SUPREME COURT
EN BANC

TERESITA G. FABIAN,
***Petitioner*,**

-versus-

G.R. No. 129742
September 16, 1998

HON. ANIANO A. DESIERTO, in his capacity as Ombudsman; HON. JESUS F. GUERRERO, in his capacity as Deputy Ombudsman for Luzon; and NESTOR V. AGUSTIN,
***Respondents*.**
x----------x

D E C I S I O N

REGALADO, *J.*:

Petitioner has appealed to us by *Certiorari* under Rule 45 of the Rules of Court from the "Joint Order" issued by public respondents on June 18, 1997 in OMB-Adm. Case No. 0-95-0411 which granted the motion for reconsideration of and absolved private respondent from administrative charges for inter alia grave misconduct committed by him as then Assistant Regional Director, Region IV-A, Department of Public Works and Highways (DPWH).

I

It appears from the statement and counter-statement of facts of the parties that petitioner Teresita G. Fabian was the major stockholder and president of PROMAT Construction Development Corporation (PROMAT) which was engaged in the construction business. Private respondent Nestor V. Agustin was the incumbent District Engineer of the First Metro Manila Engineering District (FMED) when he allegedly committed the offenses for which he was administratively charged in the Office of the Ombudsman.

PROMAT participated in the bidding for government construction projects including those under the FMED, and private respondent, reportedly taking advantage of his official position, inveigled petitioner into an amorous relationship. Their affair lasted for some time, in the course of which private respondent gifted PROMAT with public works contracts and interceded for it in problems concerning the same in his office.

Later, misunderstandings and unpleasant incidents developed between the parties and when petitioner tried to terminate their relationship, private respondent refused and resisted her attempts to do so to the extent of employing acts of harassment, intimidation and threats. She eventually filed the aforementioned administrative case against him in a letter-complaint dated July 24, 1995.

The said complaint sought the dismissal of private respondent for violation of Section 19, Republic Act No. 6770 (Ombudsman Act of 1989) and Section 36 of Presidential Decree No. 807 (Civil Service Decree), with an ancillary prayer for his preventive suspension. For purposes of this case, the charges referred to may be subsumed under the category of oppression, misconduct, and disgraceful or immoral conduct.

On January 31, 1996, Graft Investigator Eduardo R. Benitez issued a resolution finding private respondent guilty of grave misconduct and ordering his dismissal from the service with

forfeiture of all benefits under the law. His resolution bore the approval of Director Napoleon Baldrias and Assistant Ombudsman Abelardo Aportadera of their office.

Herein respondent Ombudsman, in an Order dated February 26, 1996, approved the aforesaid resolution with modifications, by finding private respondent guilty of misconduct and meting out the penalty of suspension without pay for one year. After private respondent moved for reconsideration, respondent Ombudsman discovered that the former's new counsel had been his "classmate and close associate" hence he inhibited himself. The case was transferred to respondent Deputy Ombudsman Jesus F. Guerrero who, in the now challenged Joint Order of June 18, 1997, set aside the February 26, 1997 Order of respondent Ombudsman and exonerated private respondent from the administrative charges.

II

In the present appeal, petitioner argues that Section 27 of Republic Act No. 6770 (Ombudsman Act of 1989)[1] pertinently provides that —

> In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *Certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court. (Emphasis supplied)

However, she points out that under Section 7, Rule III of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman),[2] when a respondent is absolved of the charges in an administrative proceeding the decision of the Ombudsman is final and unappealable. She accordingly submits that the Office of the Ombudsman has no authority under the law to restrict, in the manner provided in its aforesaid Rules, the right of appeal allowed by Republic Act No. 6770, nor to limit the power of review of this Court. Because of the aforecited

provision in those Rules of Procedure, she claims that she found it "necessary to take an alternative recourse under Rule 65 of the Rules of Court, because of the doubt it creates on the availability of appeal under Rule 45 of the Rules of Court.

