



Republic of the Philippines
 Supreme Court
 Manila

EN BANC

INFORMATION TECHNOLOGY FOUNDATION OF THE PHILIPPINES, MA. CORAZON M. AKOL, MIGUEL UY, EDUARDO H. LOPEZ, AUGUSTO C. LAGMAN, REX C. DRILON, MIGUEL HILADO, LEY SALCEDO, and MANUEL ALCUAZ, JR.,

G.R. No. 159139

Petitioners,

-versus-

COMMISSION ON ELECTIONS, COMELEC CHAIRMAN BENJAMIN ABALOS, SR., COMELEC BIDDING AND AWARDS COMMITTEE CHAIRMAN EDUARDO D. MEJOS AND MEMBERS GIDEON DE GUZMAN, JOSE F. BALBUENA, LAMBERTO P. LLAMAS, and BARTOLOME SINOCRUZ, JR.,

Respondents.

X -----X

AQUILINO Q. PIMENTEL, JR., SERGIO R. OSMEÑA III, PANFILO M. LACSON, ALFREDO S. LIM, JAMBY A.S. MADRIGAL, LUISA P. EJERCITO-ESTRADA, JINGGOY E. ESTRADA, RODOLFO G. BIAZON, and RICHARD J. GORDON,

G.R. No. 174777

Present:

SERENO, *C.J.*,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 MENDOZA,*
 REYES,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,

Petitioners,

-versus-

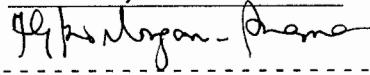
MA. MERCEDITAS NAVARRO-GUTIERREZ, in her capacity as Ombudsman,

Respondent.

CAGUIOA,
MARTIRES,* and
TIJAM, *JJ*.

Promulgated:

June 6, 2017



x-----x

DECISION

JARDELEZA, J.:

In *Information Technology Foundation of the Philippines (Infotech) v. Commission on Elections (COMELEC)*,¹ we nullified the COMELEC's award to Mega Pacific Consortium of the procurement contract involving the automated counting machines (ACMs) for the 2004 national elections. We found that the COMELEC gravely abused its discretion when it awarded the contract to an entity which failed to establish itself as a proper consortium, and despite the ACMs' failure to meet certain technical requirements. This case presents the question of whether our conclusion in *Infotech* that the COMELEC committed grave abuse of discretion is tantamount to a finding of probable cause that the COMELEC officials violated penal laws, thereby making it the ministerial duty of the respondent Ombudsman to file the appropriate criminal complaints.

I

On January 13, 2004, we promulgated the Decision in *Infotech* declaring as null and void: (a) COMELEC Resolution No. 6074 which awarded the contract for Phase II of the Comprehensive Automated Electoral System to Mega Pacific Consortium (MPC); and (b) the procurement contract for ACMs executed between the COMELEC and Mega Pacific eSolutions, Inc. (MPEI).² We found that the COMELEC's failure to follow its own rules, policies, and guidelines in respect of the bidding process, and to adequately check and observe financial, technical and legal requirements constituted grave abuse of discretion. In particular, we found that the winning bidder, MPC, failed to include in its bid documents any joint venture or consortium agreement between MPEI, Election.com, Ltd., WeSolv Open Computing, Inc., SK C&C, ePLDT and Oracle System (Philippines), Inc. that would prove that MPC is a proper consortium. Thus, we concluded that there was no documentary basis for the COMELEC to determine that the alleged consortium really existed and was eligible and qualified to bid.³ Furthermore, we found that the ACMs from MPC failed to meet the 99.9995% accuracy rating required in the

* On official leave.

¹ G.R. No. 159139, January 13, 2004, 419 SCRA 141.

² *Id.* at 204.

³ *Id.* at 164-174, 219-220.



COMELEC's own Request for Proposal (RFP). Based on a 27-point test conducted by the Department of Science and Technology (DOST), MPC failed in eight mostly software-related items—which result should have warranted the rejection of MPC's bid.⁴ Finally, we also found that it was grave abuse for the COMELEC to evaluate the demo version of the software instead of the final version which would be run during the national elections. And because the final version was still to be developed when the ACM contract was awarded, the COMELEC practically permitted the winning bidder to change and alter the subject of the contract, particularly the software, thus effectively allowing a substantive amendment without public bidding.⁵ As a result of the foregoing lapses of the COMELEC, we also directed the Ombudsman to determine the criminal liability, if any, of the public officials and private individuals involved in the nullified resolution and contract.⁶

As mandated by the *Infotech* Decision, the Ombudsman initiated a fact-finding investigation docketed as CPL-C-04-0060. On January 21, 2004, Senator Aquilino Pimentel, Jr. also filed criminal and administrative complaints against COMELEC Chairman Benjamin S. Abalos, Sr. and other COMELEC officials with the Ombudsman, docketed as OMB-C-C-04-0011-A and OMB-C-A-04-0015-A.⁷ Kilosbayan Foundation and Bantay Katarungan Foundation later filed a related complaint with the Ombudsman against COMELEC officials and stockholders of MPEI on September 19, 2004, docketed as OMB-L-C-02-0922-J.⁸ The Field Investigation Office (FIO) of the Ombudsman filed a supplemental complaint on October 6, 2004. These cases were later on consolidated by the Ombudsman.⁹

