CORRUPTION IN PERU AND ITS CONFRONTATION IN A CONSTITUTIONAL KEY

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SUMMARY: I. *Introduction*. II. *The problem of corruption in Peru*. III. *The legal instruments to face the phenomenon*. IV. *Our proposal to face it constitutionally*. V. *Conclusive Remarks*.

I. INTRODUCTION

Before addressing the topic to which we dedicate this work, "Corruption in Peru and its Confrontation in a Constitutional Key", we must express our deep gratitude to the UNAM Institute of Legal Research, as well as to the doctrinaires Mr. Diego Valadés and Mr. Antonio María Hernández, for the kind invitation they extended to us to participate in the work "The Constitution and the Fight Against Corruption", which, with undoubted success, they have promoted the idea of providing a comparative examination of the problem and the existing legal instruments in Argentina, Brazil, Chile, Colombia, Spain, France, Guatemala, Italy, Mexico, Peru and Venezuela, in the fight against corruption, due to the widespread incidence of the phenomenon.

Having stated the foregoing and as an introduction to the subject that brings us together today, it is worth mentioning, in line with what we have argued on other occasions, that, as occurs with the vast majority of coun-

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tries in the world, Peru presents a history in which Corruption has marked and, by the way, continues to mark its pernicious presence. That is to say, a future, from its republican foundation produced in 1821 to the present 21st century, punctuated by acts of corruption in all spheres of its society, with special emphasis on what refers to the management, administration and disposal of public coffers; this, without considering that corruption was fatally present in the colonial stage.

However, in the last decade of the last century, during the second government of former President Alberto Fujimori (1995-2000), who is currently serving a 25-year prison sentence for committing the crimes of aggravated homicide, serious injuries and aggravated kidnapping, the country was stupefied on television, in an unprecedented way, the degree that this phenomenon had reached, when the famous "vladivideos" were revealed, recorded in the room of the National Intelligence Service, SIN, by the then presidential adviser Vladimiro Montesinos Torres, today also imprisoned for various crimes; videos in which the degree of decomposition existing in politicians, military officers of the highest rank, authorities and owners of the media was clearly seen, who were seen selling their conscience for money, which was received in cash and in voluminous piles of banknotes, with impudence and without any hesitation.

Thus, Peruvian society verified, it would be said directly and with their own eyes, the degree of existing decomposition and how the typical crimes of corruption, such as extortion, improper collection, collusion, embezzlement, and bribery among others, were perpetrated without hesitation by characters from the most diverse and high spheres of Peruvian society.

In this regard, as the Peruvian historian Alfonso W. Quiroz correctly maintains, unfortunately today absent due to his early departure, the 1990s in Peru was an "infamous decade", in which the level of corruption "...definitely it surpassed that of all other governments in modern history and would be comparable perhaps only to the colonial period, when corrupt mechanisms were inherent in the system of power and wealth generation".[1]

The described situation triggered diverse and explainable reactions, since it was a public and evident verification, which produced indignation in all sectors of Peruvian society, which demanded urgent and effective measures to put an end to the phenomenon promptly and effectively and prevent it from remained, increased and before its combat were more difficult.

[1] Quiroz, Alfonso W., "Historia de la corrupción en el Perú", Lima, Institute of Peruvian Studies, 2016, p. 432.