Respondents filed their respective comments and rejoined that the Office of the Ombudsman is empowered by the Constitution and the law to promulgate its own rules of procedure. Section 13(8), Article XI of the 1987 Constitution provides, among others, that the Office of the Ombudsman can "(p)romulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law."

Republic Act No. 6770 duly implements the Constitutional mandate with these relevant provisions:

> Sec. 14. Restrictions. — No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman except the Supreme Court on pure questions of law.
>
> x x x
>
> Sec. 18. Rules of Procedure. — (1) The Office of the Ombudsman shall promulgate its own rules of procedure for the effective exercise or performance of its powers, functions, and duties.
>
> x x x
>
> Sec. 23. Formal Investigation. — (1) Administrative investigations by the Office of the Ombudsman shall be in accordance with its rules of procedure and consistent with due process.
>
> x x x
>
> Sec. 27. Effectivity and Finality of Decisions. — All provisionary orders at the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

x x x

> Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a Petition for *Certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

Respondents consequently contend that, on the foregoing constitutional and statutory authority, petitioner cannot assail the validity of the rules of procedure formulated by the Office of the Ombudsman governing the conduct of proceedings before it, including those rules with respect to the availability or non-availability of appeal in administrative cases, such as Section 7, Rule III of Administrative Order No. 07.

Respondents also question the propriety of petitioner's proposition that, although she definitely prefaced her petition by categorizing the same as "an appeal by *certiorari* under Rule 45 of the Rules of Court," she makes the aforequoted ambivalent statement which in effect asks that, should the remedy under Rule 45 be unavailable, her petition be treated in the alternative as an original action for *certiorari* under Rule 65. The parties thereafter engage in a discussion of the

differences between a Petition for Review on *Certiorari* under Rule 45 and a special civil action of *certiorari* under Rule 65.

Ultimately, they also attempt to review and rationalize the decisions of this Court applying Section 27 of Republic Act No. 6770 vis-a-vis Section 7, Rule III of Administrative Order No. 07. As correctly pointed out by public respondent, Ocampo IV vs. Ombudsman, et al.[3] and Young vs. Office of the Ombudsman, et al.[4] were original actions for *Certiorari* under Rule 65. Yabut vs. Office of the Ombudsman, et al.[5] was commenced by a Petition for Review on *Certiorari* under Rule 45. Then came Cruz, Jr. vs. People, et al.,[6] Olivas vs. Office of the Ombudsman, et al.,[7] Olivarez vs. Sandiganbayan, et al.,[8] and Jao, et al. vs. Vasquez,[9] which were for *Certiorari*, prohibition and/or mandamus under Rule 65. Alba vs. Nitorreda, et al.[10] was initiated by a pleading unlikely denominated as an "Appeal/Petition for *Certiorari* and/or Prohibition," with a prayer for ancillary remedies, and ultimately followed by Constantino vs. Hon. Ombudsman Aniano Desierto, et al.[11] which was a special civil action for *certiorari*.

Considering, however, the view that this Court now takes of the case at bar and the issues therein which will shortly be explained, it refrains from preemptively resolving the controverted points raised by the parties on the nature and propriety of application of the writ of *certiorari* when used as a mode of appeal or as the basis of a special original action, and whether or not they may be resorted to concurrently or alternatively, obvious though the answers thereto appear to be. Besides, some seemingly obiter statements in Yabut and Alba could bear reexamination and clarification. Hence, we will merely observe and lay down the rule at this juncture that Section 27 of Republic Act No. 6770 is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action.

III

After respondents' separate comments had been filed, the Court was intrigued by the fact, which does not appear to have been seriously considered before, that the administrative liability of a public official could fall under the jurisdiction of both the Civil Service Commission and the Office of the Ombudsman. Thus, the offenses imputed to herein private respondent were based on both Section 19 of Republic Act No. 6770 and Section 36 of Presidential Decree No. 807. Yet, pursuant to the amendment of Section 9, Batas Pambansa Blg. 129 by Republic Act No. 7902, all adjudications by the Civil Service Commission in administrative disciplinary cases were made appealable to the Court of Appeals effective March 18, 1995, while those of the Office of the Ombudsman are appealable to this Court.