In the meantime, the petitioners in the *Infotech* case (docketed as G.R. No. 159139) filed a Manifestation and Motion¹⁰ dated December 22, 2005, as well as a Supplemental Motion¹¹ dated January 20, 2006, alleging that the Ombudsman has yet to comply with our directive in the *Infotech* Decision. Thus, on February 14, 2006, we issued a Resolution¹² directing the Ombudsman to show cause why it should not be held in contempt for its failure to comply with the Court's directive. In compliance with the foregoing Resolution, the Ombudsman filed its Comment¹³ contending that it should not be held in contempt of court because it has "long acted on the referral, or complied with this x x x Court's '*directive*' in this case, to its full extent."¹⁴ In a Resolution¹⁵ dated March 28, 2006, we directed the

⁴ *Id.* at 181-191.

⁵ *Id.* at 199-202.

⁶ *Id.* at 204.

⁷ *Rollo* (G.R. No. 174777), p. 93.

⁸ *Id.* at 95.

⁹ *Id.* at 95-96.

¹⁰ *Rollo* (G.R. No. 159139), pp. 3779-3784.


¹¹ *Id.* at 3800-3807.

¹² *Id.* at 3817-3820.

¹³ *Id.* at 3827-3870.

¹⁴ *Id.* at 3854.

¹⁵ *Id.* at 3889-3896.



Ombudsman, under pain of contempt, to submit quarterly reports to the Court starting June 30, 2006.¹⁶

Consequently, the Ombudsman issued a Resolution¹⁷ dated June 28, 2006 recommending: (a) the filing of an information with the Sandiganbayan against Eduardo Mejos, Gideon G. De Guzman, Jose P. Balbuena, Lamberto P. Llamas, Bartolome J. Sinocruz, Jr., Willy U. Yu, Bonnie Yu, Enrique Tansipek, Rosita Y. Tansipek, Pedro O. Tan, Johnson W. Fong, Bernardo L. Fong, and Lauriano Barrios; (b) the dismissal of the complaint against Jose Tolentino, Jaime Paz, Zita Buena-Castillon, and Rolando Vilorio; (c) the referral of the findings against COMELEC Commissioner Resurreccion Z. Borra to the House of Representatives; (d) the dismissal of Eduardo Mejos, Gideon G. De Guzman, Jose P. Balbuena, Lamberto P. Llamas, and Bartolome J. Sinocruz, Jr. from service; and (e) the conduct of further fact-finding investigation by the Ombudsman.¹⁸ The respondents in the Ombudsman cases filed a Motion for Reconsideration of the aforementioned Resolution on July 10, 2006.¹⁹

On July 13, 2006, the investigating panel of the Office of the Ombudsman reconvened to carry out further investigation and clarificatory hearings. They invited resource persons and witnesses to testify and present relevant documents and papers in order to determine criminal liability of the public and private respondents in the Ombudsman cases. In all, the investigating panel conducted a total of 12 public hearings between July 13, 2006 and August 23, 2006, interviewed 10 witnesses, and received no less than 198 documents.²⁰

Following these public hearings, the Ombudsman issued a Supplemental Resolution²¹ dated September 27, 2006 which reversed and set aside the June 28, 2006 Resolution, and dismissed the administrative and criminal complaints against both public and private respondents for lack of probable cause. The Supplemental Resolution stated that the Investigating Panel “cannot find an iota of evidence to show that the acts of [the Bids and Awards Committee (BAC)] in allowing MPC to bid and its subsequent recommendation to award [the] Phase II Contract to MPC constitute manifest [] partiality, evident bad faith or gross inexcusable negligence” and that it cannot establish that any “unwarranted benefit, advantage or preference was extended to MPC or MP[E]I by [the] BAC in the exercise of its administrative function in the determination [of] MPC’s eligibility and subsequent recommendation made to [the] COMELEC.”²² In sum, the Ombudsman opined that a finding of grave abuse of discretion in the

¹⁶ *Id.* at 3895.

¹⁷ *Rollo* (G.R. No. 174777), pp. 88-124.

¹⁸ *Id.* at 121-122.

¹⁹ *Id.* at 36-37.

²⁰ *Id.* at 37-46, 52-57.

²¹ *Id.* at 33-87.

²² *Id.* at 69.

Infotech case cannot be considered criminal in nature in the absence of evidence showing bad faith, malice or bribery in the bidding process.²³

Aggrieved by the Ombudsman's reversal, the petitioners filed the present special civil action for *certiorari* docketed as G.R. No. 174777 seeking to nullify the Ombudsman's Supplemental Resolution and to cite the Ombudsman in contempt. On the other hand, petitioners in G.R. No. 159139 filed a Motion²⁴ dated October 17, 2006 praying for the Court to: (1) reject the Ombudsman's Supplemental Resolution as compliance with the Court's directive in the *Infotech* decision; and (2) order the Ombudsman to file an information with the Sandiganbayan against the COMELEC officials and other private individuals. On the same date, we resolved to consolidate the two cases.²⁵

