RAFAEL FLAUTA, JR., LUCRESIA ORDINARIO, NEMESIO GOSE, RICARDO BAJADE, JOSEPH ORAYLE, GIL BATILO, ROMULO HILARIO, BEVELYN ZAPANTA AND GENOVIVA JEHODO, PETITIONERS, VS. THE COMMIS...

G.R. No. 184586. July 22, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

The instant petition for certiorari and prohibition seeks to set aside the Resolution[1] of the Commission on Elections (COMELEC) En Banc dated September 25, 2008 in SPC Case No. 07-201, denying private respondent Dante Manganaan's petition to nullify Statements of Votes by Precinct (SOVP) Nos. 0000877, 0000878, 0000879 and 0000880, and instead treated the same as a petition to correct manifest errors found in said SOVPs.

Manganaan was a mayoralty candidate during the May 15, 2007 local elections for the municipality of Senator Ninoy Aquino in Sultan Kudarat. Petitioner Rafael Flauta, Jr. was proclaimed mayor of said municipality, while the other petitioners were proclaimed winning candidates for Vice Mayor and Members of the Sangguniang Bayan, respectively. The herein respondent Special Board of Canvassers (SBOC) was composed of Josephine Macapas, Chairman; Reginald Abad, Vice Chairman; and Oliver Alar, Secretary.

The facts, as found by the COMELEC en banc, are as follows:

> Records disclose that on May 16, 2007, the canvassing proceedings of the said town was disrupted by explosions and gun fires (sic). During said interruption, Melicano Bernan and Julio Collantes, then chairman and secretary, respectively, of the Municipal Board of Canvassers sneaked out of the Sangguniang Bayan Hall and carted away completely filled up and tabulated Statements of Votes by Precinct (SOVP, for brevity) with serial numbers 0000877, 0000878, 0000879 and partially filled up SOVP No. 0000880. Said SOVPs cover eighty-one (81) of the one hundred and six (106) precincts of the municipality. The occurrence of this incident is supported by a May 17, 2007 certification issued by Police Inspector Pablito Silve Nasataya, Chief of Police of Sen. Ninoy Aquino which quoted the pertinent entries in the police blotter.
>
> x x x x
>
> An SBOC was constituted on May 21, 2007 composed of Election Officer Josephine J. Macapas as Chairman; Election Officer Oliver Y. Alar as Vice Chairman and Election Officer Reginald C. Abad as Secretary. The SBOC canvassed the remaining twenty-five (25) precincts but did not proclaim the winners due to the failure of Melicano Bernan and Julio Collantes to surrender the SOVPs they took with them.
>
> (Manganaan), on May 23, 2007, wrote the Chairman and the Commissioners through Commissioner Romeo A. Brawner, Commissioner-in-Charge of Region XII requesting for the nullification of SOVP Nos. 0000877, 0000878 and 0000880 and page three (3) of SOVP No. 0000879 due to the aforesaid incidents. In response, Commissioner Brawner issued a Memorandum dated May 23, 2007 addressed to Atty. Paisal Diaz Tanjili, Provincial Election Supervisor of Sultan Kudarat which states:

> "Due to the reports received pertaining to the disappearance of Melicano Bernan, the Chairman of the Board of Canvassers of the Municipality of Ninoy Aquino, Sultan Kudarat, and his possession of certain Statements of Votes, the following orders are hereby issued to preserve the integrity and credibility of the elections in the Municipality of Sen. Benigno Aquino:
>
> a) SOV Nos. 0000877, 0000878 and 0000880 and page three (3) for the Local Municipal Positions of SOV No. 0000879 are NULLIFIED.
>
> b) The Special Board of Canvassers (SBOC) is DIRECTED to conduct a re-canvassing/re-tallying of all the Election Returns, except those for the 25 precincts which they had already previously canvassed. The re-canvassing/re-tallying shall be conducted in the Municipality of Senator Ninoy Aquino, Sultan Kudarat.
>
> c) The SBOC shall not make any proclamation prior to the completion of the re-canvassing/re-tallying procedure.
>
> For your compliance."