This indignation, in turn, caused multidimensional effects such as, to name a few: it sharpened the population's sensitivity to everything that could mean corruption to some extent, which we could categorize as a hypersensitivity of the social group; a special zeal of the press, especially investigative and denunciatory journalism, which focused its actions on denouncing any act that had any hint of corruption; a refinement and a sharpening of a kind of attitude of collective suspicion, of distrust in all orders, especially in the field of the exercise of public function, either by popular representation or by appointment or another modality of entry to the performance of the same; a kind of collective summons of civil society and the media to the political class, questioning their actions, to the point that new uncoverings were raised, multiple processes were opened at the level of the Public Ministry and the Judicial Power and machinery was set in motion to prosecute and punish those accused of acts of corruption; a draconian attitude of the prosecutors and judges in charge of investigating, prosecuting, sentencing and punishing the accused, who relativized the constitutional guarantees, preferring the deprivation of liberty, even before the formalization of the complaint, the prosecution of the accused, the sentence and conviction of criminal responsibility; the existence of a media trial by large sectors of society, which, as a result of the scandals uncovered by the press, condemned against a simple complaint; merciless public pressure on the authorities, resorting to questioning the prosecutors and judges commissioned by sectarian sectors of society, who claimed the absolute heritage of the truth, despite the rights of those denounced and respect for autonomy and independence of authority; and, finally, a grotesque use of the issue of the fight against corruption as a banner for various opportunist, sectarian and manipulative social actors, extremist ideological politicians, parametric press and civil society organizations, among Others.

In parallel, a change began to take place at the infra-constitutional normative level that translated into a series of modifications and innovations in the regulatory provisions of the public sector, of the exercise of the public function, of the contracting carried out by the State, of the control and monitoring of public management, of criminal offenses, of the management of funds held by state institutions, of significant economic movements carried out by individuals and their monitoring, among many other measures that tended to facilitate detection, complaint, prosecution and punishment for acts related to corruption. That is to say, a change at the infra-constitutional normative level that led to an over-regulation elaborated as a reaction to what had been experienced, but in many cases lacking constitutional basis.

In this essay, following the guidelines outlined by the promoters of the work, we will address the problem of corruption in Peru, stopping at the problems of origin of the Republic, at the trigger produced by the phenomenon of corruption since the decade of the nineties of the last century, in what came after, in the reactions and dimensions of the response of the social group and in the current panorama; to then review the main existing legal instruments to face and overcome the phenomenon, reviewing the current constitutional and infra-constitutional framework, as well as supranational regulations; and lead to our proposal for confrontation in a constitutional key, stopping at the need to turn our gaze to the principles and values that inspire the national constituent, towards a revaluation of the human person and their rights and, from them, confront the scourge, postulating the adequacy of the infra-constitutional regulations to the Fundamental Charter of the Republic, the rethinking of the role of the press and of the other social actors of the State; to, finally, record our conclusive findings on the need to legitimize the fight against corruption by constitutionalizing it in all orders.

II. The problem of corruption in Peru

The comparative examination of the problem of the fight against existing corruption in Argentina, Brazil, Chile, Colombia, Spain, France, Guatemala, Italy, Mexico, Peru and Venezuela, which this book intends as its first objective, in what concerns us is specifically circumscribed to the exposition of the Peruvian case, in the idea of presenting an overview of what is the situation of the country in this matter, without further pretense of offering the reader a diagnosis that allows him to properly carry out the comparative analysis with the other countries that have been chosen as the object of study. Therefore, we do not intend to carry out such an analysis, but only present the situation, leaving the reader the task of comparing and contrasting it with its reality and that of other countries.

That said, we believe that in order to understand what is happening in Peru today regarding the issue of corruption, as well as the characteristics of the phenomenon, its edges, dimensions, complexities and other aspects, it is necessary to refer to the original problems of our Republic, because what is happening to us today is deeply linked to our past and, we would say more, is largely a consequence of it, so it will deserve our immediate approach, noting that once this has been done, as we have advanced in the introduction, We will refer to the factors that caused the multidimensional explosion in the issue of corruption that we are experiencing today, to un-

derstand the responses that were given in Peruvian society and offer the current panorama of corruption in Peru.

Having specified the aforementioned, we proceed accordingly.

1. *The Origin Problems of the Republic*

Peru, made independent by General Don José de San Martín on July 28, 1821, presents problems from its republican origin, which typify it, in our opinion, as a Nation-State in formation, which has adopted the form of a Constitutional State, but that it is not yet consolidated as such, due to a series of factors, among which we can highlight the lack of awareness and a collective commitment of what this means; the absence of a true constitutional sentiment; the crisis of values and principles; the precarious institutionalism; the lack of a mature, serious and responsible political class; the lack of solidarity and commitment in the media regarding the social responsibility that corresponds to them; and the existence of a non-committed community, without adequate training in principles and values, and highly manipulable.

