

UNOFFICIAL TRANSLATION



Ninth Constitutional Court of the Lima Superior Court of Justice
City of Lima, June 19, 2024.
Regarding File 06245-2023-93-1801-JR-DC-09

To the Judge of the Ninth Constitutional Court of the Superior Court of Justice of Lima:

We, the undersigned, are honored to share this Amicus Curiae brief with the Ninth Constitutional Court of the Superior Court of Justice of Lima. This brief is submitted on behalf of Frank La Rue, the former U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. It is submitted by the Rule of Law Impact Lab at Stanford Law School to respectfully share the reasons why the disciplinary proceedings and sanctions imposed on Prosecutor Rafael Ernesto Vela Barba through Resolution No. 007-2023-ANC-CP. 007-2023-ANC-CPD dated October 5, 2023, violate Peru's obligations under Articles 8 and 13 of the American Convention on Human Rights and Article 19 of the International Covenant on Civil and Political Rights.

This case raises fundamental questions about freedom of expression and prosecutorial independence in Peru. As set forth in the brief, the disciplinary sanctions imposed on Prosecutor Vela Barba because of his public statements are neither necessary in a democratic society, nor proportionate to a compelling social need. His public statements, issued in furtherance of his duty as a prosecutor, were entitled to heightened protection because they related to a case concerning high-level corruption allegations, a matter of significant public interest. Furthermore, the disciplinary proceedings and sanctions against him constitute harassment aimed at undermining prosecutorial independence. Upholding

UNOFFICIAL TRANSLATION

the sanctions imposed on him in this case would expose other independent justice operators to a “chilling effect” in violation of Peru’s obligations under international law.

The undersigned, as entities committed to the preservation of the Rule of Law, are honored to offer our support and contribution to the commendable work of the Constitutional Court of the Superior Court of Justice of Lima in the present case.

Respectfully,

Frank La Rue
Former U.N. Special Rapporteur
on the Promotion and Protection
of the Right to Freedom of
Opinion and Expression

Amrit Singh
Executive Director, Stanford Law
School Rule of Law Impact Lab

UNOFFICIAL TRANSLATION

Before the
NINTH CONSTITUTIONAL COURT
OF THE SUPERIOR COURT OF JUSTICE OF LIMA

In the

Case 06245-2023-93-1801-JR-DC-09

Rafel Ernesto Vela Barba

Vs.

National Control Authority of the Public Prosecutor's Office

Presents

Amicus Curiae Brief

Presented on behalf of the Frank La Rue, former U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, by the Rule of Law Impact Lab at Stanford Law School

UNOFFICIAL TRANSLATION

I.	DECLARATION OF INTEREST.....	7
II.	FACTS AND PROCEDURAL HISTORY	7
	BACKGROUND	7
	OPERATION LAVA JATO: ODEBRECHT IN PERU	8
	Fuji-cocktails" case.....	9
	IMPACT OF THE COVID-19 PANDEMIC IN PERUVIAN PRISONS	9
	Statements made by Prosecutor Vela Barba	11
	DISCIPLINARY PROCEDURE 134-2020	12
	SUMMARY OF THE CHARGES AGAINST PROSECUTOR VELA BARBA	13
	RESOLUTION 007-2023-ANC-CPD	15
	CHALLENGING THE ADMINISTRATIVE SANCTION.....	15
	RESOLUTION No. 3 AND INJUNCTIVE RELIEF	17
	CONTEXT OF THE ATTACKS ON PROSECUTOR VELA BARBA	20
	PRECAUTIONARY MEASURES OF THE IACHR AND RESPONSE FROM INTERNATIONAL ORGANIZATIONS.....	21
III.	INTERNATIONAL NORMS AND STANDARDS.....	23
	A. BINDING NATURE OF INTERNATIONAL STANDARDS IN PERU.....	23
	B. OBLIGATIONS OF PERU RELATED TO THE GUARANTEE OF FREEDOM OF EXPRESSION.	23
	C. OBLIGATIONS OF PERU RELATED TO THE LIMITATION OF FREEDOM OF EXPRESSION, THROUGH SUBSEQUENT LIABILITIES.	24
	c.1 Limitations on freedom of expression must be established by law (principle of legality).	25
	c.2 Any limitation on freedom of expression requires judicial oversight.....	25
	c.3 Laws, orders and practices on limitations to freedom of expression must be necessary and proportionate.....	25
	D. PERU'S OBLIGATIONS RELATED TO FREEDOM OF EXPRESSION AND POSSIBLE RESTRICTIONS IN THE CASE OF PROSECUTORS.	27
	d.1 Duty to pronounce on matters of public interest.....	28
	d.2 Duty to ensure that its pronouncements do not interfere with the independence and autonomy of judicial authorities.....	28
	d.3 Duty of confidentiality.	29
	d.4 Special duty to reasonably establish the facts on which its rulings are based.....	30
	d.5 Duty to ensure that its pronouncements do not constitute violations of human rights.....	30
	d.6 Duty to ensure that its pronouncements do not constitute an arbitrary interference, directly or indirectly, in the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts.	30
	E. PERU'S OBLIGATIONS RELATED TO THE INDEPENDENCE OF PROSECUTORS DUE TO THE NATURE OF THE FUNCTIONS THEY EXERCISE.	31
IV.	LEGAL ARGUMENTS.....	32
	A. THE CHALLENGED RESOLUTION ESTABLISHES A RESTRICTION TO FREEDOM OF EXPRESSION THAT IS NEITHER NECESSARY IN A DEMOCRATIC SOCIETY NOR	

UNOFFICIAL TRANSLATION

PROPORTIONATE TO A COMPELLING SOCIAL NEED IN VIOLATION OF ARTICLE 13 OF THE ADH CONVENTION AND ARTICLE 19 OF THE ICCPR..... 33

 A.1 Prosecutor Vela Barba’s statements were entitled to heightened protection because they relate to a matter of significant public interest 34

 A.2 Prosecutor Vela Barba had a right to criticize pursuant to his duty to defend his public position as a prosecutor..... 35

 A.3 Prosecutor Vela Barba’s statements did not undermine judicial integrity or violate his duty of confidentiality 35

 B. THE DISCIPLINARY PROCEEDINGS AND SANCTIONS AGAINST PROSECUTOR VELA BARBA CONSTITUTE HARASSMENT THAT VIOLATES THE PROVISIONS OF ARTICLE 8 OF THE ADH CONVENTION..... 36

V. CONCLUSION 37

UNOFFICIAL TRANSLATION

AMICUS CURIAE PRESENTED IN CASE 06245-2023-93-1801-JR-DC-09, which corresponds to the amparo proceeding filed by Mr. Rafael Ernesto Vela Barba against the National Authority of Control of the Public Ministry (hereinafter ANCMP) through which he requests the nullity of Resolution 007-2023-ANC-CPD; nullity of all the proceedings in case 134-2020 and the referral of the case to the National Justice Board.

Honorable Judge of the Ninth Constitutional Court of the Lima Superior Court of Justice

P R E S E N T . -

1. This amicus curiae brief is filed in the amparo proceeding through which Mr. Rafael Ernesto Vela Barba, who held the position of Senior Prosecutor National Coordinator of the Specialized Prosecutor's Offices for Money Laundering Crimes and Senior Prosecutor Coordinator of the Special Prosecutor's Team for the Odebrecht Company and others (hereinafter, Prosecutor Vela Barba), requests the nullity of Resolution 007-2023-ANC-CPD (hereinafter, Resolution No. 007-2023-ANC-CPD) and the disciplinary proceeding in which it was adopted. This specific case involves profoundly relevant issues regarding the role of the Judiciary in safeguarding the fundamental rights to freedom of expression, the independence of justice operators and the preservation of the constitutional order.
2. The main purpose of this memorial is to respectfully share with the Ninth Constitutional Court of the Superior Court of Justice of Lima, the relevant international standards to evaluate the disciplinary proceedings and the sanctions imposed on prosecutor Vela Barba. In this sense, it is argued that such acts contravene international standards that oblige the Peruvian State to guarantee freedom of expression, as well as to ensure a fair, autonomous, independent and impartial administration of justice.
3. In this regard, this memorial states the reasons why Resolution No. 007-2023-ANC-CPD dated October 5, 2023 violates the rights protected by Articles 8 and 13 of the American Convention on Human Rights and Article 19 of the International Covenant on Civil and Political Rights. 007-2023-ANC-CPD dated October 5, 2023 violates the rights protected by Articles 8 and 13 of the American Convention on Human Rights and Article 19 of the International Covenant on Civil and Political Rights. As set forth below, the disciplinary sanctions imposed on Prosecutor Vela Barba are neither necessary in a democratic society, nor proportionate to a compelling social need. His public statements, issued in furtherance of his duty as a prosecutor, were entitled to heightened protection because they related to high-level corruption allegations, a matter of significant public interest. Furthermore, the disciplinary proceedings and sanctions against him constitute harassment aimed at undermining prosecutorial independence. Upholding the sanctions imposed on him in this case would expose

UNOFFICIAL TRANSLATION

other independent justice operators to a “chilling effect” in violation of Peru’s obligations under international law.

I. DECLARATION OF INTEREST

4. Frank La Rue was the U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression for two consecutive three-year periods, from 2008 to 2014. He is an expert on human rights, freedom of expression, access to information, cultural diversity, expression of people and memory.
5. The Rule of Law Impact Lab at Stanford Law School is a non-profit, non-partisan project that aims to study and put law at the service of democracy around the world.¹

II. FACTS AND PROCEDURAL HISTORY

Background

6. Rafael Ernesto Vela Barba is a Peruvian lawyer, academic, public servant and prosecutor known for his relevant role in high-profile investigations related to corruption and money laundering in the country.² Prosecutor Vela Barba has worked on significant cases, including those linked to Operation Lava Jato, in charge of investigating bribery and corruption in several Latin American countries by the Brazilian company Odebrecht,³ national businessmen and politicians. During his career, he has also served as national coordinating prosecutor for the extinction of ownership and anti-corruption criminal judge in the Fujimori Montesinos case.⁴
7. Between 2015 and 2021, prosecutor Vela Barba was appointed as Senior Prosecutor Specializing in Money Laundering and Loss of Ownership Crimes (Lima Headquarters), in the Office of the Second National Senior Prosecutor's Office Specializing in Money Laundering Crimes, as National Coordinator of the Prosecutor's Offices Specializing in Money Laundering Crimes,⁵ reaching his current appointment as Coordinator of the Special Team of Prosecutors Specializing in Money Laundering.⁶

¹ The Rule of Law Impact Lab gratefully acknowledges the contributions of its expert advisor, Adriana García García, as well as Stanford Law School students Frida Ibarra Olguín and Gianmarco Coronado.

² See <https://www.gob.pe/institucion/mpfn/funcionarios/150678-rafael-ernesto-vela-barba>

³ See

https://www.pj.gob.pe/wps/wcm/connect/1259440047cdeb3ab204f61f51d74444/Vela_Barba.pdf?MOD=AJPERES&CACHEID=1259440047cdeb3ab204f61f51d74444

⁴ See <https://www.linkedin.com/in/rafael-vela-barba-59877229/details/experience/>

⁵ Decisions of the Attorney General's Office No. 1036-2015-MP-FN, 1074-2015-MP-FN, 2681-2018-MP-FN, 1947-2019-MP-FN and 834-2021-MP-FN, dated March 26 and 27, 2015, July 23, 2018, July 25, 2019, June 08, 2021, and resolution No. 3270-2023-MP-FN Lima, dated November 24, 2023 respectively.