Meanwhile, in the morning of the same day, the Office of the Provincial Election Supervisor (OPES) received a letter from Melicano Bernan and a sealed ballot box believed to be containing the missing SOVPs and the other missing documents. Uninformed of the order, the SBOC convened and proclaimed the winning candidates (petitioners).

On May 29, 2007, (Manganaan) filed this Petition to Annul Proclamation[2] against the proclaimed winning candidates (petitioners) for the positions of mayor, vice mayor and members of the Sangguniang Bayan of the municipality of Sen. Ninoy Aquino, province of Sultan Kudarat. He argues that (petitioners') proclamation is null and void since many of the SOVs used as bases for the said proclamation were declared null and void.

On June 28, 2007, the Commission en banc promulgated Resolution No. 8212[3] which listed the cases that will be heard by the Commission beyond June 30, 2007. The instant case was not among those listed.[4] (other entries in parentheses supplied)

After receipt of Commissioner Brawner's Memorandum, the SBOC sought clarification on the following: 1) status of the proclamation made; 2) whether the SBOC is duty bound to repeat the procedure and conduct a re-canvassing of the affected election returns; and 3) whether the SBOC can finally tabulate the votes gathered for provincial and national offices for the eventual preparation of the Certificate of Canvass of Votes.

On July 3, 2007, Manganaan filed a Motion for Clarification and/or Reconsideration[5] of Resolution No. 8212, which was set for hearing on September 18, 2007.

On August 30, 2007, petitioners filed their Opposition[6] to Manganaan's motion for clarification/reconsideration. On September 18, 2007, the scheduled hearing on the motion was held, after which the parties filed their respective memoranda.

On September 25, 2008, the COMELEC issued the assailed Resolution, the dispositive portion of which provides as follows:

> WHEREFORE, premises considered, the Commission RESOLVED, as it hereby RESOLVES, to DENY the petition to nullify SOVP Nos. 0000877, 0000878, 0000879 and 0000880. Instead, the Commission treats the instant petition to be a petition to correct the manifest errors present in the said SOVPs.
>
> The Special Municipal Board of Canvassers of the municipality of Sen. Ninoy Aquino is hereby DIRECTED to:
>
> a) Reconvene to annul the proclamation of Rafael Flauta, Jr., Lucresia Ordinario, Nemesio Gose, Ricardo

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> Bajade, Joseph Orayle, Gil Batilo, Emely Herezo-delos Santos, Romulo Hilario, Bevelyn Zapanta, Genoviva Jehodo as mayor, vice-mayor and members of the Sangguniang Bayan of Sen. Ninoy Aquino in Sultan Kudarat;
>
> b) Reconvene to rectify the errors the former members of the Municipal Board of Canvassers committed in the copying of votes; and
>
> c) Proclaim the winning candidates based on the corrected entries as detailed above;
>
> Further, the Law Department of the Commission is likewise directed to conduct thorough investigation on the culpability of Melicano Bernan and Julio Collantes in making erroneous entries in the above-mentioned SOVPs.
>
> Let a copy of the instant Resolution be furnished to the Municipal Local Government Operations Officer of the Department of Interior and Local Government (DILG) in the Municipality of Sen. Ninoy Aquino, Province of Sultan Kudarat.
>
> SO ORDERED.[7]

Hence, the instant petition raising the following issues:

> Whether or not the COMELEC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in taking cognizance of the Motion for Reconsideration of an en banc resolution which dismissed SPC Case No. 07-201;
>
> Whether or not the COMELEC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in treating or converting the petition to annul proclamation or as a petition to correct manifest errors;
>
> Whether or not a petition to correct manifest errors may be entertained after a proclamation has been made; and,
>
> Whether or not petitioners' right to due process has been violated.

