZAMORA, B.S.B.A., M.B.A., D.B.A., *Vice-President for Development*
ELENA E. PERNIA, B.A., M.A., Ph.D., *Vice-President for Public Affairs*
HECTOR DANNY D. UY, LL.B., M.N.S.A. *Vice-President for Legal Affairs*
ROBERTO M.J. LARA, B.A., LL.B., LL.M., *Secretary of the University and of the Board of Regents*

OFFICE OF ADMINISTRATION — UP DILIMAN

FIDEL R. NEMENZO, B.S., M.S., D.Sc., *Chancellor*
MA. THERESA T. PAYONGAYONG, B.A., M.A., Ph.D., *Vice-Chancellor for Academic Affairs*
ADELINE A. PACIA, B.S., M.T.M., *Vice-Chancellor for Administration*
GONZALO A. CAMPOAMOR II, B.A., M.A., Ph.D., *Vice-Chancellor for Research & Development*
LOUISE JASHIL R. SONIDO, B.A., M.A., *Vice-Chancellor for Student Affairs*
ALELI B. BAWAGAN, B.S., M.C.D., Ph.D., *Vice-Chancellor for Community Affairs*
RAQUEL B. FLORENDO, B.A., M.A., Ph. D., *Vice-Chancellor for Planning and Development*
MARIA VANESSA LUSUNG-OYZON, B.E.E., M.A., Ph.D., *University Registrar*

UP LAW COMPLEX

EDGARDO CARLO L. VISTAN II, B.S., LL.B., LL.M., *Dean; Director, Office of Legal Aid*
JAY L. BATONGBACAL, B.A., LL.B., M.M.M., J.S.D., *Associate Dean; Director, Institute for Maritime Affairs and Law of the Sea*
MICHELLE B. SAN BUENAVENTURA-DY, B.A., LL.B., *College Secretary*
ROMMEL J. CASIS, B.A., LL.B., LL.M., *Director, Institute of International Legal Studies*
JOSE ARMAND AREVALO, B.A., LL.B., *Officer-in-Charge, Institute for Administration of Justice*
ELIZABETH H. AGUILING-PANGALANGAN, B.A., LL.B., LL.M., *Director, Institute of Human Rights*
SOLOMON F. LUMBA, B.S.S.E., LL. B., *Director, Institute of Government & Law Reform; Head, Administrative Division*
EMERSON S. BANEZ, B.A., LL.B., LL.M., *Head, Information and Publication Division*
GLENDA LITONG., *Head, Training and Convention Division*
RENE B. MANLANGIT, M.L.S., *Head, Law Librarian*

ISSN 0031-7721

PHILIPPINE LAW JOURNAL
Published by the College of Law, University of the Philippines
Diliman, Quezon City, Philippines

VOLUME 94 SEPTEMBER 2021 NO. 4

EDITORIAL BOARD

The Editorial Board, under the aegis of the University of the Philippine College of Law, publishes contributions of interest and value to law students and the legal profession. However, the views of the contributors to the PHILIPPINE LAW JOURNAL do not necessarily reflect those of the College or the Editorial Board.

Communications of either an editorial or business nature should be addressed to the PHILIPPINE LAW JOURNAL, Malcolm Hall, University of the Philippines, Diliman, Quezon City, Philippines, faxed to 927-0518 (Phone: 920-5514 loc. 207), or emailed to plj@up.edu.ph. It will be assumed that a renewal of subscription is desired unless a notice of discontinuance is received by the Editorial Board on or before the expiration date.

ACKNOWLEDGMENTS

The Editorial Board of the PHILIPPINE LAW JOURNAL Volume 94 would like to acknowledge and express its sincerest gratitude to the Editorial Assistants under the PLJ Internship Program for assisting the Editorial Board in their regular editorial and administrative tasks. The completion of this Volume would not have been possible without them.

As membership in the Student Editorial Board is based solely on academic qualifications and the annual competitive examinations conducted by the PLJ Examination Committee, participants to the PLJ Internship Program are neither members of the Board nor of the Journal. However, participation is highly encouraged for students interested in membership in the Board as it exposes them to the work of student editors.

VOLUME 94 EDITORIAL ASSISTANTS

Ana Kristabella A. Amano
Mary Joe D. Arada
Beatriz Anna S. Balbacal
Tonee Butch L. Bayhon
Amierielle Anne A. Bulan
Maria Isabel R. Cañaveral
Elise Samantha S. Chan
Gregory Silver S. De Castro
Richard S.M. de Leon
Ma. Ayesha Nicole I. Del Rosario
Czarina Dorothy R. Duka
Danica Anne S. Escobiñas
Iyla Marie D. Ferrer
Kim Gia G. Gatapia
Gerald John C. Guillermo
Diego Carmelo D. Lacap
Antonio Miguel M. Lagura
Noel Christoffer Lorenzo O. Lazaro
Michiko B. Lokin
Franco Luis G. Lopez
Stephanie Ann B. Lopez
Iñaqui Angelo Mangahas
Christian G. Marchan
Miriam Celine J. Miciano
Anne Denise C. Muñoz
Deana P. Pagtalunan
Maria Lovelyn Joyce S. Quebrar
Mika Andrea O. Ramirez
Arvi Gerard D. Rivera
Alenah Joice B. Romero
Bryan Thomas D. Santamaria
Alyssa Danielle S. Sipaco
Gianina Lucille T. Somblingo
Richmoune Lavinne L. Sy
Kyle Christian G. Tutor
Danilo P. Villarey III
Lance Ryan J. Villarosa
Bernice Marie S. Violago
Francesca Mikhaela P. Yazon
Jana Samantha S. Young