II

As a preliminary procedural matter, we observe that while the petition asks this Court to set aside the Supplemental Resolution, which dismissed both administrative and criminal complaints, it is clear from the allegations therein that what petitioners are questioning is the criminal aspect of the assailed resolution, *i.e.*, the Ombudsman's finding that there is no probable cause to indict the respondents in the Ombudsman cases.²⁶ Movants in G.R. No. 159139 similarly question this conclusion by the Ombudsman and accordingly pray that the Ombudsman be directed to file an information with the Sandiganbayan against the responsible COMELEC officials and conspiring private individuals.²⁷

In *Kuizon v. Desierto*²⁸ and *Mendoza-Arce v. Office of the Ombudsman*,²⁹ we held that this Court has jurisdiction over petitions for *certiorari* questioning resolutions or orders of the Ombudsman in criminal cases. For administrative cases, however, we declared in the case of *Dagan v. Office of the Ombudsman (Visayas)*³⁰ that the petition should be filed with the Court of Appeals in observance of the doctrine of hierarchy of courts. The *Dagan* ruling homogenized the procedural rule with respect to administrative cases falling within the jurisdiction of the Ombudsman—first enunciated in *Fabian v. Desierto*³¹—that is, all remedies involving the orders, directives, or decisions of the Ombudsman in administrative cases, whether by an appeal under Rule 43 or a petition for *certiorari* under Rule 65, must be filed with the Court of Appeals.

²³ *Id.* at 69-70.

²⁴ *Rollo* (G.R. No. 159139), pp. 4260-4306.

²⁵ *Rollo* (G.R. No. 174777), pp. 125-126.

²⁶ *Id.* at 23.

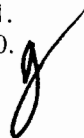
²⁷ *Rollo* (G.R. No. 159139), pp. 4260-4300.

²⁸ G.R. No. 140619, March 9, 2001, 354 SCRA 158.

²⁹ G.R. No. 149148, April 5, 2002, 380 SCRA 325.

³⁰ G.R. No. 184083, November 19, 2013, 709 SCRA 681.

³¹ G.R. No. 129742, September 16, 1998, 295 SCRA 470.



Accordingly, we shall limit our resolution to the criminal aspect of the Ombudsman's Supplemental Resolution dated September 27, 2006.

III

The dispositive portion of the *Infotech* decision reads:

WHEREFORE, the Petition is *GRANTED*. The Court hereby declares *NULL* and *VOID* Comelec Resolution No. 6074 awarding the contract for Phase II of the AES to Mega Pacific Consortium (MPC). Also declared null and void is the subject Contract executed between Comelec and Mega Pacific eSolutions (MPEI). Comelec is further *ORDERED* to refrain from implementing any other contract or agreement entered into with regard to this project.

Let a copy of this Decision be furnished the Office of the Ombudsman which shall determine the criminal liability, if any, of the public officials (and conspiring private individuals, if any) involved in the subject Resolution and Contract. Let the Office of the Solicitor General also take measures to protect the government and vindicate public interest from the ill effects of the illegal disbursements of public funds made by reason of the void Resolution and Contract.³² (Citation omitted, emphasis supplied.)

The Ombudsman maintains that it has the discretion to determine whether a criminal case, given the facts of the case and the applicable laws and jurisprudence, should be filed.³³ The respondents in G.R. No. 159139, the COMELEC and MPEI, support the Ombudsman's position. They point to the plain text of the dispositive portion, *i.e.*, the use of the phrase "if any," which clearly demonstrates the Court's intent for the Ombudsman to conduct its own investigation and render an independent assessment based on whatever evidence the Ombudsman gathers.³⁴

Against this straightforward interpretation, the petitioners in G.R. No. 174777 and movants in G.R. No. 159139 insist that "[t]he Supreme Court in the *Infotech* case has already established that a crime has been committed and endorsed the case to the Ombudsman to determine the specific personalities who are 'probably guilty' thereof."³⁵ They allege that, by issuing the Supplemental Resolution, the Ombudsman reversed the findings of the Supreme Court.³⁶ Consequently, they argue that the Ombudsman should also be held in indirect contempt because she failed to comply with our directive in *Infotech*. We take their arguments in turn.

³² *Supra* note 1 at 204.

³³ *Rollo* (G.R. No. 174777), pp. 812-813.

³⁴ *Id.* at 619-620, 657-658.

³⁵ *Id.* at 23.

³⁶ *Id.* at 20-21, 544-545.

A

The Court is mindful that the directive in the *Infotech* Decision may have been susceptible to misinterpretation, particularly when taken in conjunction with the oftentimes strong language used in the body of the *ponencia*. However, such statements were made only to emphasize the critical role of the COMELEC in the electoral process and to sternly remind the COMELEC that it cannot afford to be lackadaisical in the implementation of the bidding laws and rules, particularly when what is involved is no less than the national elections. Thus, to allay any fear that we are arrogating unto ourselves the powers of the Ombudsman, we deemed it proper to clarify the nature of our directive in a Resolution³⁷ dated June 13, 2006, the relevant portion of which provides:

The Court emphatically stresses that its directive to the OMB to render a report on a regular basis, pursuant to this Court's Decision promulgated on January 13, 2004, does **not in any way** impinge upon, much less rob it of, its independence as provided under the Constitution. Nowhere in the questioned Resolutions did the Court demand the OMB to decide or make a specific determination—one way or the other—of the culpability of any of the parties. Our directive was for the OMB to report on its “final determination of *whether* a probable cause exists against *any* of the public officials (and conspiring private individuals, *if any*) x x x.” Surely, these emphasized words indicate that the Court in no way intends to intrude upon the discretionary powers of the OMB. x x x³⁸ (Emphasis in the original.)