To understand this reality, it is necessary to take into account that the National States in Latin America emerged within a *sui generis* and atypical context, characterized by the existence of a series of elements and forces that simultaneously provoked centrifugal and centripetal energies; so it can be affirmed that the American emancipation did not really correspond to a unanimous, coherent movement, desired by all those involved and consciously accepted; Rather, it was to a certain extent a phenomenon imposed by circumstances, at the base of which was a tangled and complex social fabric, impregnated with contradictory interests, forces and positions.

Peru was not only no stranger to this context, but these contradictions were more emphasized in it, as recognized by the famous Peruvian historian Jorge Basadre when he maintains that

> Due to the greater rooting of the colonial tradition, due to the abundance of civil servants, nobles and prosperous merchants within the current regime, due to the exceptional conditions that Viceroy Abascal knew how to deploy, Peru was not only the country least moved by the liberating commotion but the champion of colonial resistance. Argentine, Chilean and Colombian interventions were necessary to free Peru.[2]

[2] Basadre, Jorge, "Perú: Problema y Posibilidad", Fourth Edition, Lima, Publishers Technical Consortium, 1978, p. 19.

It is certainly a weak, hesitant start and without popular conviction, which allows us to understand the reason for its subsequent course and its current situation, which presented, among others, the following characteristics:

a) It arose as a consequence of the emancipation process and in circumstances in which it had not concluded on the military level; It is relevant to highlight that its territory was not totally liberated, that its population remained partially subjugated and that its jurisdiction could not be fully exercised, so that, from the beginning, it presented the unavoidable need for a military power that, due to the circumstances, appeared as more important than the civil power itself (perhaps here is the germ of that fatal pendulum between democracy and dictatorship that has been marking its republican life, except in the last twenty-six years);
b) It was predetermined by the theory inspired by foreign models, but without comparison with reality, which was totally different and distant from them;
c) It presented an incipient organization, which forced the centralization of power to control a situation that required action on several fronts (structuring of the state apparatus; formulation of the new legal order; design of action policies without having a diagnosis of the reality of the country and, even less, with an inventory of existing means and possibilities to face the needs of that hour; obtaining means for war; etc.);
d) It lacked a political elite with government experience, which caused improvisations and the adoption of circumstantial measures, without any projection, in the framework of confrontations between the existing caudillos and those who represented spheres of power; voids within which characters belonging to the clergy and the military forces assumed a leading power, despite the industrial bourgeoisie and the lower town; and
e) It administered a society in imbalance, due to the rupture of the colonial pact; imbalance that led to fights and internal clashes.

There is, then, since that early dawn as the Nation State, a divorce between society and the formal State, despite the fact that they were elements whose assembly and harmony were consubstantial for their real existence; divorce that became more palpable if one takes into account that being a disjointed society, without a true national conscience, with groups that had

different and even conflicting interests and, even, with ethnic groups in open conflict, an attempt was made to impose an imported law, a copy of the liberal models of Western Europe, neither tested nor consulted with the Peruvian people. Peru was born to independence in this contradiction, lacking the necessary elements to generate an integrating decision; therefore, absent a national integration requirement.