It could thus be possible that in the same administrative case involving two respondents, the proceedings against one could eventually have been elevated to the Court of Appeals, while the other may have found its way to the Ombudsman from which it is sought to be brought to this Court. Yet systematic and efficient case management would dictate the consolidation of those cases in the Court of Appeals, both for expediency and to avoid possible conflicting decisions.

Then there is the consideration that Section 30, Article VI of the 1987 Constitution provides that "(n)o law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and consent," and that Republic Act No. 6770, with its challenged Section 27, took effect on November 17, 1989, obviously in spite of that constitutional prohibition. The conventional rule, however, is that a challenge on constitutional grounds must be raised by a party to the case, neither of whom did so in this case, but that is not an inflexible rule, as we shall explain.

Since the constitution is intended for the observance of the judiciary and other departments of the government and the judges are sworn to support its provisions, the courts are not at

liberty to overlook or disregard its commands or countenance evasions thereof. When it is clear that a statute transgresses the authority vested in a legislative body, it is the duty of the courts to declare that the constitution, and not the statute, governs in a case before them for judgment.[12]

Thus, while courts will not ordinarily pass upon constitutional questions which are not raised in the pleadings,[13] the rule has been recognized to admit of certain exceptions. It does not preclude a court from inquiring into its own jurisdiction or compel it to enter a judgment that it lacks jurisdiction to enter. If a statute on which a court's jurisdiction in a proceeding depends is unconstitutional, the court has no jurisdiction in the proceeding, and since it may determine whether or not it has jurisdiction, it necessarily follows that it may inquire into the constitutionality of the statute.[14]

Constitutional questions, not raised in the regular and orderly procedure in the trial are ordinarily rejected unless the jurisdiction of the court below or that of the appellate court is involved in which case it may be raised at any time or on the court's own motion.[15] The Court *ex mero motu* may take cognizance of lack of jurisdiction at any point in the case where that fact is developed.[16] The court has a clearly recognized right to determine its own jurisdiction in any proceeding.[17]

The foregoing authorities notwithstanding, the Court believed that the parties hereto should be further heard on this constitutional question. Correspondingly, the following resolution was issued on May 14, 1998, the material parts stating as follows:

> The Court observes that the present petition, from the very allegations thereof, is "an appeal by *certiorari* under Rule 45 of the Rules of Court from the 'Joint Order (Re: Motion for Reconsideration)' issued in OMB-Adm. Case No. 0-95-0411, entitled 'Teresita G. Fabian vs. Engr. Nestor V. Agustin, Asst. Regional Director, Region IV-A, EDSA, Quezon City,' which absolved the latter from the

administrative charges for grave misconduct, among others."

It is further averred therein that the present appeal to this Court is allowed under Section 27 of the Ombudsman Act of 1987 (R.A. No. 6770) and, pursuant thereto, the Office of the Ombudsman issued its Rules of Procedure, Section 7 whereof is assailed by petitioner in this proceeding. It will be recalled that R.A. No. 6770 was enacted on November 17, 1989, with Section 27 thereof pertinently providing that all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to this Court in accordance with Rule 45 of the Rules of Court.

The Court notes, however, that neither the petition nor the two comments thereon took into account or discussed the validity of the aforestated Section 27 of R.A. No. 8770 in light of the provisions of Section 30, Article VI of the 1987 Constitution that "(n)o law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and consent."

The Court also invites the attention of the parties to its relevant ruling in First Lepanto Ceramics, Inc. vs. The Court of Appeals, et al. (G.R. No. 110571, October 7, 1994, 237 SCRA 519) and the provisions of its former Circular No. 1-91 and Revised Administrative Circular No. 1-95, as now substantially reproduced in Rule 43 of the 1997 revision of the Rules of Civil Procedure.