During the pendency of the instant petition or on January 12, 2009, the SBOC of the Municipality of Sen. Ninoy Aquino reconvened to annul the previous proclamation of petitioner Rafael Flauta, Jr.; rectified the alleged errors committed by the previous board of canvassers; and proclaimed respondent Manganaan as the duly elected mayor who then took his oath of office. Petitioner Flauta, Jr., on the other hand, filed on January 21, 2009 an election protest ad cautelam before the Regional Trial Court of Isulan, Sultan Kudarat.[8]

In view of these developments, Manganaan filed a Manifestation seeking dismissal of the instant petition on the ground that it has become moot.

Petitioners assert that the non-inclusion of SPC Case No. 07-201 in Resolution No. 8212 as among the cases that will be heard by the COMELEC beyond June 30, 2007 means that the same was considered dismissed; that the COMELEC had no jurisdiction to entertain Manganaan's motion for clarification/reconsideration because the same is a prohibited pleading under the COMELEC Rules of Procedure; and that Manganaan's motion contained a mere general notification addressed to the COMELEC and not the proper notice of hearing, thus rendering the same a mere scrap of paper.

Petitioners likewise contend that the procedure adopted by the COMELEC in motu propio converting Manganaan's petition to annul proclamation into one for correction of manifest errors, is irregular and contrary to the rule since petitioners have already been proclaimed. Petitioners rely upon the rule that no petition for correction of manifest errors may be entertained after the candidates have been proclaimed.[9]

In his Comment, Manganaan argues that the instant petition should be dismissed because the issues raised have become moot in view of his proclamation and oath taking as mayor of Sen. Ninoy Aquino town and the filing by petitioner Flauta of an election protest before the Regional Trial Court in Isulan, Sultan Kudarat.

The COMELEC maintains that the prevailing circumstances at the time warranted the suspension of its Rules as authorized under Section 4, Rule 1 of the Rules of Procedure;[10] thus, the treatment of Manganaan's petition to annul proclamation as one to correct manifest mistakes was proper. On the claim of denial of due process, the COMELEC asserts that petitioners were given the opportunity to ventilate their side in a hearing held on September 18, 2007, where the parties were allowed to submit their respective memoranda.

The petition is dismissed.

In O'hara v. Commission on Elections,[11] the Court reiterated the COMELEC's broad power, derived from our fundamental law, to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall; its power of supervision and control over boards of election inspectors and boards of canvassers; the concomitant need to do everything in its power to secure a fair and honest canvass of the votes cast in the elections; the grant to it of broad and flexible powers to effectively perform its duties and to ensure free, orderly, honest, peaceful and credible elections; and its role as the guardian of the people's sacred right of suffrage. Citing Benito v. Commission on Elections,[12] the Court held that:

> Election contests involve public interest, and technicalities and procedural barriers must yield if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. The Court frowns upon any interpretation of the law that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.[13]

In particular, the statutory power of supervision and control by the COMELEC over the boards of canvassers includes the power to revise or reverse the action of the boards, as well as to do what the boards should have done. Such power includes the authority to initiate motu propio such steps or actions as maybe required pursuant to law, like reviewing the actions of the board; conducting an inquiry affecting the genuineness of election returns beyond the election records of the polling places involved; annulling canvass or proclamations based on incomplete returns or on incorrect or tampered returns; invalidating a canvass or proclamation made in an unauthorized meeting of the board of canvassers either because it lacked a quorum or because the board did not meet at all; or requiring the board to convene.[14]

Indeed, under the COMELEC Rules of Procedure, a motion for reconsideration of an en banc resolution of the Commission is not allowed. However, an exception exists as when the case involves an election offense. Thus:

> Section 1. What Pleadings are not Allowed. - The following pleadings are not allowed:
>
> x x x x
>
> d) motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases;
>
> x x x x. (Emphasis supplied)