⁶ Decision No. 3270-2023-MP-FN Lima, dated November 24, 2023.

UNOFFICIAL TRANSLATION

Operation Lava Jato: Odebrecht in Peru

8. Operation Lava Jato has been the most important bribery case in Brazil and Latin America.⁷ This case revealed a massive corruption scheme in which Brazilian construction company Odebrecht delivered hundreds of millions of dollars in bribes to government officials in multiple countries, including Peru. The operation began in 2013 following investigations by the Brazilian justice system into a parallel foreign exchange market in a network of gas stations. The investigation exposed a complex network of money laundering and bribery, where Odebrecht paid bribes in exchange for public works contracts, especially evident in contracts with Petrobras, Brazil's largest state-owned company.⁸
9. In Peru, Operation Lava Jato had profound political repercussions, as it involved high-level government officials, including former Peruvian presidents such as Ollanta Humala, Alejandro Toledo and Pedro Pablo Kuczynski. The involvement of these figures in bribery highlighted the extent of corruption in public-private partnership (PPP) projects and public procurement contracts.⁹
10. Public contracts, often awarded to Odebrecht and other Brazilian companies, were used as vehicles to increase the value of concessions and recognize additional payments in exchange for bribes. In response to the revelation of these acts of corruption, the Peruvian government implemented legal reforms to modify the public procurement framework and the PPP regime in order to mitigate and prevent corruption. Peru also adopted other changes to the way in which money laundering and corruption are investigated and strengthened the capacities of the Public Prosecutor's Office for this purpose.¹⁰ For these reasons, in December 2016, the Special Prosecutors Team was created,¹¹ to exclusively hear investigations linked to crimes of corruption of officials and related crimes related to Operation Lava Jato and Odebrecht.¹²
11. As anticipated, the relevance of the Lava Jato case in the Peruvian political landscape was monumental. In this complex context, prosecutor Rafael Vela Barba played a crucial role as coordinator of the Lava Jato task force in Peru. He has been

⁷ David Rockefeller Center for Latin American Studies at Harvard (2020). The Criminalization of Corruption in Latin America: Causes and Consequences of Lava Jato. Retrieved from <https://drclas.harvard.edu/event/lava-jato-effects-public-opinion-brazil-and-peru>

⁸ David Rockefeller Center for Latin American Studies at Harvard (2020). The Criminalization of Corruption in Latin America: Causes and Consequences of Lava Jato. Retrieved from <https://drclas.harvard.edu/event/lava-jato-effects-public-opinion-brazil-and-peru>

⁹ NYU Journal of Legislation and Public Policy (n. d.). Operation Car Wash and its impact in Peru. Retrieved from <https://nyujlpp.org/quorum/operation-car-wash-and-its-impact-in-peru/>

¹⁰ NACLA, Odebrecht tsunami, corruption and state capture: <https://nacla.org/news/2019/06/25/el-tsunami-odebrecht-la-corrupción-y-la-captura-del-estado>

¹¹ By resolution of the Attorney General's Office No. 5050-2016-MP-FN.

¹² Resolution No. 1375-2019-MP-FN Lima, dated June 19, 2019, First, Second and Third paragraph.

UNOFFICIAL TRANSLATION

instrumental in advancing the investigations, facilitating judicial cooperation with Brazil and ensuring that the testimonies of Odebrecht executives are properly integrated into the judicial proceedings against prominent political figures.¹³ Prosecutor Vela Barba has faced significant challenges during his tenure as head of the special prosecutor's office for the Lava Jato case. Despite various obstacles, Prosecutor Vela Barba and his team have managed to maintain the momentum of the Lava Jato case.¹⁴

Fuji-cocktails" case

12. In connection with Operation Lava Jato and based on the new legal framework on money laundering and anti-corruption, under the coordination of prosecutor Vela Barba, the case popularly known as "Fuji-cocktails" was investigated. This matter refers to the investigation on the financing of the electoral campaign of the political party called Fuerza Popular, led by Keiko Fujimori during the 2016 elections. The Lava Jato Special Team headed by Vela Barba based the theory of the case on the realization of money laundering acts through social events or cocktail parties by Fuerza Popular.¹⁵ According to the investigations, the social events were used to cover up the true source of the funds received, for which Fuerza Popular was only able to identify 30% of the attendees to the cocktail parties.¹⁶

13. As a result of the investigations in the "Fuji-cocktails" case, on January 28, 2020, Judge Víctor Zúñiga Urday declared that the request for pre-trial detention requested by prosecutor Pérez Gómez, who is part of the Lava Jato Special Team, for the alleged crime of money laundering, was well founded and ordered 15 months of pre-trial detention against the leader of Fuerza Popular (Popular Force), Keiko Fujimori.¹⁷

Impact of the COVID-19 pandemic in Peruvian prisons

14. The COVID-19 pandemic exacerbated the already precarious and overcrowded conditions in Peruvian prisons. Extreme overcrowding and lack of hygiene allowed the virus to spread rapidly and resulted in a high number of infections and deaths

¹³ Institute of Democracy and Human Rights of the Pontifical Catholic University of Peru (IDEHPUCP). (2022). Suspensive points in the Odebrecht case. Retrieved from <https://idehpucp.pucp.edu.pe/revista-memoria/reportaje/puntos-suspenivos-en-el-caso-odebrecht/>

¹⁴ Idem.

¹⁵ La República (2018). Prosecutor's Office: Fuerza Popular's Fuji-cocktails were for money laundering. Retrieved from <https://larepublica.pe/politica/1368156-fiscalia-fuji-cocteles-fuerza-popular-lavar-dinero>

¹⁶ La República (2018). Prosecutor's Office: Fuerza Popular's Fuji-cocktails were for money laundering. Retrieved from <https://larepublica.pe/politica/1368156-fiscalia-fuji-cocteles-fuerza-popular-lavar-dinero>

¹⁷ The Law. (2020). New court constituted to resolve Keiko Fujimori's appeal. Retrieved from <https://laley.pe/2020/03/04/constituyen-nuevo-tribunal-para-resolver-apelacion-de-keiko-fujimori/>

UNOFFICIAL TRANSLATION

among inmates.¹⁸ Prison authorities implemented a series of measures such as the early release of vulnerable people to mitigate the impact. However, the situation in many prisons remained critical, with constant riots and tensions due to the restrictions imposed to contain the virus.¹⁹

15. In fact, the IACHR expressed its concern by mentioning that "[...] the State's prisons lack adequate medical treatment to treat the virus, equipment to prevent its transmission, and tests to diagnose it. [Considering the level of overcrowding that prevails in Peruvian prisons -reported by prison authorities to the national press at 142%- the State must immediately adopt measures to reduce the prison population. In this regard, the IACHR and its Rapporteurs on Peru and on the Protection of Persons Deprived of Liberty and on Preventing and Combating Torture, welcome the first actions implemented (sic.) by the Peruvian authorities in this context, such as: i) Legislative Decree No. 1459 of April 14, 2020, which was enacted by the Peruvian government. 1459 of April 14, 2020, aimed at the automatic conversion of persons convicted for omission of family assistance, and ii) Supreme Decree No 004-2020-JUS of April 22 on common and humanitarian pardons, and commutations of sentence."²⁰
16. Based on the above, Keiko Fujimori, who at the time was in pretrial detention, warned of the high risk of COVID-19 infection among the inmates and requested the modification of the precautionary measure against her.²¹ Fujimori argued that the prison conditions increased her vulnerability to the virus and requested the change of the preventive detention measure, alleging the lack of protocols to deal with the crisis and exposure to the virus.²²
17. On May 1, 2020, the preventive measure of preventive detention was revoked by the judges Sonia Bienvenida Torre Muñoz, Rómulo Carcausto Calla and Edgar Medina Salas, provisional members of the Second Criminal Chamber of Appeals.²³ This

¹⁸ One of the problems complicating the prison system is high overcrowding (2020). IDEHPUCP. Retrieved from <https://idehpucp.pucp.edu.pe/boletin-eventos/amigos-con-derechos-episodio-02-uno-de-los-problemas-que-complican-el-sistema-carcelario-es-el-elevado-hacinamiento-21831/>

¹⁹ Goicochea Elías, J. J., Piñarreta Moreno, L., Omani Flores, A., & Valdivia Fajardo, F. (2020). Penalties in pandemic time: a different way to survive the coronavirus. *Lumen*, 16(1), 55-72. Retrieved from <https://revistas.unife.edu.pe/index.php/lumen/article/view/2285/2515>

²⁰ Inter-American Commission on Human Rights (2020). IACHR condemns acts of violence in Peruvian prisons [Press release]. Retrieved from <https://www.oas.org/es/cidh/prensa/comunicados/2020/107.asp>

²¹ Keiko Fujimori asks to be released from prison for fear of contracting COVID-19 (2020). DW. Retrieved from <https://www.dw.com/es/keiko-fujimori-pide-salir-de-prisi%C3%B3n-por-temor-a-contraer-covid-19/a-53176536>

²² Keiko Fujimori: INPE reports on the conditions of her prison situation (2020). *El Comercio*. Retrieved from <https://elcomercio.pe/politica/justicia/keiko-fujimori-el-inpe-informa-sobre-las-condiciones-de-su-situacion-carcelaria-jose-domingo-perez-inpe-noticia/>

²³ LP Right (2020). Keiko Fujimori: Judges to decide appeal. Retrieved from <https://lpderecho.pe/keiko-fujimori-jueces-decidiran-apelacion/>

UNOFFICIAL TRANSLATION

decision, adopted in second instance by the Judiciary, was after a judicial hearing in which the Special Lava Jato Team of the Prosecutor's Office²⁴ was not present despite a request to reschedule the hearing. Prosecutor Vela Barba had requested this rescheduling until the lifting of the mandatory social isolation (quarantine) during the pandemic.²⁵

18. None of the proceedings in this case have been reserved or considered confidential by the Judiciary. On the contrary, the Peruvian Judiciary has publicly broadcast all hearings related to this case. There have been live broadcasts of the Public Prosecutor's Indictment Hearing in the trial against Keiko Fujimori²⁶, request for pre-trial detention against Keiko Fujimori²⁷, revocation of Keiko Fujimori's appearance with restrictions to pre-trial detention,²⁸ and appeal by the Public Prosecutor in Keiko Fujimori's trial²⁹ among others.