In view of the fact that the appellate jurisdiction of the Court is invoked and involved in this case, and the foregoing legal considerations appear to impugn the constitutionality and validity of the grant of said appellate jurisdiction to it, the Court deems it necessary that the parties be heard thereon and the issue be first resolved before conducting further proceedings in this appellate review.

> ACCORDINGLY, the Court Resolved to require the parties to SUBMIT their position and arguments on the matter subject of this resolution by filing their corresponding pleadings within ten (10) days from notice hereof.

IV

The records do not show that the Office of the Solicitor General has complied with such requirement, hence the Court dispenses with any submission it should have presented. On the other hand, petitioner espouses the theory that the provision in Section 27 of Republic Act No. 6770 which authorizes an appeal by *certiorari* to this Court of the aforementioned adjudications of the Office of the Ombudsman is not violative of Section 30, Article VI of the Constitution. She claims that what is proscribed is the passage of a law "increasing" the appellate jurisdiction of this Court "as provided in this Constitution," and such appellate jurisdiction includes "all cases in which only an error or question of law is involved." Since Section 5(2)(e), Article VIII of the Constitution authorizes this Court to review, revise, reverse, modify, or affirm on appeal or *certiorari* the aforesaid final judgment or orders "as the law or the Rules of Court may provide," said Section 27 does not increase this Court's appellate jurisdiction since, by providing that the mode of appeal shall be by petition for *certiorari* under Rule 45, then what may be raised therein are only questions of law of which this Court already has jurisdiction.

We are not impressed by this discourse. It overlooks the fact that by jurisprudential developments over the years, this Court has allowed appeals by *certiorari* under Rule 45 in a substantial number of cases and instances even if questions of fact are directly involved and have to be resolved by the appellate court.[18] Also, the very provision cited by petitioner specifies that the appellate jurisdiction of this Court contemplated therein is to be exercised over "final judgments and orders of lower courts," that is, the courts composing the integrated judicial system. It does not include the quasi-judicial bodies or agencies, hence whenever the legislature intends that the

decisions or resolutions of the quasi-judicial agency shall be reviewable by the Supreme Court or the Court of Appeals, a specific provision to that effect is included in the law creating that quasi-judicial agency and, for that matter, any special statutory court. No such provision on appellate procedure is required for the regular courts of the integrated judicial system because they are what are referred to and already provided for in Section 5, Article VIII of the Constitution.

Apropos to the foregoing, and as correctly observed by private respondent, the revised Rules of Civil Procedure[19] preclude appeals from quasi-judicial agencies to the Supreme Court via a petition for review on *Certiorari* under Rule 45. In the 1997 Rules of Civil Procedure, Section 1 of Rule 45, on "Appeal by *Certiorari* to the Supreme Court," explicitly states:

> SEC. 1. Filing of petition with Supreme Court. — A person desiring to appeal by *Certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified Petition for Review on *Certiorari*. The petition shall raise only questions of law which must be distinctly set forth. (Emphasis ours).

This differs from the former Rule 45 of the 1964 Rules of Court which made mention only of the Court of Appeals, and had to be adopted in statutes creating and providing for appeals from certain administrative or quasi-judicial agencies, whenever the purpose was to restrict the scope of the appeal to questions of law. That intended limitation on appellate review, as we have just discussed, was not fully subserved by recourse to the former Rule 45 but, then, at that time there was no uniform rule on appeals from quasi-judicial agencies.

Under the present Rule 45, appeals may be brought through a Petition for Review on *Certiorari* but only from judgments and final orders of the courts enumerated in Section 1 thereof. Appeals from judgments and final orders of quasi-judicial agencies[20] are now required to be brought to the Court of

Appeals on a verified petition for review, under the requirements and conditions in Rule 43 which was precisely formulated and adopted to provide for a uniform rule of appellate procedure for quasi-judicial agencies.[21]

It is suggested, however, that the provisions of Rule 43 should apply only to "ordinary" quasi-judicial agencies, but not to the Office of the Ombudsman which is a "high constitutional body." We see no reason for this distinction for, if hierarchical rank should be a criterion, that proposition thereby disregards the fact that Rule 43 even includes the Office of the President and the Civil Service Commission, although the latter is even an independent constitutional commission, unlike the Office of the Ombudsman which is a constitutionally-mandated but statutorily-created body.