In the instant case, Manganaan's motion for clarification/reconsideration alleged Bernan and Collantes' unauthorized removal of SOVs from the canvassing venue, as well as possible tampering/increasing/decreasing of votes. Under our election laws, any member of the board of election inspectors or board of canvassers who tampers, increases, or decreases the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes shall be

guilty of an election offense.[15] Likewise, any person who, through any act, means or device, violates the integrity of any official ballot or election returns before or after they are used in the election,[16] and any public official who neglects or fails to properly preserve or account for any ballot box, documents and forms received by him and kept under his custody[17] shall be guilty of an election offense. As such, said allegations of commission of election offense did not make Manganaan's motion for clarification/reconsideration a prohibited pleading.

Bernan and Collantes' sudden disappearance during the canvassing bringing with them a padlocked ballot box containing the SOVPs in question and their having resurfaced after seven days has been established; this is sufficient ground for the COMELEC to exercise its broad powers and jurisdiction, and accordingly treat Manganaan's petition either as a complaint for the investigation and prosecution of an election offense, a petition to correct manifest errors found in the SOVPs, or a ground to declare a failure of elections.

Having decided to treat Manganaan's petition as one for correction of manifest errors, it was within the COMELEC's power, as enunciated in the Alejandro[18] case, to motu propio conduct an inquiry into the matter - exercising as it does direct supervision and control over all boards of canvassers - and secure all documents and papers necessary for the proper resolution of the case. The COMELEC found that:

> In the instant case, the errors in the copying of the figures from the election returns to the SOVs are definitely evident to the understanding and it does not need further evidence to make it clearer. It does not involve the opening of ballot boxes, and appreciation of ballots.
>
> Moreover, Section 35 of Resolution No. 7859 considers error in the copying of votes from the election returns to the SOVs of (sic) as manifest error. It states:
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> "SEC. 34. Manifest error. - There is manifest error in the tabulation of tallying of the results during the canvassing where:
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> x x x x
>
> 3) There was a mistake in the copying of the figures from the election returns to SOV by precinct or from the municipal/city Certificates of canvass to the SOV by Municipality; or from the Provincial/City Certificate of Canvass to the SOV by province/city;[19]

The Statement of Votes (SOV) is a tabulation per precinct of the votes garnered by the candidates as reflected in the election returns. It is a vital component of the electoral process; it supports the Certificate of Canvass and is the basis for proclamation. Its preparation is an administrative function of the Board of Canvassers, a purely mechanical act the performance of which the COMELEC has direct control and supervision.[20] In Milla v. Balmores-Laxa,[21] its significance was underscored, and the Court sustained the COMELEC's power to annul the proclamation of a winning candidate who had taken his oath and assumed office due to an alleged error in the tabulation of the SOV, viz:

> The Statement of Votes forms the basis of the Certificate of Canvass and of the proclamation. Any error in the statement ultimately affects the validity of the proclamation.
>
> If a candidate's proclamation is based on a Statement of Votes which contains erroneous entries, it is null and void. It is no proclamation at all and the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to annul the proclamation.[22]

In Duremdes v. Commission on Elections,[23] this Court sustained the power of the COMELEC en banc to order a correction of the Statement of Votes to make it conform to the election returns. In Castromayor v. Commission on Elections,[24] we allowed this procedure even if the proclamation of a winning candidate has already been made. We also sustained a resolution of the COMELEC directing the MBOC to reconvene and conduct a new

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canvass of the election returns in order to rectify the errors it committed in tallying the votes for the vice-mayoralty race even after a proclamation had already been made.[25] This is because in election laws, the paramount interest lies in the determination of the true will of the electorate.Thus, we held:

> In any case, the COMELEC Second Division justified the reconvening of the MBC in this wise:
>
> On June 21, 2004, public respondent Election Officer Teresita B. Angangan, Chairman of the Board, submitted her answer. She admitted that there were indeed manifest errors committed by the Board in the preparation of the Statement of Votes but denied that "dagdag-bawas was done, practiced, perpetrated and repeated several times over by the Municipal Board of Canvassers." She maintained that there was no dagdag-bawas but a mere error in tabulation or tallying.
>
> EO Angangan also submitted a table comparing the figures in the Election Returns and in the Statement of Votes in all 156 clustered precincts. In this table (Annex 1 of public respondent's Answer), she pointed out that based on the Election Returns, petitioner [private respondent herein] should have won the elections after garnering 11,401 votes as against the 11,152 votes for private respondent.
>
> x x x x
>
> There is no question that errors were committed regarding the copying of the results of the elections from the Election Returns to the Statement of Votes. Both the public and private respondent admitted that errors were indeed made. They just differ as to who will be the real winner if these errors are corrected. According to public respondent, petitioner won; private respondent maintains he would still have won even if the errors were corrected.
>
> What is involved here is a simple problem of arithmetic. The Statement of Votes involved in this case does not match the entries made in the election returns.
>
> It is thus imperative that a Municipal Board of Canvassers be immediately convened to correct with dispatch the errors committed in the tallying of votes.

The COMELEC en banc upheld the reconvening of the MBC, thus:

> "The teaching of past experience is that every effort should be strained, every means should be explored, to ascertain the true returns with the end in view that upon the basis thereof, proclamation untainted by force, fraud, forgery, mistake and the like, may be made. It is true indeed that after proclamation, the losing candidate may yet have the remedy of an election protest. But that may not prove effective. A number of factors, such as the almost illimitable resources of lawyers and the delay that may be occasioned may well frustrate the ends of the protest. Victory may just be in sound, and not in substance." While it is true that as a general rule, the Board of Canvassers becomes functus officio after it has performed its last task, which is to proclaim the winning candidates, the Highest Tribunal had the opportunity to cite an exception to such general rule in Javier vs. COMELEC, where it stated that "it may be conceded as a general proposition that when a Board of Canvassers has fully performed its duty and proclaimed the result of the election according to law and adjourned sine die, it may be deemed functus officio in the sense that the members of the board have no power voluntarily to reassemble and re-canvass the returns. But the foregoing pronouncement finds no application in this case where as already ruled, the canvass and proclamation were made in violation of the lawful order of the COMELEC.
>
> Furthermore, where an election return has been amended by court order or the election return from a certain precinct has been wrongfully or erroneously excluded by the Board of Canvassers, We held that the COMELEC has the power to order a new canvass of the election returns even after a proclamation had already been made. The underlying theory therefore, it was said, is the ministerial duty of the Board of Canvassers to base the proclamation on the election returns of all the precincts of the municipality. Where the Board of

> Canvassers, as in this instance with knowledge that the return from one precinct is undoubtedly vitiated by clerical mistake, continued the canvass and proclaimed a winner based on the result of such canvass, the proclamation cannot be said to have been in faithful discharge of its ministerial duty under the law.

We find no grave abuse of discretion in the foregoing COMELEC pronouncements. There is no controversy that discrepancies exist in the statement of votes and that reflected in the questioned election returns. Considering that any error in the statement of votes would affect the proclamation made on the basis thereof, the resolution of the COMELEC directing the MBOC to reconvene to rectify the errors it committed in tallying the votes for the vice-mayoralty race in Alicia, Isabela should be upheld. Indeed, "above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred."[26]

In the instant case, it was established that Bernan and Collantes took away with them SOVPs pertaining to 81 out of the 106 precincts of the municipality, or SOVPs pertaining to more than 75% of the total number of voting precincts.[27] It was patent error to conduct a proclamation of supposed winning candidates following such highly anomalous circumstance. We agree with the COMELEC when it held that:

> Clearly, taking uncanvassed SOVPs away from the watch of those who have stake (sic) in the election is diametrically opposed to the poll body's thrust of holding honest and credible elections. Hence, it is of paramount importance that the subject SOVs be treated with extreme caution.
>
> It appears, however, that the SBOC did not accord such treatment to the SOVs. It proceeded to canvass the SOVPs without addressing the issue of the integrity of the SOVPs.[28]

Given the circumstances, the COMELEC properly conducted an examination of the SOVPs in question which it found to contain glaring errors, such that entries and figures contained therein do not match those found in the Commission's official copy of the election returns in all covered precincts. These SOVPs were already patently suspect, and certainly could not have been the basis of a valid proclamation. Likewise, since Commissioner Brawner's May 23, 2007 Memorandum remained unheeded by the SBOC despite its clear mandate, it thus became imperative on the part of the COMELEC to perform such acts that would elicit the true will of the electorate, since its subordinates remained seemingly powerless or unwilling to act.

We cannot fault the COMELEC for treating the case as one for correction of manifest errors. Given its broad powers, it may exercise its judgment as it sees fit, and we are wont to interfere therewith in the absence of grave abuse of its discretion. The appreciation of contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and barangay officials. Consequently, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the COMELEC on matters falling within its competence shall not be interfered with by this Court.[29]

Much less does the absence of a notice of hearing in Manganaan's motion convince us to grant the instant petition. Judging from the factual milieu, the COMELEC properly considered the lack of the notice of hearing as mere technicality, which we cannot put premium over and above the COMELEC's noble and paramount duty of determining the true will of the electorate.

Finally, petitioners' protestations of failure to observe due process are unavailing. Given the facts, which remained undisputed, no further proof was required from them that could have counteracted the effects of the evidence already available. Petitioners could not have presented documentary and other evidence that was not already in

the possession of the MBOC, the SBOC, or the COMELEC as the specialized constitutional agency exercising direct supervision and control over the MBOC or SBOC, and over all elections.

WHEREFORE, the petition is DISMISSED. The September 25, 2008 Resolution of the Commission en banc in SPC Case No. 07-201 is AFFIRMED.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, and Bersamin, JJ., concur.
Brion, J. on official leave.

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[1] Rollo, pp. 31-105.

[2] Id. at 125-131.

[3] Id. at 132-149.

[4] Id. at 32-35.

[5] Id. at 150-154.

[6] Id. at 161-164.

[7] Id. at 104-105.

[8] Id. at 246-249.

[9] Citing Agpalo, Comments on Omnibus Election Code, 2004 Edition, p. 514.

[10] Which provides:

In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission.

[11] G.R. Nos. 148941-42, March 12, 2002, 379 SCRA 247.

[12] G.R. No. 106053, August 17, 1994, 235 SCRA 436.

[13] Id. at 442.

[14] Alejandro v. COMELEC, G.R. No. 167101, January 31, 2006, 481 SCRA 427.

[15] Republic Act No. 6646 (The Electoral Reforms Law of 1987), Section 27 (b).

[16] B.P. Blg. 881, as amended, Sec. 261 (z) (21).

[17] Id., Sec. 261 (z) (15).

[18] Supra note 14.

[19] Rollo, pp. 103-104.

[20] Duremdes v. Commission on Elections, G.R. Nos. 86362-63, October 27, 1989, 178 SCRA 746.

[21] G.R. No. 151216, July 18, 2003, 401 SCRA 679.

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[22] Id. at 684-685.

[23] Supra note 20.

[24] G.R. No. 120426, November 23, 1995, 250 SCRA 298.

[25] Alejandro v. Commission on Elections, supra note 14.

[26] Id. at 448-450.

[27] The parties do not dispute this official finding of the local police, as embodied in the Certification dated May 17, 2007 issued by Police Inspector Pablito Silve Nasataya, Chief of Police of Sen. Ninoy Aquino town.

[28] Rollo, p. 36.

[29] Punzalan v. Commission on Elections, G.R. No. 132435, April 27, 1998, 289 SCRA 702.

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