Statements made by Prosecutor Vela Barba

19. After the revocation of Keiko Fujimori's pre-trial detention, Public Prosecutor Vela Barba made a series of statements to the media regarding the actions of the judges assigned to the Second Criminal Chamber of Appeals.³⁰ The most relevant statements are transcribed below:³¹

- a. On May 1, 2020, prosecutor Vela Barba went on the news agency ATV and stated: "The members of the High Court had incurred in an atypical procedure [...] the result was decided before any hearing. [For Mrs. Fujimori it was a

²⁴ Juris.pe. For these statements the prosecutor Rafael Vela Barba was suspended for 8 months. Retrieved from: <https://juris.pe/blog/declaraciones-fiscal-rafael-vela-barba-suspendido-ocho-meses-cargo/>

²⁵ Prosecutor Vela Barba had requested the postponement of the hearing given the isolation measures of the pandemic: "We reiterate our request to postpone the convening of the hearing of the remand appeal until the lifting of the mandatory social isolation (quarantine), since if this does not occur, this Superior Prosecutor's Office in the scope of its autonomy and prosecutorial independence, will not attend the hearing convened, for the reasons set out in this letter, and our non-attendance in this regard should be considered justified", <https://rpp.pe/politica/judiciales/coronavirus-en-peru-covid-19-keiko-fujimori-rafael-vela-pide-postergar-audiencia-de-apelacion-de-keiko-fujimori-hasta-que-termine-la-cuarentena-odebrecht-lava-jato-fiscalia-noticia-1260447>.

²⁶ Judicial Branch of Peru's Facebook page: <https://www.facebook.com/justiciatv/videos/-envivo-audiencia-de-control-de-acusación-fiscal-en-el-proceso-contr-keiko-fuji/1481970558976566/>

²⁷ Judicial Branch of Peru's Facebook page: https://www.facebook.com/watch/live/?ref=watch_permalink&v=132660544483641

²⁸ Judicial Branch of Peru's Facebook page: https://www.facebook.com/watch/live/?ref=watch_permalink&v=180149194062000

²⁹ Judicial Branch of Peru's Facebook page: https://www.facebook.com/watch/live/?ref=watch_permalink&v=382187184239774

³⁰ Jurispe. (n. d.). Declaraciones del fiscal Rafael Vela Barba suspendido ocho meses del cargo (Statements by prosecutor Rafael Vela Barba suspended for eight months). Retrieved from <https://juris.pe/blog/declaraciones-fiscal-rafael-vela-barba-suspendido-ocho-meses-cargo/>

³¹ Idem.

UNOFFICIAL TRANSLATION

privileged treatment, otherwise we would not have the possibility of filing an exceptional cassation because it is precisely a matter of new rules that have been created based on the Fujimori case. For us, it is a privileged and differentiated treatment, with the request for postponement that was not heeded and then the hearing, which was simply carried out in the absence of the Public Prosecutor's Office. This gives us the perception that this whole process has in reality been a process on which the decision to free Mrs. Fujimori was already based".³²

- b. On May 3, 2020, before the newspaper "La República", the Public Prosecutor mentioned that "[the decision to cancel Fujimori's pre-trial detention] had already been made before the hearing.
- c. Similarly, in a broadcast of the program "Diálogo Abierto" (Open Dialogue), prosecutor Vela Barba stated that: "We interpret that this resolution has been biased because it has rejected the request for the hearing to be held at a different time, so this makes us think that this was already resolved before the hearing. We were asking for this hearing to be held after the lifting of the social isolation, which was scheduled for May 6, and we were asking for a postponement in order to be able to support the position of the superior prosecutor's office".
- d. Finally, during an interview with RPP, Public Prosecutor Vela Barba declared that the judges in charge of the Fujimori case had: "[...] created a new jurisprudence, never before had it been interpreted in the way that the judges, Dr. Torre and Dr. Carcausto, have interpreted the way they have granted the appeal.

Disciplinary Procedure 134-2020

20. As a result of statements in the media by prosecutor Vela Barba, in May 2020, Superior Judge Sonia Bienvenida Torre Muñoz filed a disciplinary complaint against Vela Barba alleging alleged "functional misconduct."³³ On May 21, 2020, the Qualifications Commission of the former Supreme Prosecutor's Office of Internal

³² Prosecutor Vela Barba had requested the postponement of the hearing given the isolation measures of the pandemic: "We reiterate our request to postpone the convening of the hearing of the remand appeal until the lifting of the mandatory social isolation (quarantine), since if this does not occur, this Superior Prosecutor's Office in the scope of its autonomy and prosecutorial independence, will not attend the hearing convened, for the reasons set out in this letter, and our non-attendance in this regard must be considered justified", <https://rpp.pe/politica/judiciales/coronavirus-en-peru-covid-19-keiko-fujimori-rafael-vela-pide-postergar-audiencia-de-apelacion-de-keiko-fujimori-hasta-que-termine-la-cuarentena-odebrecht-lava-jato-fiscalia-noticia-1260447>.

³³ Resolution No. 007-2023-ANC-CPD Lima, dated October 5, 2023, paragraph 1.1.

UNOFFICIAL TRANSLATION

Control referred Judge Torre Muñoz's complaint to the Preliminary Investigation Commission on Disciplinary Proceedings for substantiation.

21. On December 7, 2020, a preliminary investigation was initiated directed to prosecutor Rafael Ernesto Vela Barba. The purpose of said investigation was to clarify the facts and determine whether there was merit to proceed with the disciplinary actions requested.³⁴ Subsequently, on December 14, 2021, the Preliminary Investigation Commission on Disciplinary Proceedings issued report No. 122-2021-MP-FN-FSCI-CIPPD in which it considered "there was no merit to open disciplinary proceedings against attorney Rafael Ernesto Vela Barba [...]."³⁵ Said agency referred the case for further proceedings and investigation of the facts to the Disciplinary Procedures Commission.
22. Finally, on June 22, 2023, the Disciplinary Procedures Commission formally initiated disciplinary proceeding 134-2020 against prosecutor Vela Barba, derived from the public statements related to the "Fuji-cocktails" case.³⁶

Summary of the charges against Prosecutor Vela Barba

23. According to the charges in disciplinary proceeding 134-2020, prosecutor Vela Barba allegedly violated several norms contained in Law No. 30483, Law of the Prosecutorial Career. According to the records, these infractions are related to actions and statements that allegedly compromise the integrity and impartiality required in the exercise of his functions.³⁷
24. Among the accusations, it is worth mentioning the alleged violation of numeral 13 of Article 47 of Law No. 30483, Law of the Prosecutorial Career, which states as a fault "Incurring in an act or omission that, without being a crime, seriously compromises the duties of the position", in relation to numeral 4) of Article 33 of the same law which establishes as a duty "To respect and comply with the regulations and directives and other provisions issued by their superiors, provided that they are of a general nature" and in relation to Article 4 of the Code of Ethics of the Public Prosecutor's Office, which states "It is the duty of prosecutors to preserve and improve the prestige of the institution, in order to strengthen public confidence and the consolidation of the Public Prosecutor's Office as an autonomous constitutional agency of the State." This accusation is based on statements made by prosecutor Vela Barba in an interview for ATV media, where he questioned the impartiality of

³⁴ Resolution No. 007-2023-ANC-CPD Lima, dated October 5, 2023, paragraph 1.2.

³⁵ Retrieved from: <https://img.lpderecho.pe/wp-content/uploads/2023/10/Resolucion-007-2023-ANC-CPD-LPDerecho.pdf>

³⁶ Resolution No. 007-2023-ANC-CPD Lima, dated October 5, 2023, paragraph 1.6.

³⁷ Resolution No. 007-2023-ANC-CPD Lima, dated October 5, 2023, paragraph 2.1.

UNOFFICIAL TRANSLATION

the judicial process by stating that "[t]he members of the Superior Collegiate had incurred in an atypical proceeding... the result was decided before any hearing."³⁸

25. Likewise, he is alleged to have violated numeral 6 of Article 47° of Law No. 30483, which prohibits "Interfering in the exercise of functions of other State bodies, their agents or representatives or allowing the interference of any body, institution or person that attempts against the prosecutorial body or the prosecutorial function" in relation to Article 4 of the Code of Ethics of the Public Ministry, which states: "It is the duty of prosecutors to preserve and improve the prestige of the institution, in order to strengthen public confidence and the consolidation of the Public Ministry as an autonomous constitutional body of the State". This infraction is supported by comments that allegedly insinuate a possible undue influence on the public perception of judicial independence, as allegedly evidenced in another interview given to Diario La República, where the prosecutor expressed that "[the judges] have created a new jurisprudence, never before had it been interpreted in the way the judges have done."³⁹
26. Finally, it was considered that prosecutor Vela Barba incurred in the infraction of numeral 19 of Article 46 of Law No. 30483, Law of the Prosecutorial Career, which penalizes "Commenting through any means of communication on procedural or substantive aspects of an ongoing investigation or proceeding", in relation to numeral 12 of Article 33 of the same law which establishes as a duty "To keep due reserve of those cases, which by their nature or by virtue of laws or regulations, so require" in relation to numeral 1 of Article 324 of the Code of Criminal Procedure which states: "The investigation is of a reserved nature. Only the parties may be informed of its contents directly or through their attorneys duly accredited in the case file. At any time they may obtain a simple copy of the proceedings" and related to the Code of Ethics of the Public Prosecutor's Office which states as a principle: "Truthfulness: We must act with precision and accuracy, according to the surrounding reality (...). Truthfulness involves accuracy, objectivity and impartiality (...). Prudence: We must conduct ourselves fairly, adequately and with caution (...). Prudence advises us to proceed with balance and moderation, with equanimity and moderation in our actions and opinions, always seeking the sanity of the just mean (...)". This is allegedly reflected in his comments on specific cases, as reported in the same interview to La República, highlighting phrases such as "[t]he decision to release her was already made before the hearing" and "[t]he release of Keiko Fujimori was sought at all costs and in the shortest possible time."⁴⁰ According to the ministerial authority, the statements allegedly imply the disclosure of information that is confidential.

³⁸ Resolution No. 007-2023-ANC-CPD Lima, dated October 5, 2023, paragraph 2.2.

³⁹ Resolution No. 007-2023-ANC-CPD Lima, dated October 5, 2023, paragraph 2.4.

⁴⁰ Resolution No. 007-2023-ANC-CPD Lima, dated October 5, 2023, paragraph 2.3.

UNOFFICIAL TRANSLATION

Resolution 007-2023-ANC-CPD

27. On October 5, 2023, the National Control Authority (ANC) of the Public Prosecutor's Office -the institution that assumed the functions of the former Supreme Prosecutor's Office of Internal Control- issued Resolution 007-2023-ANC-CPD in which it determined the alleged disciplinary responsibility of prosecutor Vela Barba and applied the sanction of suspension from the exercise of his functions for a period of eight months and fifteen days. For clarity, the following is a summary of the arguments used by the ANC when issuing such resolution.
28. First, the ANC considered that prosecutor Vela Barba allegedly violated numeral 13 of Article 47 of Law No. 30483 by allegedly seriously compromising the duties of his office through comments that questioned the impartiality of the judicial process. This fault was allegedly observed in Vela Barba's criticism of the way in which a judicial proceeding was handled, insinuating that the outcome was pre-decided, which was perceived as an attack to the integrity of the process and of his colleagues.⁴¹
29. Secondly, the ANC considered that prosecutor Vela Barba had failed to comply with the regulation requiring him not to interfere with the functions of other State organs, established in numeral 6 of the same article. By allegedly having made public statements suggesting a new jurisprudential interpretation by the judges, prosecutor Vela Barba would have implied a possible undue influence on the public perception of judicial independence.⁴²
30. Finally, the NCA considered that prosecutor Vela Barba would have violated numeral 19 of Article 46 of Law No. 30483, which prohibits commenting on procedural or substantive aspects of an ongoing investigation or proceeding. The ANC considered that the prosecutor disclosed details of an ongoing process, which could have affected its integrity, by commenting on specific judicial decisions and the defense strategy before and after the completion of the relevant judicial proceedings.⁴³

Challenging the administrative sanction

31. At the administrative level, on October 13, 2023, Prosecutor Vela Barba filed an appeal against Resolution 007-2023-ANC-CPD.⁴⁴
32. Likewise, at the judicial level, on October 23, 2023, prosecutor Vela Barba filed a writ of amparo, requesting the nullity of the aforementioned resolution, arguing the

⁴¹ Resolution No. 007-2023-ANC-CPD Lima, dated October 5, 2023, page 5 and page 6.