In reality, it was a birth as a formal Nation State rather than a real one, since in practice Peruvian society did not change in its essence,[3] but, on the contrary, as Basadre affirms, it showed "colonial survivals"[4] and "precolonial survivals".[5]

Within the "colonial survivals", due to the lack of continuity, energy, and integrity of the emancipatory impulse, caused by the lack of coherence and vision of its representatives, as well as by the factors that have been mentioned, the general bases of social life. Moreover, following the same historian,

> The division of castes continued; Although some Spaniards withdrew to Europe, their Peruvian children were, along with the offspring of the purely Creole nobility, the most important elements in the life of the salons; the family regimen continued without alteration; the Indians continued to be "the vile clay with which the social building is made"; the blacks continued as people attached to the old mansions and the great coastal estates. The clergy preserved the role of owner of the spiritual life of the wealthy classes as well as of the popular classes, also having privileges and privileges; although the missionary zeal in the Amazon region and the pageantry of the convents greatly diminished.[6]

The political organisms were replaced by others, but basically analogous: "the President replaced the Viceroy, the Supreme Court the Courts and the Municipalities the Cabildos. Lima and the coast maintained their primacy over the rest of the country. The voluminous file, the long processing, the bureaucratic delay".[7] It remained, and even increased, "employment, the search for honors and sinecures".[8]

In this same aspect, it is curious to observe how even the colonial legislation was maintained for more than three decades, until 1852, despite the

[3] *Ibidem*, p. 20.
[4] *Idem*.
[5] *Ibidem*, p. 23.
[6] *Ibidem*, p. 21.
[7] *Idem*.
[8] *Idem*.

various Constitutions that were dictated; agriculture not only remained in the same state but worsened due to lack of labor; mining entered a process of frank decline due to the elimination of the mitas, the absence of qualified human support, and the destruction of the Pasco mines; the tax and contribution regime remained intact; education did not undergo significant changes; and, to a certain extent, accentuated its deficiencies; and the regime of economic feudalism was not touched.

Regarding the "pre-colonial survivals",[9] the ayllu and the community (which still survives), the indigenous religiosity, as well as a series of traditions and customs typical of the time before the colony did not suffer any alteration.

However, said social topography showed several elements that were a contribution of emancipation, which we summarize below: the formation of a powerful army; the birth of an urban movement; the migration of a good number of English and North Americans; the importation of foreign ideologies, especially from France; the opening, at least at the level of official recognition, to all freedoms, except for the freedom of belief; the adoption of the system of separation of powers; and the tendency to imitate European life.

The army, due to the leading role it played in independence itself, as well as the role it played since the beginning of the Republic, through its commanding officers, became the fundamental element in achieving that libertarian feat, giving a militaristic fate to it. Indeed, the military were the ones who carried out the actions for freedom and the proclamation of independence and the military were the ones who, directly or indirectly, were in the leadership of the country from its beginnings, to the point that history records, apart from the events of the independence struggle, three periods of marked military presence since the Republic was founded in the 19th century: a first period, between 1827 and 1841, whose main protagonists were Santa Cruz and Gamarra; a second period, between 1841 and 1861, characterized by the predominance of Castile and its rivalry with Vivanco; and a third period, between 1862 and 1868, in which the military power began to weaken.

For Basadre, the militarism of the country's dawn was born of three causes: the first, as a recognition of the people in the face of the victories obtained, before which they tried to pay "a national debt of triumph";[10] the second, as a lesson after the defeat, which left the awareness of the need to

[9] *Ibidem*, p. 23.
[10] *Ibidem*, p. 106.

strengthen military power to prevent history from repeating itself; and the third, as a lifeline in situations of indecision or political and social crisis, where the army was "the only materially strong institution and, furthermore, the best organized class in moments of collective weakness".[11]

Alongside militarism, the social structure was made up of the nobility, the church, the middle classes, and the popular classes (within the latter, the indigenous and blacks), with respect to which we must specify:

1. The Peruvian nobility, arising from the conquest, to which the descendants of the conquerors, the officials and aristocrats who came from Spain and the families of commercial and bourgeois origin that had gained positions, were gradually incorporated, was weakened and under the formula of the new rich, but had not lost hierarchy. He had no political power, although he maintained social power.
2. The church, despite having survived almost without alterations to the founding of the Republic and maintained its full validity in the new order, "did not mean a differentiation in the authentic structure of the country"[12] and entered a certain relaxation; however, it did have some level of influence at the family and public levels.
3. The middle classes were divided between a plutocratic minority sector, which could be called the upper layer, and a large mass, which could be called the lower layer, which did not have access to trade or industry and constituted, according to Basadre himself, "a village mass, enough, abandoned, ignorant; an unstable political history to the point of comics".[13]
4. The natives did not experience any change. They continued in the same condition of marginalization, pauperism, abandonment and exploitation in which they found themselves before, with the aggravating circumstance that they were totally forgotten and exploited; so much so that the comparative analysis between the colonial legislation and that of the first years of the Republic shows that in the Colony, at least at the normative level, there were provisions that showed some concern for this sector.
5. Black people continued to be victims of slavery until 1854 and had no greater interest or participation in independence. What's more, they continued to work as peons and servants, at the service of the large landowners.

[11] *Idem*.
[12] *Ibidem*, p. 111.
[13] *Ibidem*, p. 115.

In conclusion, the beginning of the Republic shows us an alien landscape to the gestation of a decision for internal integration and, even less, of concrete actions to even undertake the path to adopt it, due in large part to the problems that have been outlined. and others whose detail escapes the purposes that convene us today, as well as a series of revealing variables of the existence since that time of a germ of violence in the very structure of Peruvian society.

Regarding this conclusion, it is pertinent to quote the words of Enrique Bernales, who, when analyzing the cultural factors of the Peruvian political crisis, in line with what was said by John Lynch, maintains that

> the formation of the Republic and the foundation of the independent State, they did not mean a substantive change in the pattern of existing social relations. The absence from the beginning, of a ruling class that definitively opted for democracy, of a liberating, democratic and efficient State, negatively marked the course of the newly founded State. There was a lack of those who assumed the task of building the unity of the Nation and from that solid base, progressing in the specificity of the Peruvian political system and institutions, which could be the cause of the scarce representation of the State. Only a small part of society feels convergent with him; another part sees it as something distant and even hostile, while a third part, perhaps the largest of the three, is indifferent and alien to the political model of the State.[14]

To this early dawn it should be added that the phenomenon of corruption had already been embedded in Peruvian society since colonial times, especially at the level of state administration, to the point that, following Alfonso Quiroz, one could speak of cycles of colonial corruption. During the mature Peruvian viceroyalty, which he considers to have been six and describes as follows: (i) an extremely high level of corruption from at least the second half of the 17th century to the early 18th century, (ii) a temporary but slight drop from the decade from 1720 to 1740, (iii) a marked increase from the 1750s to the 1770s, (iv) a brief but significant drop in the 1780s and 1790s, (v) a slight increase in the first decade of the 19th century, and (vi) a sharp rise in the decade before independence";[15] an author who also maintains that the most usual forms of corruption in this plane consisted of illegal and undue profits of the viceroy, the governors, of the magistrates

[14] Bernales, Enrique, "Crisis y Partidos Políticos", AA. VV., *Del Golpe de Estado a la Nueva Constitución. Serie de Lecturas sobre Temas Constitucionales*, Lima, *Comisión Andina de Juristas*, 1993, No. 09, p. 20.

[15] *Ibidem*, p. 100.

and the hearers, among others; in the use of administrative insufficiencies as a tool to obtain perks and favors to delay the collection of debts in favor of the State, as well as the supervision and maintenance of mines; and smuggling, among others.[16]