Our pronouncements in the June 13, 2006 Resolution are consistent with the Court's policy of non-interference with the Ombudsman's conduct of preliminary investigations, and to leave the Ombudsman sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause.³⁹ As a general rule, the Court does not intervene with the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service.⁴⁰ This policy rests on the fundamental doctrine of separation of powers, which is one of the foundations of our republican government.

³⁷ *Rollo* (G.R. No. 159139), pp. 3947-3950.

³⁸ *Id.* at 3948.

³⁹ *Agdeppa v. Ombudsman*, G.R. No. 146376, April 23, 2014, 723 SCRA 293, 330 citing *Casing v. Ombudsman*, G.R. No. 192334, June 13, 2012, 672 SCRA 500, 507.

⁴⁰ *Id.*

The 1987 Constitution clothed the Ombudsman with authority to investigate offenses committed by public officers and employees.⁴¹ In *Casing v. Ombudsman*,⁴² we stated that:

The Constitution and R.A. No. 6770 endowed the Office of the Ombudsman with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. Specifically, the determination of whether probable cause exists is a function that belongs to the Office of the Ombudsman. Whether a criminal case, given its attendant facts and circumstances, should be filed or not is basically its call.⁴³

The determination of probable cause—that is, one made for the purpose of filing an information in court—is essentially an executive function and not a judicial one. The State’s self-preserving power to prosecute violators of its penal laws is a necessary component of the Executive’s power and responsibility to faithfully execute the laws of the land.⁴⁴

On the other hand, the Constitution vests the Supreme Court with judicial power, defined under Section 1, Article VIII as “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.” Conspicuously absent in the provision is the power of the judiciary to prosecute crimes—much less the broader power to execute laws from which it can be inferred. As early as 1932, we held that: “It is judicial power and judicial power only which is exercised by the Supreme Court. Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act.”⁴⁵

In view of the constitutional delineation of powers, we reject the petitioners’ contention that we already made a determination in the *Infotech* case that a crime has been committed. We could not have made such determination without going beyond the limits of our judicial power and thereby unlawfully impinging the prerogative of the constitutionally created Office of the Ombudsman. In *Infotech*, we only exercised our mandate to determine whether or not there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC. Ultimately, we found that the COMELEC committed grave abuse of discretion when it: (a)

⁴¹ CONSTITUTION, Art. XI, Sec. 13(1).

⁴² *Casing v. Ombudsman*, *supra*.

⁴³ *Id.* at 507.

⁴⁴ *Elma v. Jacobi*, G.R. No. 155996, June 27, 2012, 675 SCRA 20, 56.

⁴⁵ *Manila Electric Co. v. Pasay Transportation Co.*, 57 Phil. 600, 605 (1932)

awarded the project to MPC, an entity that did not participate in the bidding; (b) accepted and paid for MPEI's ACMs that failed the 99.9995% accuracy requirement stated in the COMELEC's own bidding rule, including the software's failure to detect previously downloaded precinct results and the ACMs' inability to print audit trails without loss of data; and (c) accepted and awarded the contract based on a mere demo version of the software. However, a finding of grave abuse of discretion is not necessarily indicative of probable cause. To determine the latter, the constitutive elements of the crime must first be considered.⁴⁶ In the exercise of our *certiorari* jurisdiction in *Infotech*, we only resolved whether the COMELEC acted in a capricious, whimsical, arbitrary or despotic manner.⁴⁷ We never decided whether the facts were sufficient to engender a well-founded belief that a crime has been committed and that the respondents were probably guilty thereof.⁴⁸

Under our constitutional structure, courts of law have no right to directly decide matters over which full discretionary authority has been delegated to another office or branch of government.⁴⁹ We confine ourselves to the exercise of judicial power and are careful not to encroach upon the functions of the other branches of the government. Lest it be forgotten, separation of powers is not merely a hollow doctrine in constitutional law; rather, it serves a very important purpose in our democratic republic government, that is, to prevent tyranny by prohibiting the concentration of the sovereign powers of state in one body. The power to prosecute and the power to adjudicate must remain separate; otherwise, as James Madison warned, "[the judge] might behave with all the violence of [an oppressor]."⁵⁰

B

Apart from constitutionally founded limitations, there are also practical reasons why the Court does not interfere with the Ombudsman's determination of the existence or absence of probable cause. These reasons are briefly, but concisely, stated in *Galario v. Office of the Ombudsman (Mindanao)*:⁵¹

It is not sound practice to depart from the policy of noninterference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, this Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon

⁴⁶ *Aguilar v. Department of Justice*, G.R. No. 197522, September 11, 2013, 705 SCRA 629, 638.