⁴² Resolution No. 007-2023-ANC-CPD Lima, dated October 5, 2023, page 6.

⁴³ Resolution No. 007-2023-ANC-CPD Lima, dated October 5, 2023, page 8.

⁴⁴ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 2.

UNOFFICIAL TRANSLATION

violation of his constitutional guarantees.⁴⁵ The following day, on October 24, 2023, prosecutor Vela Barba requested a precautionary measure before the ninth Constitutional Court of the Superior Court of Justice of Lima, requesting that the judge provisionally suspend the execution of the disciplinary sanction imposed, while the amparo lawsuit is being decided.⁴⁶

33. It should be noted that on November 9, 2023, as will be discussed further below, the Inter-American Commission on Human Rights (IACHR) through Resolution 64/2023⁴⁷ granted precautionary measures in favor of prosecutor Vela Barba (extending the precautionary measures granted to prosecutor Pérez Gómez), as a result of the prolonged situation of harassment, harassment, hate campaigns and stigmatization that put his integrity and that of his family in grave danger. The facts referred by the applicants for precautionary measures also include the disciplinary proceedings before the ANCMP.
34. Regarding the administrative procedure, on November 24, 2023, Resolution 602-2023-ANC-MP/C3 was issued, confirming Resolution 007-2023-ANC-CPD, by which the appeal filed by the prosecutor Vela Barba was declared unfounded.⁴⁸
35. On December 19 and 20, 2023, the investigative portal Epicentro.TV⁴⁹ and the investigative portal Elbuho.pe⁵⁰ reported that the suspension of prosecutor Vela Barba, according to the declarations of detainee Jaime Villanueva⁵¹, former advisor of the then National Prosecutor Patricia Benavides, would have been the result of negotiations to favor certain persons investigated by the prosecutor groups coordinated by prosecutor Vela Barba. These negotiations would have taken place between the then National Prosecutor Patricia Benavides, the Chief of the ANCMP Juan Antonio Fernandez and lawyers related to the prosecutorial investigations.

⁴⁵ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 3.

⁴⁶ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 3.

⁴⁷ Inter-American Commission on Human Rights (2023). Resolution can be viewed at: https://www.oas.org/es/cidh/decisiones/MC/2023/Res_64-23_MC_576-21_PE_ES.PDF

⁴⁸ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 3.

⁴⁹ Epicentro.TV (2023). Patricia Benavides case: the role of Garrido Lecca and José Luis Hauyón. Retrieved from: <https://epicentro.tv/caso-patricia-benavides-el-rol-de-garrido-lecca-y-de-jose-luis-hauyon/> from: <https://elbuho.pe/2023/12/rafael-vela-fue-destituido-por-no-anular-expediente-contrapristas-involucrados-en-caso-odebrecht/>

⁵⁰ Elbuho.pe (2023). Rafael Vela was dismissed for not annulling files against apristas involved in the Odebrecht case. Retrieved from: <https://elbuho.pe/2023/12/rafael-vela-fue-destituido-por-no-anular-expediente-contrapristas-involucrados-en-caso-odebrecht/>

⁵¹ Gestión.pe (2023) Jaime Villanueva Barreto, former advisor to the Attorney General of the Nation, is arrested. Retrieved from: <https://gestion.pe/peru/politica/detienen-a-jaime-villanueva-barreto-exasesor-de-la-fiscal-de-la-nacion-patricia-benavides-caso-vaikiria-v-defensoria-del-pueblo-noticia/>

UNOFFICIAL TRANSLATION

These allegations are currently being investigated by the prosecutor's office and by the National Justice Board⁵².

36. Finally, on January 31, 2024, the 9th Constitutional Court issued Resolution 01 in which it declared that there was no need to issue a ruling on the precautionary claim,⁵³ given that the same court had declared that it did not have jurisdiction to hear the substantive claims set forth in the amparo lawsuit. Dissatisfied with Resolution 01, on February 1, 2024 the prosecutor Vela Barba filed an appeal,⁵⁴ which was sent to the First Constitutional Chamber of the Superior Court of Justice of Lima for its decision.

Resolution No. 3 and Injunctive Relief

37. On March 7, 2024, the First Constitutional Chamber of the Superior Court of Justice of Lima issued Resolution No. 3 in which it determined to revoke the denial of precautionary measures and provisionally reinstate prosecutor Vela Barba in his position. Specifically, the Chamber resolved: "1. REVOKING Resolution No. 01 dated January 31, 2024, pages 468 to 469, which formally resolves to declare that there is no need to issue a ruling on the requested precautionary measure, but that materially it constitutes a declaration of inadmissibility due to material incompetence. 2. REFORMING the appealed resolution WE DECLARE the requested precautionary measure FUNDED and consequently ORDER TO PROVISIONALLY SUSPEND the effects of Resolutions 007-2023-ANC-CPD dated October 05, 2023 and 602-2023-ANCMPC/C3 dated November 24, 2023 issued by the National Authority of Control of the Public Prosecutor's Office until the final resolution of the case, PROVISIONALLY REPEALING things to the state immediately prior to the one in which the alleged constitutional violations described above were committed in application of the restitutive effect of the amparo. 3. Consequently, PROVISIONALLY REINSTATE the plaintiff in the position he would have held prior to the imposition of the disciplinary measure of suspension, that is, that of Senior Prosecutor Coordinator of the Special Team for Money Laundering and Asset Forfeiture Crimes and any other power or position he held at that time. [...]"⁵⁵

⁵² Infobae.com (2023) JNJ conducts inquiries against the head of the ANC for alleged coordination with Patricia Benavides to suspend Rafael Vela. Retrieved from: <https://www.infobae.com/peru/2023/12/19/junta-nacional-de-justicia-realiza-indagaciones-contral-el-jefe-de-la-anc-por-presunta-coordinacion-con-patricia-benavides-para-suspender-a-rafael-vela/>

⁵³ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 3.

⁵⁴ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 3.

⁵⁵ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, pages 20-21.

UNOFFICIAL TRANSLATION

38. In line with the above, the Constitutional Chamber's analysis made a distinction between the rights of public and private officials, arguing that the former are subject to a higher level of scrutiny and criticism due to their role in matters of public interest. Specifically, the Chamber recognized the relevance of the position held by prosecutor Vela Barba, since "... (the removal from his position) affects the normal development of his functions as Coordinator of the Special Team on Money Laundering and Loss of Ownership Crimes, a task of special transcendence due to the important cases under his knowledge that are of public interest and that should be developed without further delays".⁵⁶ This distinction is relevant because prosecutor Vela Barba publicly criticized the decisions of a judicial body in a matter of maximum public interest: the "Fuji-cocktails" case.
39. The constitutional judges also recognized that prosecutor Vela Barba's criticisms fall within the exercise of protected freedom of expression, especially when they are aimed at evaluating the public function. The resolution emphasized that, being officials who influence the public sphere, they must accept criticism and discussion of their performance more broadly than private citizens. Specifically: "In the specific case of judges, criticism of their performance is supported by the right to criticize judicial decisions that every citizen has under Article 139, paragraph 20 of the Constitution and that, in terms of the Constitutional Court, implies the right of every person to publicly examine and make judgments regarding the decisions adopted by judges in all specialties and instances, as stated in the judgment in Case No. 00512-2013-PHC/TC."⁵⁷
40. On the other hand, the Constitutional Chamber conducted a detailed review of the applicable principles of procedural and constitutional law, particularly with regard to precautionary measures in amparo proceedings and the principle of procedural elasticity in constitutional proceedings. In its decision, the Chamber weighed the requirements of the appearance of good faith, danger in the delay, and the adequacy of the precautionary measure and determined that the appeal of prosecutor Vela Barba satisfied the procedural requirements necessary to grant the precautionary measure and reinstate him (provisionally) in his position as prosecutor.
41. Likewise, the Chamber discussed how the suspension affects the right to work of prosecutor Vela Barba, the right to an adequate defense and due process. Specifically: "In this regard, this instance considers that, having accredited the verisimilitude of the right, not to accede now to the constitutional precautionary protection would also violate his right to work and consequently his right to remuneration, since he does not receive it and will not receive it for the entire period

⁵⁶ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 19.

⁵⁷ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 18.

UNOFFICIAL TRANSLATION

of the suspension. Any delay in resolving the plaintiff's legal situation would affect his subsistence and that of his dependent family members, also undermining his right to health because from this labor relationship with the State would derive benefits such as access to insurance for medical benefits, which would lead to an inevitable irreparability of the damage caused to him, inasmuch as the suspension imposed is currently being served, approaching half of it, so that if the claim were eventually upheld, the sentence would not be more effective given the prior compliance with the sanction, so that we consider that the requirement of *periculum in mora* is accredited."⁵⁸

42. The Chamber also stressed the need for effective judicial protection to prevent irreparable harm and emphasized that administrative procedures and sanctions should not unjustifiably hinder or restrict the rights of individuals, especially when rights of constitutional relevance are at stake. After evaluating the grounds of the appeal and the rights at stake, the First Constitutional Chamber decided to revoke the initial resolution and grant the requested precautionary measure to prosecutor Vela Barba. Said decision was aimed at the provisional reinstatement of the plaintiff in his functions and the suspension of the previous disciplinary resolutions of the NCA until the case is finally resolved.
43. Likewise, when resolving the appeal on the precautionary measure, one of the judges of the First Constitutional Chamber, Judge Tapia Gonzáles, issued a singular vote in which he agreed to declare the precautionary measure founded on additional grounds based mainly on the test of proportionality, as established by the Peruvian Constitutional Court in uniform jurisprudence. This test comprises three sub-principles: suitability, necessity and weighting or proportionality in the strict sense, applied to determine whether the restriction of a fundamental right is reasonable.⁵⁹
44. In the specific case, the sanction imposed on the plaintiff, a Senior Prosecutor, for his statements against members of a judicial collegiate with criminal jurisdiction, a sanction that sought to ensure prudent conduct in the exercise of his functions, is questioned. The Magistrate argues that this sanction, being such an intervening and compulsive means, is not suitable for the supposedly legitimate purpose of promoting prudent behavior, since prudence does not imply annihilating the constitutional right to criticize judicial decisions.⁶⁰
45. In addition, he stressed that if the prosecutor's counterparts such as Keiko Fujimori freely exercise their right to express themselves in the media about criminal trials

⁵⁸ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 19.

⁵⁹ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 22.

⁶⁰ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 23.