Regarding the misgiving that the review of the decision of the Office of the Ombudsman by the Court of Appeals would cover questions of law, of fact or of both, we do not perceive that as an objectionable feature. After all, factual controversies are usually involved in administrative disciplinary actions, just like those coming from the Civil Service Commission, and the Court of Appeals as a trier of fact is better prepared than this Court to resolve the same. On the other hand, we cannot have this situation covered by Rule 45 since it now applies only to appeals from the regular courts. Neither can we place it under Rule 65 since the review therein is limited to jurisdictional questions.[*]

The submission that because this Court has taken cognizance of cases involving Section 27 of Republic Act No. 6770, that fact may be viewed as "acquiescence" or "acceptance" by it of the appellate jurisdiction contemplated in said Section 27, is unfortunately too tenuous. The jurisdiction of a court is not a question of acquiescence as a matter of fact but an issue of conferment as a matter of law. Besides, we have already discussed the cases referred to, including the inaccuracies of some statements therein, and we have pointed out the instances when Rule 45 is involved, hence covered by Section 27 of Republic Act No. 6770 now under discussion, and when that

provision would not apply if it is a judicial review under Rule 65.

Private respondent invokes the rule that courts generally avoid having to decide a constitutional question, especially when the case can be decided on other grounds. As a general proposition that is correct. Here, however, there is an actual case susceptible of judicial determination. Also, the constitutional question, at the instance of this Court, was raised by the proper parties, although there was even no need for that because the Court can rule on the matter *sua sponte* when its appellate jurisdiction is involved. The constitutional question was timely raised, although it could even be raised any time likewise by reason of the jurisdictional issue confronting the Court. Finally, the resolution of the constitutional issue here is obviously necessary for the resolution of the present case.[22]

It is, however, suggested that this case could also be decided on other grounds, short of passing upon the constitutional question. We appreciate the ratiocination of private respondent but regret that we must reject the same. That private respondent could be absolved of the charge because the decision exonerating him is final and unappealable assumes that Section 7, Rule III of Administrative Order No. 07 is valid, but that is precisely one of the issues here. The prevailing rule that the Court should not interfere with the discretion of the Ombudsman in prosecuting or dismissing a complaint is not applicable in this administrative case, as earlier explained. That two decisions rendered by this Court supposedly imply the validity of the aforementioned Section 7 of Rule III is precisely under review here because of some statements therein somewhat at odds with settled rules and the decisions of this Court on the same issues, hence to invoke the same would be to beg the question.

V

Taking all the foregoing circumstances in their true legal roles and effects, therefore, Section 27 of Republic Act No. 6770 cannot validly authorize an appeal to this Court from decisions

of the Office of the Ombudsman in administrative disciplinary cases. It consequently violates the proscription in Section 30, Article VI of the Constitution against a law which increases the appellate jurisdiction of this Court. No countervailing argument has been cogently presented to justify such disregard of the constitutional prohibition which, as correctly explained in First Lepanto Ceramics, Inc. vs. The Court of Appeals, et al.,[23] was intended to give this Court a measure of control over cases placed under its appellate jurisdiction. Otherwise, the indiscriminate enactment of legislation enlarging its appellate jurisdiction would unnecessarily burden the Court.[24]

We perforce have to likewise reject the supposed inconsistency of the ruling in First Lepanto Ceramics and some statements in Yabut and Alba, not only because of the difference in the factual settings, but also because those isolated cryptic statements in Yabut and Alba should best be clarified in the adjudication on the merits of this case. By way of anticipation, that will have to be undertaken by the proper court of competent jurisdiction.