⁴⁷ See *Saldariega v. Panganiban*, G.R. No. 211933, April 15, 2015, 755 SCRA 627.

⁴⁸ See *Alberto v. Court of Appeals*, G.R. No. 182130, June 19, 2013, 699 SCRA 104, 130.

⁴⁹ *Metrobank v. Tobias III*, G.R. No. 177780, January 25, 2012, 664 SCRA 165, 176-177.

⁵⁰ James Madison, *The Federalist Papers: No. 47*, available at

http://avalon.law.yale.edu/18th_century/fed47.asp (last accessed on August 13, 2015).

⁵¹ G.R. No. 166797, July 10, 2007, 527 SCRA 190.

practicality as well. If it were otherwise, **this Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, to determine if there is probable cause.**

[T]he Court does not interfere with the Ombudsman's discretion in the finding of probable cause resulting in its investigations. **The Ombudsman's findings are essentially factual in nature, and the Supreme Court is NOT a trier of facts.**⁵² (Citation omitted, emphasis supplied.)

In his separate opinion in *Roberts, Jr. v. Court of Appeals*,⁵³ Chief Justice Narvasa succinctly stated his objection to the idea of the Court making a determination of probable cause:

In this special civil action, this Court is being asked to assume the function of a public prosecutor. It is being asked to determine whether probable cause exists as regards petitioners. More concretely, the Court is being asked to examine and assess such evidence as has thus far been submitted by the parties and, on the basis thereof, make a conclusion as to whether or not it suffices "to engender a well[-]founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial."

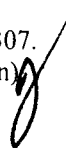
It is a function that this Court should not be called upon to perform. It is a function that properly pertains to the public prosecutor, one that, as far as crimes cognizable by a Regional Trial Court are concerned, and notwithstanding that it involves an adjudicative process of a sort, exclusively pertains, by law, to said executive officer, the public prosecutor. It is moreover a function that in the established scheme of things, is supposed to be performed at the very genesis of, indeed, prefatorily to, the formal commencement of a criminal action. The proceedings before a public prosecutor, it may well be stressed, are essentially preliminary, prefatory, and cannot lead to a final, definite and authoritative adjudgment of the guilt or innocence of the persons charged with a felony or crime.⁵⁴ (Citations omitted, emphasis supplied.)

For cases cognizable by the Sandiganbayan, the function of determining probable cause primarily lies with the Office of the Ombudsman, which has the presumed expertise in the laws it is entrusted to enforce.

⁵² *Id.* at 206.

⁵³ G.R. No. 113930, March 5, 1996, 254 SCRA 307.

⁵⁴ *Id.* at 349-350 (Narvasa, *C.J.*, Separate Opinion)



C

The Ombudsman's determination of probable cause may only be assailed through *certiorari* proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion. Not every error in the proceedings or every erroneous conclusion of law or fact, however, constitutes grave abuse of discretion. It has been stated that the Ombudsman may err or even abuse the discretion lodged in her by law, but such error or abuse alone does not render her act amenable to correction and annulment by the extraordinary remedy of *certiorari*. To justify judicial intrusion into what is fundamentally the domain of another constitutional body, the petitioner must clearly show that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in making her determination and in arriving at the conclusion she reached.⁵⁵ For there to be a finding of grave abuse of discretion, it must be shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.⁵⁶

In a special civil action for *certiorari*, the burden of proving that the public officer acted with grave abuse of discretion, in accordance with the definition and standards stated above, lies with the person filing the petition.⁵⁷ Here, the petitioners solely rely on the *Infotech* Decision to support their contention that the Ombudsman gravely abused her discretion when she issued the assailed Supplemental Resolution. They argue that the Ombudsman's decision to dismiss the criminal complaints is tantamount to a reversal of a final decision by the Supreme Court.

However, a close scrutiny of the Supplemental Resolution reveals that the Ombudsman did not reverse the Court's findings in the *Infotech* case. Preliminarily, we reiterate the rule that the Supreme Court is not a trier of facts. Hence, the findings made in *Infotech* were not exhaustive insofar as they only represent undisputed facts.⁵⁸ To recapitulate, these facts were: (a) MPC did not present any joint venture or consortium agreement between MPEI, Election.com, Ltd., WeSolv Open Computing, Inc., SK C&C, ePLDT, and Oracle System (Philippines), Inc. in any of its bid documents; (b) the ACMs provided by MPC failed in eight mostly software-related items out of the 27-point test conducted by the DOST; (c) the COMELEC only evaluated a demo version of the software instead of the final version to be run in the national elections; and (d) notwithstanding the foregoing deficiencies, the COMELEC still awarded the contract and made

⁵⁵ *Agdeppa v. Ombudsman*, *supra* note 39 at 332-333.

⁵⁶ *Id.* at 331, citing *M.A. Jimenez Enterprises, Inc. v. Ombudsman*, G.R. No. 155307, June 6, 2011, 650 SCRA 381, 392-394.

⁵⁷ *Id.* at 332.