UNOFFICIAL TRANSLATION

that concern them, prosecutors should enjoy a similar right to express themselves, especially when they are not subject to the obligation of impartiality as a judge would be, since they are a party to the trial.⁶¹

46. The Magistrate also referred to comparative jurisprudence, such as the New York Times v. Sullivan case of the Supreme Court of the United States, which establishes that public officials have a lesser scope of protection of their reputation compared to citizens who do not hold public office. This is because officials are expected to tolerate criticism, even harsh criticism, as part of proper democratic coexistence. In addition, it cited Bridges v. California, which holds that harm to an official's reputation does not justify suppressing speech.⁶² The singular vote concluded that the sanction of suspension lacks reasonableness and there are reasons why it should be provisionally deprived of its effects, reinstating the plaintiff in his position in the Public Prosecutor's Office until a final decision on the merits is issued.⁶³

47. On March 26, 2024, the National Prosecutor's Office reinstated prosecutor Vela Barba in his positions after a period of suspension and legal disputes, through Resolution No. 825-2024-MP-FN.⁶⁴ The National Prosecutor's Office decided to reinstate him in his position in the Office of the Second Superior National Prosecutor's Office Specialized in Money Laundering Crimes and as National Coordinator of the Prosecutor's Offices Specialized in Money Laundering Crimes and of the Special Prosecutor's Team. This decision came after the execution of a resolution of the First Constitutional Chamber of the Superior Court of Justice of Lima mentioned above. As of the date of filing of this memorial, this is the existing factual situation.

Context of the attacks on prosecutor Vela Barba

48. On various occasions and media, the legal representation of prosecutor Vela Barba before the Inter-American Commission on Human Rights, has exposed that, since August 2018, prosecutor Vela Barba has played crucial roles in the investigation of high-profile corruption cases, particularly related to the construction company Odebrecht, which has brought him acts of harassment and threats.⁶⁵ The representation detailed that prosecutor Vela Barba and his family have been subject

⁶¹ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 23 and 24.

⁶² Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 24.

⁶³ Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, pages 19, 20 and 21.

⁶⁴ Available online: <https://busquedas.elperuano.pe/dispositivo/NL/2274143-1>

⁶⁵ Inter-American Commission on Human Rights, Resolution 64/2023, Precautionary Measures No. 576-21. José Domingo Pérez and his next of kin with respect to Peru, dated November 8, 2023 (Follow-up and Expansion), paragraph 1 and paragraphs 41-52.

UNOFFICIAL TRANSLATION

to harassment since 2018, with incidents including stalking and acts of intimidation, especially after significant prosecution actions against political figures such as Keiko Fujimori. It is further noted that prosecutor Vela Barba has faced an escalation of harassment and defamation, especially by a civilian group called "La Resistencia" (The Resistance).⁶⁶

49. In the year 2023, the risk events for prosecutor Vela Barba and his family intensified. The representation mentions specific incidents where both the prosecutor and his family have been verbally attacked and assaulted in public places, indicating a growing campaign of disinformation and discrediting. In response to these events, prosecutor Vela Barba requested, unsuccessfully, reinforced police protection, which was denied under the argument of lack of objective evidence of the threat.⁶⁷
50. The representation also pointed out the professional challenges faced by prosecutor Vela Barba, including disciplinary investigations initiated for comments in the media, which are considered attempts to curtail his freedom of expression and self-protection against attacks.⁶⁸
51. Finally, the representation of prosecutor Vela Barba related that, in September 2023, prosecutor Vela Barba and his wife were physically assaulted by individuals in an incident in a commercial establishment. The security situation of the prosecutor worsened when, on October 6, 2023, the National Authority of Control of the Public Prosecutor's Office decided to suspend him from his position for 8 months and 15 days, resulting in the withdrawal of the police protection he had. This suspension, in the opinion of the representation, seems to be another strategy to intimidate the work of prosecutor Vela Barba, coinciding with key moments of important procedural moments related to the "Fuji-cocktails" case.⁶⁹

Precautionary Measures of the IACHR and Response from International Organizations

52. On June 23, 2021, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures, through Resolution No. 55/2021, in favor of another

⁶⁶ Inter-American Commission on Human Rights, Resolution 64/2023, Precautionary Measures No. 576-21. José Domingo Pérez and his next of kin with respect to Peru, dated November 8, 2023 (Follow-up and Expansion), paragraph 45.

⁶⁷ Inter-American Commission on Human Rights, Resolution 64/2023, Precautionary Measures No. 576-21. José Domingo Pérez and his next of kin with respect to Peru, dated November 8, 2023 (Follow-up and Expansion), paragraph 49.

⁶⁸ Inter-American Commission on Human Rights, Resolution 64/2023, Precautionary Measures No. 576-21. José Domingo Pérez and his next of kin with respect to Peru, dated November 8, 2023 (Follow-up and Expansion), paragraph 46.

⁶⁹ Inter-American Commission on Human Rights, Resolution 64/2023, Precautionary Measures No. 576-21, José Domingo Pérez and his next of kin regarding Peru, dated November 8, 2023 (Follow-up and Expansion), para. 52. José Domingo Pérez and his next of kin with respect to Peru, dated November 8, 2023 (Follow-up and Expansion), paragraph 52.

UNOFFICIAL TRANSLATION

Peruvian prosecutor, José Domingo Pérez Gómez and his family. Subsequently, on November 8, 2023, the IACHR granted and extended precautionary measures through Resolution No. 576-21.⁷⁰ In said resolution, the IACHR decided to extend the precautionary measures to include prosecutor Vela Barba and his family, thus recognizing the risk extended to other members of the prosecutorial team due to their association with highly sensitive investigations. The measures were granted with the objective of protecting their rights to life and personal integrity from threats and harassment arising from their work. The main precautionary measures granted by the IACHR are summarized below:

- a. The IACHR requested Peru to adopt all necessary measures to protect the life and personal integrity of the beneficiaries and their families. This included the reinstatement of security and personal protection services, which is expected to deter threats and physical attacks against them.
- b. The State was required to ensure that prosecutors could continue their work without being subjected to threats, harassment or acts of violence. This was especially relevant given the context of their investigations, which involved high-profile political figures and significant corruption cases such as Lava Jato and "Fuji-cocktails".
- c. The IACHR emphasized the importance of the security measures being finalized with the beneficiaries and their representatives, ensuring that the State's actions are aligned with the specific security needs of the beneficiaries and that they are effectively implemented on the ground. Precautionary measures include regular consultations and adaptations of the measures according to the evolution of the level of risk.
- d. The State was required to report on the actions taken to investigate the facts that gave rise to the precautionary measures and to avoid their repetition. This implies a process of continuous monitoring and review to evaluate the effectiveness of the measures implemented and make adjustments as necessary.

53. Likewise, international organizations such as the Center for Justice and International Law (CEJIL), the Due Process of Law Foundation (DPLF), Robert F. Kennedy Human Rights (RFKHR) and the Washington Office on Latin America (WOLA), among others, have expressed their concern over the summary trial against prosecutor Vela Barba.⁷¹ The organizations considered the prosecution of Prosecutor Vela Barba as

⁷⁰ Inter-American Commission on Human Rights, Resolution 64/2023, Precautionary Measures No. 576-21. José Domingo Pérez and his next of kin with respect to Peru, dated November 8, 2023 (Follow-up and Expansion), paragraph 97.

⁷¹ Retrieved from: <https://www.wola.org/wp-content/uploads/2023/11/Comunicado-suspension-Rafael-Vela-Barba-1.pdf>

UNOFFICIAL TRANSLATION

an act that would seriously weaken Peru's anti-corruption prosecutors. The organizations highlighted that the summary process against prosecutor Vela Barba occurs in an adverse context for independent justice operators in the country, who increasingly face disciplinary proceedings seeking their dismissal or removal in retaliation for their anti-corruption work.

54. The organizations also warned that the suspension of prosecutor Vela Barba could result in the elimination of his police protection and salary, significantly increasing the risks to his personal security given that he is subject to constant threats derived from the anti-corruption and money laundering cases in which prosecutor Vela Barba has been involved. This situation was recognized by the IACHR itself when it granted prosecutor Vela Barba several precautionary measures to protect his integrity.⁷²

III. INTERNATIONAL NORMS AND STANDARDS

a. Binding nature of international standards in Peru.

55. In accordance with the provisions of Article 55 of the Political Constitution of Peru, "Treaties entered into by the State and in force are part of national law". The Peruvian State ratified the American Convention on Human Rights (ADH Convention) on July 11, 1978.⁷³ Peru also ratified the International Covenant on Civil and Political Rights (ICCPR) on April 28, 1978.⁷⁴ According to Article VIII of the Preliminary Title of the Peruvian Constitutional Procedural Code, which regulates constitutional amparo proceedings such as the one initiated by prosecutor Vela Barba, "the content and scope of the constitutional rights protected by the proceedings regulated in the present code must be interpreted in accordance with the Universal Declaration of Human Rights, human rights treaties, as well as with the decisions adopted by international human rights courts constituted according to treaties to which Peru is a party".

b. Obligations of Peru related to the guarantee of freedom of expression.

56. The right to freedom of expression is established in various international treaties and declarations. According to Article 13 of the ADH Convention, "Everyone has the right to freedom of thought and expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either

⁷² Retrieved from: <https://www.wola.org/wp-content/uploads/2023/11/Comunicado-suspension-Rafael-Vela-Barba-1.pdf>

⁷³ The American Convention on Human Rights was ratified by Peru through Decree Law No. 22231 on July 11, 1978. Peru's acceptance of the contentious jurisdiction of the Inter-American Court of Human Rights was made by virtue of the Sixteenth Final and Transitory Provision of the Political Constitution of 1979.

⁷⁴ United Nations, United Nations Treaty Bodies Database: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=136&Lang=SP.

UNOFFICIAL TRANSLATION

orally, in writing or in print, in the form of art, or through any other media of his choice".

57. Likewise, the Declaration of Principles on Freedom of Expression ("Declaration of Principles"), issued by the Office of the Rapporteur for Freedom of Expression and approved by the IACHR Commission interprets Article 13 of the ADH Convention. According to Principle 1 of the Declaration of Principles, "Freedom of expression, in all its forms and manifestations, is a fundamental and inalienable right inherent to all persons. It is, moreover, a prerequisite for the very existence of a democratic society."

58. Article 19 of the Universal Declaration of Human Rights also establishes the right to freedom of expression and states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

59. Likewise, Article 19 of the ICCPR states that "1. No one shall be subjected to interference with his opinions. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

c. Obligations of Peru related to the limitation of freedom of expression, through subsequent liabilities.

60. According to Article 13.2 of the ADH Convention, the "exercise of the right provided for in the preceding paragraph may not be subject to prior censorship but must be subject to subsequent liability, which must be expressly established by law and necessary to ensure: (a) respect for the rights or reputations of others, or (b) the protection of national security, public order, or public health or morals. However, these limitations do not operate automatically. The Inter-American Court has established a "tripartite test" to determine the legitimacy of these restrictions.

61. In the same vein, Article 19, paragraph 3 of the ICCPR Covenant states that "The exercise of the right provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, which must, however, be expressly provided by law and necessary for: (a) Respect for the rights or reputations of others; (b) The protection of national security, public order (ordre public) or public health or morals."