Furthermore, in addition to our preceding discussion on whether Section 27 of Republic Act No. 6770 expanded the jurisdiction of this Court without its advice and consent, private respondent's position paper correctly yields the legislative background of Republic Act No. 6770. On September 26, 1989, the Conference Committee Report on S.B. No. 453 and H.B. No. 13646, setting forth the new version of what would later be Republic Act No. 6770, was approved on second reading by the House of Representatives.[25] The Senate was informed of the approval of the final version of the Act on October 2, 1989[26] and the same was thereafter enacted into law by President Aquino on November 17, 1989.

Submitted with said position paper is an excerpt showing that the Senate, in the deliberations on the procedure for appeal from the Office of the Ombudsman to this Court, was aware of the provisions of Section 30, Article III of the Constitution. It also reveals that Senator Edgardo Angara, as a co-author and the principal sponsor of S.B. No. 543 admitted that the said provision will expand this Court's jurisdiction, and that the

Committee on Justice and Human Rights had not consulted this Court on the matter, thus:

> INTERPELLATION OF SENATOR SHAHANI
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> x x x
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> Thereafter, with reference to Section 22(4) which provides that the decisions of the Office of the Ombudsman may be appealed to the Supreme Court, in reply to Senator Shahani's query whether the Supreme Court would agree to such provision in the light of Section 30, Article VI of the Constitution which requires its advice and concurrence in laws increasing its appellate jurisdiction, Senator Angara informed that the Committee has not yet consulted the Supreme Court regarding the matter. He agreed that the provision will expand the Supreme Court's jurisdiction by allowing appeals through petitions for review, adding that they should be appeals on *Certiorari*.[27]

There is no showing that even up to its enactment, Republic Act No. 6770 was ever referred to this Court for its advice and consent.[28]

VI

As a consequence of our ratiocination that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43.

There is an intimation in the pleadings, however, that said Section 27 refers to appellate jurisdiction which, being substantive in nature, cannot be disregarded by this Court under its rule-making power, especially if it results in a

diminution, increase or modification of substantive rights. Obviously, however, where the law is procedural in essence and purpose, the foregoing consideration would not pose a proscriptive issue against the exercise of the rule-making power of this Court. This brings to fore the question of whether Section 27 of Republic Act No. 6770 is substantive or procedural.

It will be noted that no definitive line can be drawn between those rules or statutes which are procedural, hence within the scope of this Court's rule-making power, and those which are substantive. In fact, a particular rule may be procedural in one context and substantive in another.[29] It is admitted that what is procedural and what is substantive is frequently a question of great difficulty.[30] It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system.

In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.[31] If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but if it operates as a means of implementing an existing right then the rule deals merely with procedure.[32]

In the situation under consideration, a transfer by the Supreme Court, in the exercise of its rule-making power, of pending cases involving a review of decisions of the Office of the Ombudsman in administrative disciplinary actions to the Court of Appeals which shall now be vested with exclusive appellate jurisdiction thereover, relates to procedure only.[33] This is so because it is not the right to appeal of an aggrieved party which is affected by the law. That right has been preserved. Only the procedure by which the appeal is to be made or decided has been changed.

> The rationale for this is that no litigant has a vested right in a particular remedy, which may be changed by substitution without impairing vested rights, hence he can have none in rules of procedure which relate to the remedy.[34]
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> Furthermore, it cannot be said that the transfer of appellate jurisdiction to the Court of Appeals in this case is an act of creating a new right of appeal because such power of the Supreme Court to transfer appeals to subordinate appellate courts is purely a procedural and not a substantive power. Neither can we consider such transfer as impairing a vested right because the parties have still a remedy and still a competent tribunal to administer that remedy.[35]
>
> Thus, it has been generally held that rules or statutes involving a transfer of cases from one court to another, are procedural and remedial merely and that, as such, they are applicable to actions pending at the time the statute went into effect[36] or, in the case at bar, when its invalidity was declared. Accordingly, even from the standpoint of jurisdiction ex hypothesis, the validity of the transfer of appeals in said cases to the Court of Appeals can be sustained.

WHEREFORE, Section 27 of Republic Act No. 6770 (Ombudsman Act of 1989), together with Section 7, Rule III of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman), and any other provision of law or issuance implementing the aforesaid Act and insofar as they provide for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court, are hereby declared **INVALID** and of no further force and effect.