⁵⁸ See *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, G.R. No. 98310, October 24, 1996, 263 SCRA 490.

partial payments to MPC. From these facts, we concluded that the COMELEC disregarded its own bidding rules and procedure by entertaining the bid of an entity with no legal personality and by tolerating deviations from financial, technical and legal requirements—all of which amounted to grave abuse of discretion. Nonetheless, we did not make any determination, preliminary or otherwise, that the COMELEC acted with evident bad faith, manifest partiality or gross inexcusable negligence, or that MPC received any unwarranted benefit or undue advantage. Instead, we directed the Ombudsman to conduct its own investigation. To reiterate, we could not have made such determination because the power to do so falls squarely within the constitutional authority of the Ombudsman.

In the Supplemental Resolution, the Ombudsman found that when the COMELEC-BAC allowed MPC to bid, the public officials considered the numerous documents⁵⁹ submitted by MPC to arrive at the conclusion, albeit erroneous, that MPC was eligible. The Ombudsman also found that the COMELEC had intended to test the final version of the software,⁶⁰ but this plan was overtaken by the filing and subsequent resolution of the *Infotech* case. With respect to the bid itself, the Ombudsman found that MPC's bid was the lowest and most responsive.⁶¹ The Ombudsman based these findings on the 12 public hearings conducted between July 13, 2006 and August 23, 2006. In the course of those hearings, the investigating panel heard 10 witnesses, received counter-affidavits, and gathered voluminous documents. Based on its independent investigation, the Ombudsman did not find that all the essential elements of the crimes punished under Sections 3(e) and (g) of Republic Act No. 3019⁶² are present. In particular, the Ombudsman was of the opinion that there was nothing to show “that the acts of BAC in allowing MPC to bid and its subsequent recommendation to award [the] Phase II Contract to MPC constitute manifest [] partiality, evident bad faith or gross inexcusable negligence”⁶³ and “[n]either was it established that an unwarranted benefit, advantage or preference was extended to MPC or MP[E]I by BAC in the exercise of its administrative function in the determination [of] MPC's eligibility and subsequent recommendation x x x to [the] COMELEC.”⁶⁴ In the end, the Ombudsman concluded that the COMELEC made errors of judgment but did not necessarily violate the anti-graft law.

Based on the foregoing, we find that the action taken by the Ombudsman cannot be characterized as arbitrary, capricious, whimsical or despotic. The Ombudsman found no evidence to prove probable cause. Probable cause refers to facts and circumstances sufficient to engender a well-founded belief that a crime has been committed and that the

⁵⁹ *Rollo* (G.R. No. 174777), pp. 52-57.

⁶⁰ *Id.* at 61-66.

⁶¹ *Id.* at 68, 77.

⁶² Anti-Graft and Corrupt Practices Act (1960).

⁶³ *Rollo* (G.R. No. 174777), p. 69.

⁶⁴ *Id.*

respondents probably committed it.⁶⁵ It signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.⁶⁶ To engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present.⁶⁷ Here, the Ombudsman determined the non-existence of probable cause only after conducting numerous hearings, reviewing copious documents, and evaluating these against the constitutive elements of the crimes punished under the anti-graft law—it was not as if the decision to dismiss the complaints was pulled out of thin air. The issuance of the Supplemental Resolution is clearly a valid exercise of the Ombudsman's discretion.

The problem for the petitioners is that they relied solely on the *Infotech* Decision and did not actively participate in the investigation conducted by the Ombudsman. They did not submit any evidence to substantiate any claim of malice, bad faith, or bribery. In this regard, it bears emphasis that the petitioners do not ascribe grave abuse with regard to the conduct of the hearings. And they could not have; after all, they were duly notified by the Ombudsman and had every opportunity to participate in the preliminary investigation. Their misplaced reliance on *Infotech* now leaves them with nothing to anchor their petition on.

IV

We are not unaware of our Decision dated June 27, 2016 in *Republic v. Mega Pacific eSolutions, Inc.*,⁶⁸ where the Court's First Division relied on the same *Infotech* case to establish that MPEI committed fraud against the Republic which entitled the latter to a writ of preliminary attachment. To dispel any misconception, we deem it proper to clarify that our holding in *Republic*, much like in *Infotech*, was never intended to intrude into the Ombudsman's constitutional authority to determine probable cause.

To give a brief background, *Republic* involved an action for damages filed by MPEI with the Regional Trial Court of Makati City. MPEI claimed that notwithstanding the nullification of the contract, the COMELEC was still obligated to pay the amount of ₱200,165,681.89 representing the unpaid value of the ACMs and the support services delivered. COMELEC filed a counterclaim for the return of the payments made pursuant to the automation contract with a prayer for the issuance of a writ of preliminary attachment. The application for preliminary attachment was grounded upon the alleged fraudulent misrepresentation of MPEI and its incorporators as to the former's eligibility to participate in the bidding for the COMELEC

⁶⁵ *Elma v. Jacobi*, *supra* note 44 at 57.

⁶⁶ *Tetangco v. Ombudsman*, G.R. No. 156427, January 20, 2006, 479 SCRA 249, 254.

⁶⁷ *Aguilar v. Department of Justice*, *supra* note 46 at 131.