62. The Inter-American Court has established that "The abuse of freedom of expression cannot be the object of preventive control measures, but rather a basis for liability for those who have committed it. Even in this case, for such liability to be validly

UNOFFICIAL TRANSLATION

established, according to the Convention, several requirements must be met, namely: a) The existence of previously established grounds for liability, b) The express and exhaustive definition of those grounds by law, c) The legitimacy of the purposes pursued in establishing them, and d) That those grounds for liability are "necessary to ensure" the aforementioned purposes. All these requirements must be met in order to fully comply with Article 13.2." ⁷⁵

c.1 Limitations on freedom of expression must be established by law (principle of legality).

63. The restriction must be formally established in a law. This means that the law must explain in a clear, precise and accessible manner "...on what grounds persons may eventually incur liability for the expression of opinions or facts, so that people have full legal certainty in this regard." ⁷⁶

c.2 Any limitation on freedom of expression requires judicial oversight.

64. According to the Report of the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, "The guarantee of legality should generally entail oversight by independent judicial authorities." ⁷⁷

c.3 Laws, orders and practices on limitations to freedom of expression must be necessary and proportionate.

65. The Inter-American Court of Human Rights has indicated that the restriction to freedom of expression must pursue a legitimate objective, recognized by the ADH Convention.⁷⁸ The restriction must be necessary in a democratic society and proportional to the end sought to be achieved, i.e., there must be a compelling social need and be the least restrictive means to achieve the proposed objective.⁷⁹ In addition, it has stated that the strict proportionality stage requires "(...) assessing

⁷⁵ Inter-American Court of Human Rights. Compulsory Membership in an Association of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 39.

⁷⁶ Pou Gimenez, F. M. (2013). Freedom of expression and its limits. Instituto de Investigaciones Jurídicas, UNAM. Retrieved from https://repositorio.unam.mx/contenidos/la-libertad-de-expresion-y-sus-limites-5032643?c=bw1vmW&d=false&q=humanidades&i=5&v=1&t=search_0&as=0

⁷⁷ United Nations, General Assembly. (2018, April 6). Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/38/35). <https://undocs.org/es/A/HRC/38/35>, paragraph 7.

⁷⁸ Inter-American Court of Human Rights (2006). Case of Claude Reyes et al. v. Chile. Judgment of September 19, 2006. Series C No. 151, paragraph 90. Retrieved from http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_esp.pdf.

⁷⁹ Inter-American Court of Human Rights (2004). Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 96. Retrieved from http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_esp.pdf.

UNOFFICIAL TRANSLATION

whether the sacrifice of freedom of expression entailed by a measure is disproportionate when weighed against the advantages obtained through it".⁸⁰

66. The Court has indicated that these criteria must be applied jointly and exhaustively. If a restriction does not comply with any of these three elements, it is not considered legitimate according to the standards of the IACHR Court.⁸¹ "In this regard, this Court has reiterated in its jurisprudence that Article 13.2 of the American Convention establishes that subsequent responsibilities for the exercise of freedom of expression, must comply with the following requirements concurrently: (i) be previously fixed by law, in a formal and material sense; (ii) respond to an objective permitted by the American Convention ("respect for the rights to reputation of others" or "the protection of national security, public order, or public health or morals"), and (iii) be necessary in a democratic society (for which they must comply with the requirements of suitability, necessity and proportionality)."⁸²
67. Furthermore, in terms of the Inter-American Legal Framework on Freedom of Expression, it has been established that the "...weighing exercise must start from the prevalence in principle (or prima facie prevalence) of freedom of expression since, given the interest of the debate on public affairs, this right acquires a higher weighted value. This is precisely what the IACHR and the Inter-American Court refer to when they indicate that expressions of public interest constitute speech that is the object of special protection under the American Convention."⁸³
68. In relation to the operators of justice, the rules that enshrine the possibility of dismissing and disqualifying a judge as a subsequent consequence of the exercise of his or her right to freedom of expression must be subject to the strictest judgment of legality. Indeed, such rules not only entail an extraordinarily serious sanction (dismissal) and limit the exercise of the right to freedom of expression, but may also compromise the principles of judicial independence and autonomy, since they are an exception to judicial stability as an institutional guarantee to achieve independence and impartiality.⁸⁴

⁸⁰ Pou Gimenez, F. M. (2013), op. cit., p. 11.

⁸¹ Inter-American Court of Human Rights (2004). Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111. Retrieved from http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_esp.pdf.

⁸² Inter-American Court of Human Rights. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, para. 102.

⁸³ Office of the Special Rapporteur for Freedom of Expression and Inter-American Commission on Human Rights (2010). Inter-American legal framework on the right to freedom of expression (p. 36). Retrieved from <https://www.oas.org/es/cidh/expresion/docs/publicaciones/MARCO%20JURIDICO%20INTERAMERICANO%20DEL%20DERECHO%20A%20LA%20LIBERTAD%20DE%20EXPRESION%20ESP%20FINAL%20portada.doc.pdf>

⁸⁴ IACHR. Report No. 43/15, Case 12.632. Merits (Publication). Adriana Beatriz Gallo, Ana María Careaga and Silvia Maluf de Christin. Argentina. July 28, 2015. <https://www.oas.org/es/cidh/decisiones/2015/arpu12632es.docx>, page 240.

UNOFFICIAL TRANSLATION

69. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, in its Annual Report of the Office of the Special Rapporteur for Freedom of Expression in the region noted that "The situation of criminalization and affectations to due process in cases against journalists, human rights defenders, justice operators and, in general, people who actively participate in public life, has weakened the exercise of freedom of expression and access to public information..."⁸⁵

70. Finally, the Inter-American Court of Human Rights highlights the seriousness of this type of limitations due to their inhibiting effects. "The seriousness of the restriction of freedom of expression in the case is accentuated because not only was the right of expression of the judges being affected, but also the sanction of dismissal imposed was capable of creating fear in other judges who might seek to exercise that right in relation to any matter that in a very broad sense could be classified as political activity. This chilling effect constitutes a factor that must also be given due consideration when assessing the proportionality of the restriction on freedom of expression."⁸⁶

d. Peru's obligations related to freedom of expression and possible restrictions in the case of prosecutors.

71. The Inter-American Court of Human Rights has clearly established that "Judges, prosecutors, public defenders and public defenders as public officials enjoy a broad right to freedom of expression which is also necessary to explain, for example, to society, some aspects of national interest and relevance".⁸⁷

72. According to the Report of the Special Rapporteur on the independence of judges and lawyers, "Constituting minimum guarantees and standards that must be observed by the Prosecutor's Offices and respected by the rest of the institutions as conditions that guarantee their independence and impartiality, are the status and conditions of service; freedom of expression and association; the functions of prosecutors in criminal proceedings; discretionary powers; alternatives to prosecution; relations with other government agencies or institutions; and disciplinary proceedings."⁸⁸

⁸⁵ Special Rapporteur for Freedom of Expression (2023, December 6). Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Annual Report of the Inter-American Commission on Human Rights 2023, Volume II. OEA/Ser.L/V/II Doc. 386, para. 848.

⁸⁶ IACHR. Report No. 43/15, Case 12.632. Merits (Publication). Adriana Beatriz Gallo, Ana María Careaga and Silvia Maluf de Christin. Argentina. July 28, 2015, para. 286. <https://www.oas.org/es/cidh/decisiones/2015/arp12632es.docx>, para. 286.

⁸⁷ IACHR. Guarantees for the independence of justice operators. Toward Strengthening Access to Justice and the Rule of Law in the Americas. OEA/Ser.L/V/II, Doc. 44, December 5, 2013, para. 172: <https://www.oas.org/es/cidh/defensores/docs/pdf/operadores-de-justicia-2013.pdf>.

⁸⁸ UN: Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/44/47, 23 March 2020, paragraph 40:

UNOFFICIAL TRANSLATION

73. According to the Inter-American Commission and Court of Human Rights, the general duties to which the exercise of freedom of expression by public officials is subject are the following:

d.1 Duty to pronounce on matters of public interest.

74. The Inter-American Commission on Human Rights has stated that "Expressions concerning matters of public interest enjoy greater protection under the American Convention. This implies that the State must refrain with greater rigor from establishing limitations to these forms of expression. Given the importance of the control of public administration through free expression, any restriction on political debate or matters of public interest presents a very reduced margin of action and must be strictly necessary in a democratic society."⁸⁹

75. The Inter-American Commission on Human Rights has also pointed out that when dealing with matters of public interest, public officials not only have the right but also the duty to pronounce on them: "The transcendent democratic function of freedom of expression requires that, in certain cases, public officials make pronouncements on matters of public interest in compliance with their legal powers. In other words, under certain circumstances the exercise of their freedom of expression is not only a right, but a duty."⁹⁰

76. In the same sense, the Inter-American Court of Human Rights has stated that "In a democratic society, it is not only legitimate, but sometimes a duty of the State authorities, to pronounce on issues of public interest" .⁹¹

d.2 Duty to ensure that its pronouncements do not interfere with the independence and autonomy of judicial authorities.

<https://documents.un.org/doc/undoc/gen/g20/071/28/pdf/g2007128.pdf?token=JS1F9NOQYyTTvBwXIM&fe=true>.

⁸⁹ IACHR. Report No. 43/15, Case 12.632. Merits (Publication). Adriana Beatriz Gallo, Ana María Careaga and Silvia Maluf de Christin. Argentina. July 28, 2015. <https://www.oas.org/es/cidh/decisiones/2015/arpu12632es.docx>, para. 221.

⁹⁰ Inter-American Commission on Human Rights (IACHR). Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09, December 30, 2009. paras. 199 to 417. <https://www.oas.org/es/cidh/expresion/docs/publicaciones/MARCO%20JURIDICO%20INTERAMERICANO%20DEL%20DERECHO%20A%20LA%20LIBERTAD%20DE%20EXPRESION%20ESP%20FINAL%20portada.doc.pdf> Paragraph 201.

⁹¹ I/A Court H.R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. https://www.corteidh.or.cr/docs/casos/articulos/seriec_194_esp.pdf, para. 139.

UNOFFICIAL TRANSLATION

77. As previously established, the right to freedom of expression is not an absolute right and may be subject to subsequent liabilities. However, these subsequent liabilities require a strict balancing of rights when qualifying the limitation. Specifically, in the case of justice operators, this balancing must take place between the right to freedom of expression of justice operators and judicial independence and impartiality.
78. In this regard, it should be noted that the Consultative Council of European Judges has pointed out that, even in the case of judges, statements made on matters that have already been decided by judges do not necessarily raise a problem about their impartiality. Commenting on jurisprudence is linked to their professional activity.⁹²

d.3 Duty of confidentiality.

79. According to the Inter-American Commission on Human Rights, justice operators have a special duty of prudence and discretion with respect to the matters before them or other matters in order to safeguard the principles of independence and impartiality.⁹³
80. According to the United Nations Special Rapporteur on the independence of judges and lawyers, "The most common restriction on the exercise of freedom of expression derives from the principle of confidentiality, according to which judges and prosecutors are bound by professional secrecy with regard to their deliberations and confidential information obtained in the exercise of their functions not related to proceedings of a public nature."⁹⁴
81. In this regard, it is important to mention that with respect to the protection of confidential information, the Inter-American Court of Human Rights has stated that these restrictions "should not be confused with the restrictions on criticism of other

⁹² Council of Europe: Consultative Council of European Judges (CCJE). Opinion No. 25 (2022) of the CCJE on the freedom of expression of judges. Strasbourg, 2 December 2022. <https://rm.coe.int/opinion-ccje-no-25-2022-es/1680a9ad64>, paragraph 40: "Judges' comments on decided cases other than their own do not necessarily raise a problem about their impartiality. Commenting on case law is directly related to their professional activity. In their professional activities, judges are entitled to make constructive and respectful comments on decided cases."