The instant petition is hereby referred and transferred to the Court of Appeals for final disposition, with said petition to be considered by the Court of Appeals *pro hac vice* as a petition for review under Rule 43, without prejudice to its requiring the parties to submit such amended or supplemental pleadings and additional documents or records as it may deem necessary and proper.

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing and Purisima, *JJ.*, concur.

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[1] Effective November 17, 1989.
[2] Effective May 1, 1990.
[3] G.R. Nos. 103446-47, August 30, 1993, 225 SCRA 725.
[4] G.R. No. 110736, December 27, 1993, 228 SCRA 718.
[5] G.R. No. 111304, June 17, 1994, 233 SCRA 310.
[6] G.R. No. 107837, June 27, 1994, 233 SCRA 439.
[7] G.R. No. 102420, December 20, 1995, 239 SCRA 283.
[8] G.R. No. 118533, October 4, 1995, 248 SCRA 700.
[9] G.R. No. 111223, October 6, 1995, 249 SCRA 35, jointly deciding G.R. No. 104604.
[10] G.R. No. 120223, March 13, 1996, 254 SCRA 753.
[11] G.R. No. 127457, April 13, 1998.
[12] See 16 Am Jur. 2d, Constitutional Law, § § 155-156, pp. 531-537.
[13] Op. cit., § 174, p. 184.
[14] Mendoza vs. Small Claims Court of Los Angeles J.D., 321 P. 2d 9.
[15] State ex rel. Burg vs. City of Albuquerque, et al. 249 P. 242.
[16] State vs. Huber, 40 S.E. 2d 11.
[17] In re Thomas, 117 N.E. 2d 740.
[18] See Reyes, et al. vs. Court of Appeals, et al., G.R. No. 110207, July 11, 1996, 258 SCRA 651, and the cases and instances therein enumerated.
[19] Effective July 1, 1997.
[20] At present, the sole exception which still subsists is a judgment or final order issued under the Labor Code of the Philippines (Sec. 2, Rule 43), presently under reexamination.
[21] Rule 43 was substantially taken from and reproduces the appellate procedure provided in Circular No. 1-91 of the Supreme Court dated February 27, 1991 and its subsequent Revised Administrative Circular No. 1-95 which took effect on June 1, 1995.
[*] Petitioner suggests as alternative procedures, the application of either Rule 65 or Rule 43 (Rollo, 433).
[22] Board of Optometry, etc., et al. vs. Colet, G.R. No. 122241, July 30, 1996, 260 SCRA 88, and cases therein cited; Philippine Constitution Association, et al. vs. Enriquez, etc., et al., G.R. No. 113105, August 19, 1994, 235 SCRA 506, and companion cases.
[23] G.R. No. 110571, October 7, 1994, 237 SCRA 519.
[24] See Records of the 1986 Constitutional Commission, Vol. II, pp. 130-132.
[25] Citing the Journal and Record of the House of Representatives, Third Regular Session, 1989-90, Vol. II, p. 512.
[26] Citing the Journal of the Senate, Third Regular Session, 1989-90, Vol. I, pp. 618-619.

[27] Journal of the Senate, Second Regular Session, 1988-89, Vol. I, p. 77, August 3, 1988.
[28] Ibid., id., id., pp. 111-112, August 9, 1988.
[29] 8 Ninth Decennial Digest 155.
[30] People ex rel. Mijares, et al. vs. Kniss, et al., 357 P. 2d 352.
[31] 32 Am. Jur. 2d, Federal Practice and Procedure, § 505, p. 936.
[32] People vs. Smith, 205 P. 2d 444.
[33] 21 CJS, Courts, § 502, p. 769.
[34] Elm Park Iowa, Inc. vs. Denniston, et al., 280 NW 2d 262.
[35] Id., id.
[36] 21 CJS, Courts, § 502, pp. 769-770, 5 NR 2d 1242.