⁶⁸ G.R. No. 184666, June 27, 2016.

automation project and the failure of the ACMs to comply with mandatory technical requirements. The Court's First Division ruled in favor of the Republic and held that a writ of preliminary attachment should issue against the properties of therein respondents MPEI, Willy U. Yu, Bonnie S. Yu, Enrique T. Tansipek, Rosita Y. Tansipek, Pedro O. Tan, Johnson W. Fong, Bernard I. Fong, and Lauriano A. Barrios. Relying on portions of the *Infotech* case, the Court ruled that: (1) "MPEI committed fraud by securing the election automation contract[] and x x x by misrepresenting that the actual bidder was MPC and not MPEI, which was only acting on behalf of MPC;"⁶⁹ (2) "MPEI has defrauded petitioner, since the former still executed the automation contract despite knowing that it was not qualified to bid for the same;"⁷⁰ and (3) "[d]espite its failure to meet the mandatory requirements set forth in the bidding procedure, [MPEI] still acceded to being awarded the contract."⁷¹

At the outset, it must be clarified that fraud has no technical legal meaning in our laws.⁷² In its general sense, fraud is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated.⁷³ While the generic concept of fraud is similar for both civil and criminal cases, the term is descriptive rather than substantive. In its specific and substantive sense, a right of action occasioned by fraud is dependent on the law upon which the action is based. Based on its nature, actionable fraud may be civil or criminal.

There are two broad classes of actionable civil fraud in this jurisdiction. First is fraud that gives rise to an action for damages, generally in case of contravention of the normal fulfillment of obligations⁷⁴ or as a tort under the human relations provisions of the Civil Code,⁷⁵ as well as in

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Carandang v. Santiago*, 97 Phil. 94 (1955).

⁷³ *Republic v. Mega Pacific eSolutions, Inc.*, *supra* note 68 citing *People v. Menil, Jr.*, G.R. Nos. 115054-66, September 12, 2000, 340 SCRA 125.

⁷⁴ CIVIL CODE, Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Art. 1171. Responsibility arising from fraud is demandable in all obligations. x x x

⁷⁵ CIVIL CODE, Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

x x x

Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.

x x x



specific instances mentioned by law.⁷⁶ To be actionable, the fraudulent act must cause loss or injury to another. Second is fraud that creates a vice in the intent of one or more parties in juridical transactions, such as wills,⁷⁷ marriages,⁷⁸ and contracts, among others. With respect to the latter, fraud may render the contract defective in varying degrees: voidable, when consent is obtained through fraud;⁷⁹ rescissible, when the contract is undertaken in fraud of creditors;⁸⁰ and “reformable,” when by reason of fraud, the parties’ true intention is not expressed in the instrument.⁸¹

Criminal fraud, on the other hand, may pertain to the means of committing a crime or the classes of crimes under Chapter Three, Title Four, Book Two and Chapter Three, Title Seven, Book Two of the Revised Penal Code. As a means, fraud may be an essential element of the crime (*e.g.*, *estafa* by means of false pretenses or fraudulent acts or through fraudulent means⁸²) or a generic aggravating circumstance.⁸³ Meanwhile, the crimes classified as frauds under the penal code punish specific types of fraud: machinations in public auctions;⁸⁴ monopolies and combinations in restraint of trade;⁸⁵ importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious metals or their alloys;⁸⁶ subsisting and altering trade-mark, trade-names, or service marks;⁸⁷ unfair competition, fraudulent registration of trade-mark, trade-name or service mark, fraudulent designation of origin, and false description;⁸⁸ frauds against the public treasury and similar offenses;⁸⁹ and frauds committed by public officers.⁹⁰ As with other criminal offenses, liability for these punishable frauds depends on the concurrence of the essential elements of each type of crime.

It is immediately apparent that *Republic* involved a civil case, whereas the present case, although in the nature of a special civil action, originated from the preliminary investigation of a criminal case. We recognized this distinction in *Republic* itself:

Art. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

⁷⁶ For property relations, see CIVIL CODE, Arts. 500, 552 & 573; for partnership and agency, see CIVIL CODE., Arts. 1838 & 1909; for breach of contract, see CIVIL CODE, Art. 2220.

⁷⁷ CIVIL CODE, Art. 839.

⁷⁸ FAMILY CODE, Art. 45.

⁷⁹ CIVIL CODE, Arts. 1330 & 1390(2).

⁸⁰ CIVIL CODE, Art. 1381(3).

⁸¹ CIVIL CODE, Art. 1359.

⁸² REVISED PENAL CODE, Art. 315.

⁸³ REVISED PENAL CODE, Art. 14.

⁸⁴ REVISED PENAL CODE, Art. 185.

⁸⁵ REVISED PENAL CODE, Art. 186.

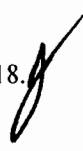
⁸⁶ REVISED PENAL CODE, Art. 187.

⁸⁷ REVISED PENAL CODE, Art. 188.

⁸⁸ REVISED PENAL CODE, Art. 189.

⁸⁹ REVISED PENAL CODE, Art. 213.

⁹⁰ REVISED PENAL CODE, Art. 214 in relation to Arts. 315-318.