⁹³ IACHR. Report No. 43/15, Case 12.632. Merits (Publication). Adriana Beatriz Gallo, Ana María Careaga and Silvia Maluf de Christin. Argentina. July 28, 2015. <https://www.oas.org/es/cidh/decisiones/2015/arpu12632es.docx>, para. 256.

⁹⁴ UN: Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/41/48, 29 April 2019, <https://documents.un.org/doc/undoc/gen/g19/118/71/pdf/g1911871.pdf?token=JcWPzm8uJBpx9YXtWv&fe=true>, paragraph 53.

UNOFFICIAL TRANSLATION

judges and, even less so, on the public defense of their own functional performance".⁹⁵

d.4 Special duty to reasonably establish the facts on which its rulings are based.

82. When public officials exercise their freedom of expression, whether in compliance with a legal duty or as a simple exercise of their fundamental right to express themselves, "they are subject to certain limitations in terms of ascertaining reasonably, although not necessarily exhaustively, the facts on which they base their opinions, and should do so with even greater diligence than that employed by private individuals, in view of the high degree of credibility they enjoy and in order to prevent citizens from receiving a manipulated version of the facts."⁹⁶

d.5 Duty to ensure that its pronouncements do not constitute violations of human rights.

83. Because of the State's obligations to guarantee, respect and promote human rights, it is the duty of public officials to ensure that in exercising their freedom of expression they are not causing the disregard or violation of other fundamental rights. In the words of the Inter-American Court, "they must bear in mind that as public officials they have a position of guarantor of the fundamental rights of individuals and, therefore, their statements cannot end up disregarding those rights."⁹⁷

d.6 Duty to ensure that its pronouncements do not constitute an arbitrary interference, directly or indirectly, in the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts.

84. Public officials also have the duty to ensure that their pronouncements do not harm the rights of those who contribute to public deliberation through the expression and dissemination of their thoughts, such as journalists and the media. This duty of

⁹⁵ IACHR Court. Case of Urrutia Laubreaux v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2020. Series C No. 409, https://www.corteidh.or.cr/docs/casos/articulos/seriec_409_esp.pdf, para. 137.

⁹⁶ Inter-American Commission on Human Rights (IACHR). Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09, December 30, 2009 <https://www.oas.org/es/cidh/expresion/docs/publicaciones/MARCO%20JURIDICO%20INTERAMERICANO%20DEL%20DERECHO%20A%20LA%20LIBERTAD%20DE%20EXPRESION%20ESP%20FINAL%20portada.doc.pdf>, para. 202.

⁹⁷ Inter-American Commission on Human Rights (IACHR). Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09, December 30, 2009 <https://www.oas.org/es/cidh/expresion/docs/publicaciones/MARCO%20JURIDICO%20INTERAMERICANO%20DEL%20DERECHO%20A%20LA%20LIBERTAD%20DE%20EXPRESION%20ESP%20FINAL%20portada.doc.pdf>, paragraph 203.

UNOFFICIAL TRANSLATION

officials is accentuated in situations in which there is, "social conflict, alterations of public order or social or political polarization," due to the "risks that they may imply for certain persons or groups at a given moment."⁹⁸

e. Peru's obligations related to the independence of prosecutors due to the nature of the functions they exercise.

85. According to the Inter-American Court of Human Rights, "The guarantees of a proper appointment, the right to remain in office and to be protected against external pressures also protect the work of prosecutors. Otherwise, they would jeopardize the independence and objectivity that are required in their function as principles aimed at ensuring that the investigations carried out and the claims made before the jurisdictional bodies are directed exclusively to the realization of justice in the specific case, consistent with the scope of Article 8 of the Convention."⁹⁹

86. According to the criteria of the Inter-American Court of Human Rights, "prosecutors perform the functions of justice operators and, as such, they must enjoy job stability guarantees, among others, as an elementary condition of their independence for the due fulfillment of their procedural functions. Therefore, they are protected by the guarantees of an adequate appointment, the right to remain in office and to be protected against external pressures. Otherwise, the independence and objectivity that are required in their function as principles aimed at ensuring that the investigations carried out and the claims formulated before the jurisdictional organs are exclusively directed to the realization of justice in the specific case, in coherence with the scope of Article 8 of the Convention, would be put at risk".¹⁰⁰

87. This obligation is also supported by the Peruvian legal system. Article 158 of the Peruvian Constitution states that "The members of the Public Prosecutor's Office have the same rights and prerogatives and are subject to the same obligations as those of the Judicial Branch in the respective category. They are affected by the same incompatibilities. Their appointment is subject to requirements and procedures identical to those of the members of the Judiciary in their respective category."

⁹⁸ Inter-American Commission on Human Rights (IACHR). Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II CIDH/RELE/INF. 2/09, December 30, 2009 <https://www.oas.org/es/cidh/expresion/docs/publicaciones/MARCO%20JURIDICO%20INTERAMERICANO%20DEL%20DERECHO%20A%20LA%20LIBERTAD%20DE%20EXPRESION%20ESP%20FINAL%20portada.doc.pdf>, paragraph 205.

⁹⁹ IACHR Court. Case of Casa Nina v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2020. Series C No. 419. https://www.corteidh.or.cr/docs/casos/articulos/seriec_419_esp.pdf, para. 72.

¹⁰⁰ IACHR Court. Case of Nissen Pessolani v. Paraguay. Merits, Reparations and Costs. Judgment of November 21, 2022. Series C No. 477. https://www.corteidh.or.cr/docs/casos/articulos/seriec_477_esp.pdf, para. 57.

UNOFFICIAL TRANSLATION

88. This guarantee of stability and irremovability in office for prosecutors implies that prosecutors can only be dismissed for serious disciplinary offenses or incompetence. The Inter-American Court of Human Rights has emphasized that "The guarantee of stability and irremovability in office for prosecutors implies, in turn, (i) that removal from office must be based exclusively on permissible grounds, either through a process that complies with judicial guarantees or because they have completed the term of their mandate; (ii) that prosecutors may only be removed for serious disciplinary misconduct or incompetence; and (iii) that all proceedings must be resolved in accordance with established standards of judicial behavior and through fair procedures that ensure objectivity and impartiality according to the Constitution or the law."¹⁰¹

89. The Inter-American Commission on Human Rights, in its report on Corruption and Human Rights: Inter-American Standards, highlights the vulnerability of the institutional independence of judges, prosecutors and public defenders.¹⁰² Despite international recognition of their crucial role in guaranteeing access to justice and due process, these actors frequently operate without the necessary guarantees for independent action, both individually and institutionally. This fragility manifests itself in interference by public authorities, which not only creates legal and practical obstacles for those seeking justice, but also reveals deficiencies in appointment, selection and, crucially, disciplinary procedures. Disciplinary procedures, according to the Commission, are often used to undermine the independence of prosecutors and judges, constituting a "tool of pressure against officials"¹⁰³. These mechanisms must adhere to strict criteria of competence, independence and impartiality, and ensure that the sanctions imposed are based on principles of legality, with clearly defined and sanctioned conduct, thus avoiding illegitimate use of the system to influence judicial decisions or remove judges from cases in which there are third party interests. In addition, it is essential that any sanction be the result of a process that respects the right to defense and the standards of due process, providing full transparency on the grounds for the sanction.

IV. LEGAL ARGUMENTS

90. As set forth below, the disciplinary proceedings and sanctions imposed on Prosecutor Vela Barba through Resolution No. 007-2023-ANC-CP. 007-2023-ANC-CPD dated October 5, 2023, violate Peru's obligations under Articles 8 and 13 of the American

¹⁰¹ IACHR Court. Case of Nissen Pessolani v. Paraguay. Merits, Reparations and Costs. Judgment of November 21, 2022. Series C No. 477. https://www.corteidh.or.cr/docs/casos/articulos/seriec_477_esp.pdf, para. 59.

¹⁰² Inter-American Commission on Human Rights (2019, December 6). Corruption and human rights: Inter-American standards. OEA/Ser.L/V/II. Doc. 236, <https://www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHHES.pdf>.

¹⁰³ Inter-American Commission on Human Rights (2019, December 6). Corruption and human rights: Inter-American standards. OEA/Ser.L/V/II. Doc. 236, para. 404, <https://www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHHES.pdf>.

UNOFFICIAL TRANSLATION

Convention on Human Rights and Article 19 of the International Covenant on Civil and Political Rights.

A. THE CHALLENGED RESOLUTION ESTABLISHES A RESTRICTION TO FREEDOM OF EXPRESSION THAT IS NEITHER NECESSARY IN A DEMOCRATIC SOCIETY NOR PROPORTIONATE TO A COMPELLING SOCIAL NEED IN VIOLATION OF ARTICLE 13 OF THE ADH CONVENTION AND ARTICLE 19 OF THE ICCPR.

91. Prosecutor Vela Barba, in his capacity as prosecutor, is protected by the right to freedom of expression. The Inter-American Court of Human Rights has emphasized the importance of guaranteeing this right in disciplinary proceedings involving justice operators.¹⁰⁴
92. As established in Articles 13.2 of the ADH Convention and 19, paragraph 3 of the ICCPR, any restriction on freedom of expression through subsequent liability must be necessary to protect specific interests. This restriction must be necessary in a democratic society and proportional to the end sought to be achieved, i.e., there must be a compelling social need and it must be the least restrictive means to achieve the proposed objective.¹⁰⁵ The Inter-American Court has established that for such restrictions to be validly established, the need for their imposition must be proven.¹⁰⁶
93. The disciplinary authority imposed sanctions on prosecutor Vela Barba for considering that his public statements: i. Gravely compromised the duties of his office by questioning the impartiality of the judicial process in which he participates as a party, which affects the integrity and prestige of the Public Prosecutor's Office. ii. Interfered in the exercise of functions of other State bodies by making public statements about a judicial authority that had established a new jurisprudence by innovatively interpreting a legal provision. iii. Violated their duty of confidentiality by commenting through a media outlet on procedural or substantive aspects of an ongoing investigation or trial by stating that the judicial decision in Keiko Fujimori's case had already been made before the public hearing, insinuating that the judges were seeking the release of the accused.¹⁰⁷

¹⁰⁴ I/A Court H.R., Case of López Lone et al. Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302. https://www.corteidh.or.cr/docs/casos/articulos/seriec_302_esp.pdf Paragraph 307.

¹⁰⁵ Inter-American Court of Human Rights (2004). Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 96. Retrieved from http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_esp.pdf.

¹⁰⁶ Inter-American Court of Human Rights. Compulsory Membership in an Association of Journalists (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 39.

¹⁰⁷ Resolution N° 007-2023-ANC-CPD Lima, dated October 5, 2023.

UNOFFICIAL TRANSLATION

94. From the analysis of the challenged resolution, it is evident that the disciplinary authorities violated Peru's international legal obligations in several respects.

A.1 Prosecutor Vela Barba's statements were entitled to heightened protection because they relate to a matter of significant public interest

95. The Inter-American Commission on Human Rights has emphasized the close relationship between freedom of expression and democracy, considering this right to be essential and fundamental.¹⁰⁸ This relationship implies that expressions related to issues of public interest should receive special protection under the American Convention on Human Rights. Therefore, the State must avoid imposing unnecessary limitations on these expressions, given the important role they play in the control of public administration and democratic debate.¹⁰⁹

96. Likewise, the right to freedom of expression is not restricted to certain professions or groups, but covers everyone, including public officials and, within this group, prosecutors.¹¹⁰ The democratic function of freedom of expression even implies that public officials issue pronouncements on matters of public interest as part of their legal responsibilities, making this exercise not only a right, but on occasions, a duty.¹¹¹

97. The sanction imposed on Prosecutor Vela Barba was based on his public statements on a case concerning allegations of high-level corruption. As such, the case was of significant public interest, as evidenced by the fact that several procedural actions of said case were disseminated through the media, including by the Judicial Power itself. However, the challenged resolution did not take this element into account in its analysis.

¹⁰⁸ IACHR. Report No. 43/15, Case 12.632. Merits (Publication). Adriana Beatriz Gallo, Ana María Careaga and Silvia Maluf de Christin. Argentina. July 28, 2015. <https://www.oas.org/es/cidh/decisiones/2015/arp12632es.docx>, para. 219.

¹⁰⁹ IACHR. Report No. 43/15, Case 12.632. Merits (Publication). Adriana Beatriz Gallo, Ana María Careaga and Silvia Maluf de Christin. Argentina. July 28, 2015. <https://www.oas.org/es/cidh/decisiones/2015/arp12632es.docx>, para. 221.

¹¹⁰ IACHR. Report No. 43/15, Case 12.632. Merits (Publication). Adriana Beatriz Gallo, Ana María Careaga and Silvia Maluf de Christin. Argentina. July 28, 2015. <https://www.oas.org/es/cidh/decisiones/2015/arp12632es.docx>, para. 222.

¹¹¹ Inter-American Commission on Human Rights (IACHR). Office of the Special Rapporteur for Freedom of Expression. Inter-American Legal Framework on the Right to Freedom of Expression. OEA/Ser.L/V/II IACHR/RELE/INF. 2/09, December 30, 2009. paras. 199 to 417. <https://www.oas.org/es/cidh/expresion/docs/publicaciones/MARCO%20JURIDICO%20INTERAMERICANO%20DEL%20DERECHO%20A%20LA%20LIBERTAD%20DE%20EXPRESION%20ESP%20FINAL%20portada.doc.pdf> Paragraph 201 and I/A Court H.R., Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194. https://www.corteidh.or.cr/docs/casos/articulos/seriec_194_esp.pdf, para. 139.

UNOFFICIAL TRANSLATION

A.2 Prosecutor Vela Barba had a right to criticize pursuant to his duty to defend his public position as a prosecutor.

98. The statements made by prosecutor Vela Barba were related to the defense of his public position as a prosecutor. This shows that he is not failing to comply with any of his obligations as a prosecutor, as established in Article 159 of the Peruvian Constitution. This article establishes within the functions of the Public Prosecutor's Office, the promotion of judicial actions in defense of legality and public interests, and the investigation and filing of criminal actions regarding crimes.
99. Indeed, as an attorney for a party, Prosecutor Vela Barba had not only a right but also a duty to criticize the irregular procedure on the basis of which the Second Criminal Chamber of Appeals revoked the pre-trial detention of Keiko Fujimori. The court conducted a hearing on the issue in the absence of the Public Prosecutor's Office, despite the latter's request for a postponement. It was this "atypical procedure" that caused Vela Barba to publicly criticize the revocation as having been already decided before the hearing on the issue. As noted by Judge Tapia González in his concurring vote, prosecutors have a right to express themselves in this manner because they are parties, and do not have the same obligation of impartiality as judges.¹¹²
100. The Inter-American Court of Human Rights has affirmed that criticism directed towards other judges or the public defense of one's own functional performance cannot be considered limitations to freedom of expression inherent to the judicial function.¹¹³ Therefore, the sanction imposed on these expressions does not meet the necessary requirements to be considered legitimate as established in Article 13.2 of the American Convention on Human Rights.

A.3 Prosecutor Vela Barba's statements did not undermine judicial integrity or violate his duty of confidentiality

101. There was no reasonable basis for the disciplinary sanctions imposed on Prosecutor Vela Barba. As noted above, Prosecutor Vela Barba's statements were necessary for the public defense of his position as a prosecutor. Instead of undermining judicial integrity (as claimed by the sanctions), these statements sought to preserve the integrity of the judicial process by highlighting the "atypical procedure" by which the pre-trial detention of the accused was revoked. Furthermore, because all of his statements related to past events, they did not undermine the judges' impartiality. This perspective is aligned with the position of the Consultative Council of European

¹¹² Superior Court of Justice of Lima First Constitutional Chamber. Resolution N°3 Lima, dated March 07, 2024, page 23 and 24.

¹¹³ IACHR Court. Case of Urrutia Laubreaux v. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2020. Series C No. 409, https://www.corteidh.or.cr/docs/casos/articulos/seriec_409_esp.pdf, para. 137.

UNOFFICIAL TRANSLATION

Judges, which indicates that the opinions of judicial operators on previously decided matters do not necessarily raise issues of impartiality, as they are part of their professional work when commenting on jurisprudence.¹¹⁴

102. Nor did Prosecutor Vela Barba violate his duty of confidentiality, as claimed by the sanctions. All of his statements focused on past events and decisions that had already been made and publicly announced by the judges—he did not disclose any confidential information.
103. Based on the foregoing, it is concluded that the sanction imposed on prosecutor Vela Barba was neither necessary in a democratic society nor proportionate to a compelling social need.
104. Finally, if this court were to uphold the sanction against prosecutor Vela Barba in the amparo proceeding, it would be tantamount to censoring the free expression of justice operators in violation of international law. The Inter-American Court of Human Rights has pointed out that unjustified restrictions on the freedom of expression of justice operators constitute serious violations of this right, since they generate fear in those who wish to exercise it. This silencing effect, known as the "chilling effect," must be duly considered when evaluating restrictions on freedom of expression of justice operators.¹¹⁵
105. By virtue of these considerations, it is argued that the resolution of the ANCMP violates the provisions of Articles 13.2 of the American Convention on Human Rights and 19, paragraph 3 of the International Covenant on Civil and Political Rights.

B. THE DISCIPLINARY PROCEEDINGS AND SANCTIONS AGAINST PROSECUTOR VELA BARBA CONSTITUTE HARASSMENT THAT VIOLATES THE PROVISIONS OF ARTICLE 8 OF THE ADH CONVENTION.

106. The disciplinary proceeding against prosecutor Vela Barba originated in the midst of a series of attacks directed at his investigation into high-level official corruption, a matter of significant public interest. This has been recognized by the Inter-American Commission on Human Rights in its decision to grant precautionary measures in favor of prosecutor Vela Barba and his family.¹¹⁶ This context, added to the lack of grounds

¹¹⁴ Council of Europe: Consultative Council of European Judges (CCJE). Opinion No. 25 (2022) of the CCJE on the freedom of expression of judges. Strasbourg, 2 December 2022. <https://rm.coe.int/opinion-ccje-no-25-2022-es/1680a9ad64>, paragraph 40.

¹¹⁵ IACHR. Report No. 43/15, Case 12.632. Merits (Publication). Adriana Beatriz Gallo, Ana María Careaga and Silvia Maluf de Christin. Argentina. July 28, 2015. <https://www.oas.org/es/cidh/decisiones/2015/arpu12632es.docx>, para. 286.

¹¹⁶ Inter-American Commission on Human Rights, Resolution 64/2023, Precautionary Measures No. 576-21. José Domingo Pérez and his next of kin with respect to Peru, dated November 8, 2023 (Follow-up and Expansion), paragraph 97.

UNOFFICIAL TRANSLATION

for the disciplinary proceeding in question, leads to the conclusion that these the disciplinary proceedings and sanctions constitute direct harassment that seeks to intimidate and undermine the independence of prosecutor Vela Barba.

107. According to the criteria established by the Inter-American Court of Human Rights, prosecutors must enjoy protection against external influences to safeguard their independence and objectivity. In accordance with Article 8 of the American Convention on Human Rights, these are essential principles for ensuring that prosecutors' investigations and actions before the courts are oriented exclusively towards the pursuit of justice in each case.¹¹⁷

108. It is crucial to emphasize that prosecutors must have an immunity that emanates from the principle of prosecutorial independence, which aims to safeguard them from any form of intimidation, obstruction, harassment or undue interference in the exercise of their professional functions.¹¹⁸ This is especially important for justice operators involved in cases with significant political or social implications, such as high-level official corruption cases, which render officials particularly vulnerable to reprisals.¹¹⁹

109. Prosecutor Vela Barba, who is in charge of investigations related to alleged acts of corruption committed by high-level public figures with considerable political influence, is particularly vulnerable to this type of attack. It is imperative that the State and its authorities guarantee the independence of such justice operators at all times in accordance with Article 8 of the American Convention on Human Rights.

V. CONCLUSION

110. In conclusion, Prosecutor Vela Barba's treatment violates Peru's obligations under the American Convention on Human Rights and the International Covenant on Civil and Political Rights. The disciplinary sanctions imposed on him because of his public statements are neither necessary in a democratic society, nor proportionate to a compelling social need. His public statements, issued in furtherance of his duty as a prosecutor, were entitled to heightened protection because they related to high-level corruption allegations, a matter of significant public interest. Furthermore, the

¹¹⁷ IACHR Court. Case of Nissen Pessolani v. Paraguay. Merits, Reparations and Costs. Judgment of November 21, 2022. Series C No. 477. https://www.corteidh.or.cr/docs/casos/articulos/seriec_477_esp.pdf, para. 57.

¹¹⁸ UN: General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Diego García Sayán, A/75/172, 17 July 2020, <https://documents.un.org/doc/undoc/gen/n20/186/76/pdf/n2018676.pdf?token=IKq9kCRBX64NGdda4e&fe=true, paragraph 44.>

¹¹⁹ UN: General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Diego García Sayán, A/75/172, 17 July 2020, <https://documents.un.org/doc/undoc/gen/n20/186/76/pdf/n2018676.pdf?token=IKq9kCRBX64NGdda4e&fe=true, paragraph 59.>

UNOFFICIAL TRANSLATION

disciplinary proceedings and sanctions against him constitute harassment aimed at undermining prosecutorial independence. Upholding the sanctions imposed on him would expose other independent justice operators to a “chilling effect” in violation of Peru’s obligations under international law.

111. Therefore, we respectfully urge the Honorable Judge of the Ninth Constitutional Court of the Superior Court of Justice of Lima to consider the aforementioned arguments in examining the challenged resolution of the ANCMP. It is imperative that international and national legal principles be respected in this case. Your court's ruling in this amparo proceeding will have significant repercussions for freedom of expression and prosecutorial independence in Peru.

June 19, 2024.

Frank La Rue

Former U.N. Special Rapporteur
on the Promotion and Protection
of the Right to Freedom of
Opinion and Expression

Amrit Singh

Executive Director, Stanford Law
School's Rule of Law Impact Lab