The main issue in the instant case is whether respondents are guilty of fraud in obtaining and executing the automation contract, to justify the issuance of a writ of preliminary attachment in petitioner's favor. Meanwhile, the issue relating to the proceedings before the Ombudsman (and this Court in G.R. No. 174777) pertains to the finding of lack of probable cause for the possible criminal liability of respondents under the Anti-Graft and Corrupt Practices Act.

The matter before Us involves petitioner's application for a writ of preliminary attachment in relation to its recovery of the expended amount under the voided contract, and not the determination of whether there is probable cause to hold respondents liable for possible criminal liability due to the nullification of the automation contract. Whether or not the Ombudsman has found probable cause for possible criminal liability on the part of respondents is not controlling in the instant case.⁹¹

The distinction is a significant one in view of the legal nuances between civil fraud and criminal fraud. To recall, *Republic* originated from the government's application for a writ of preliminary attachment in a civil case pending before the trial court. Under Rule 57 of the Rules of Civil Procedure, one of the grounds for the issuance of a writ of preliminary attachment is when the party against whom attachment is sought is guilty of fraud in "contracting the debt or incurring the obligation upon which the action is brought."⁹² The type of fraud referred to by this rule is civil in nature; in the law of contracts, it is commonly referred to as *dolo causante* or causal fraud, or those deceptions or misrepresentations of a serious character employed by one party and without which the other party would not have entered into the contract.⁹³ The finding of fraud in *Republic*, inasmuch as it involved fraud committed by MPEI in the execution of the procurement contract with COMELEC, pertains to causal fraud, which falls under the broad classification of civil fraud rather than criminal fraud. The issue of criminal fraud was not considered in *Republic* and no determination about the commission of any particular crime was made.

While we are not saying that the same act which constitutes civil fraud cannot serve as basis for criminal fraud and *vice versa*, the essential elements that create civil liability and those that give rise to criminal liability are neither identical nor legally interchangeable. We therefore find no conflict between our ruling in *Republic* and the Ombudsman's findings below.⁹⁴ We reiterate that it is not our function to determine at the first instance whether criminal fraud has been committed. That task properly lies

⁹¹ *Supra* note 68.

⁹² RULES OF COURT, Rule 57, Sec. 1, par. (d).

⁹³ *Geraldez v. Court of Appeals*, G.R. No. 108253, February 23, 1994, 230 SCRA 320.

⁹⁴ On this point, there was no finding in *Republic* that the COMELEC officials were involved in the civil fraud employed by MPEI in relation to the execution of the procurement contract.

with the prosecutorial arm of government, either with the Department of Justice or, as in this case, the Ombudsman.

V

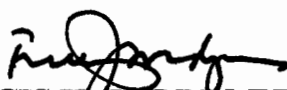
Having ruled that the Ombudsman did not commit grave abuse of discretion, it is no longer necessary to belabor the issue on contempt. Suffice it to say that our directive to the Ombudsman was simply to determine if there was any criminal liability on the part of the public and private respondents in G.R. No. 159139. The Ombudsman sufficiently complied with this directive when she found that, based on the hearings conducted and documents gathered, probable cause did not exist.

* * *


The Court respects the relative autonomy of the Ombudsman to investigate and prosecute, and refrains from interfering when the latter exercises such powers, except when there is grave abuse of discretion. The Ombudsman's determination of probable cause may only be assailed before this Court through the extraordinary remedy of *certiorari*. The requirement for judicial intrusion, however, is still for the petitioners to demonstrate clearly that the Ombudsman acted arbitrarily or despotically. Absent such clear demonstration, the intervention must be disallowed in deference to the doctrine of non-interference.

WHEREFORE, the petition docketed as G.R. No. 174777 is **DISMISSED**. The Motion dated October 17, 2006 filed by the petitioners in G.R. No. 159139 is **DENIED**.

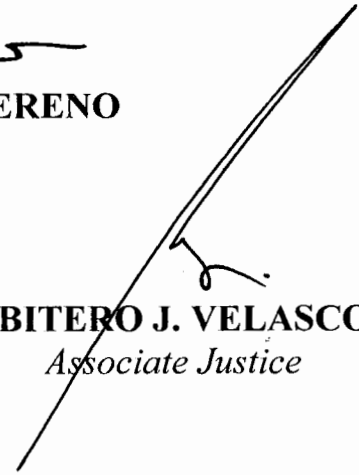
SO ORDERED.


FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice

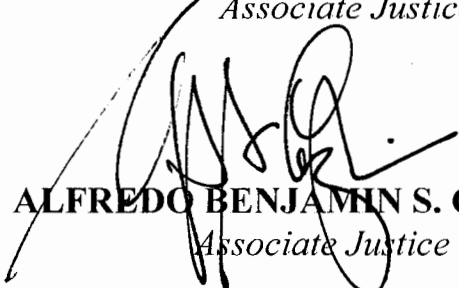

MARIANO C. DEL CASTILLO
Associate Justice

(*On Official Leave*)
JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M. V. F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

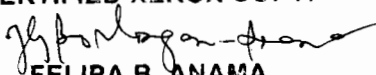
(*On Official Leave*)
SAMUEL R. MARTIRES
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:

FELIPA B. ANAMA
 CLERK OF COURT, EN BANG
 SUPREME COURT