As is logical to suppose, the independence of Peru did not mean the end of corruption. On the contrary, the corruption continued but adapting to the new situations and realities that the Republic brought; process that has been studied with special care by the aforementioned historian Alfonso W. Quiroz and to whom we turn to make a brief review of the development of the phenomenon, pointing out that from the beginning there was what he calls "the undermined foundations of the early Republic, 1821- 1859", with the patriotic looting, the shady foreign loans, the caudillo patronage circles, the scourge of the guano regime, the debt consolidation scandals, the manumission compensation and the undaunted venality;[17] to cause "the winding road to disaster, 1860-1883", with the monopolistic guano businesses, the infamous Dreyfus contract, the avalanche of public works, the road to bankruptcy, the ignominy of war and the exacerbated losses;[18] reaching "modernization and those who took advantage of it 1884-1930",[19] with the hiring of the support of the military, the Grace contract, the legacy of the Caliph, the stage of Leguía and the civilistas with the scandals produced in the so-called Oncenio de Leguía, the inept sanctions and the legacies produced; passing to the stage of "the venal dictators and secret pacts of the period 1931-1962",[20] with the moralizing attempts of Sánchez Cerro and his populism against APRA, the restoration with Benavides, the politics of war without principles, the tightrope transition, the reward of General Odría, the thesis of forgiveness and forgetfulness and the reforms proposals; to arrive at "the assaults on democracy 1963-1989", with the broken promises of Belaunde, the smuggling scandal, the military revolution, the benign negligence, the media of Alán García, the frustrated trial and the persistence of patterns of corruption;[21] and lead to the infamous decade of the nineties to which we will refer later under the heading of the trigger produced in that decade.

[16] *Idem.*
[17] *Ibidem*, pp. 107-156.
[18] *Ibidem*, pp. 157-196.
[19] *Ibidem*, pp. 197-258.
[20] *Ibidem*, pp. 259-314.
[21] *Ibidem*, pp. 315-363.

2. *The detonator produced in the 90s*

As we have pointed out above, sharing with Alfonso Quiroz, "corruption in Peru was not something sporadic, but, rather, a systemic element, rooted in the central structures of society",[22] but what happened in the nineties of the last century exceeded all expectations and merited the label of infamous decade pointed out by the same author. Indeed, an infamous decade because, as Mario Vargas Llosa maintains, referring specifically to what happened after the self-coup carried out by engineer Alberto Fujimori, then Constitutional President of the Republic, on April 5, 1992, the dictatorship that emerged from himself, promoted corruption

> in a scientific, institutional way, organizing the Judiciary and the tax collection system with that design, as a very powerful instrument of coercion, which silenced criticism, kept the citizen on tenterhooks and forced him to serve to the regime, and at the same time that it fleeced right and left, it disguised the robberies and dispossession with a veneer of legality.[23]

Infamous decade because corruption permeated the entire social fabric: there was corruption in the management of public affairs, in the administration of justice, in practically all institutions, in the National Parliament, in the control body, in the armed institutes, in the mass media and, in general, in all the strata that make up the national social group. Corruption then acquired a more generalized dimension and increased considerably in size. This situation allowed the refinement of mechanisms typical of neofascism, using all the tools that power gives in all its aspects to debase some, persecute, and destroy opponents, implement a policy that minimized and relativized opponents.

Curiously, this level of corruption did not show its true face in the first years of the Fujimorato, in which the achievements, such as the defeat of terrorism with the capture of its maximum leader Abimael Guzmán, the sincerity and the reorganization of the national economy putting an end to the hyperinflation of the years of the first government of former President Alán García Pérez, the reintegration of the country into the international economic community and the implementation of a constitutional economic regime that highly promotes private investment as the main generator of

[22] *Ibidem*, p. 31.

[23] Cited in Markuz Delgado, Jane and Tanaka, Martín, *Lecciones del final del fujimorismo*, Lima, Institute of Peruvian Studies, 2001, p. 30.

wealth and respect for rules of the free market, established in the 1993 Constitution promoted by Fujimori as a condition for the return to democracy, meant high popular approval.

An infamous decade because corruption became so novel that it revealed the banality of many characters, many of them from the upper echelons of society.

Now, in line with what was stated by Jane Markuz Delgado and Martín Tanaka and paraphrasing them, we can affirm that

> Like many of his dictatorial predecessors, Fujimori remained in power by restricting the fundamental rights of citizens to the maximum. His administration faced numerous accusations of human rights violations and abuses of power both within Peru and abroad; until his downfall, he was able to counter them successfully by invoking the Legislative Branch, making gratuitous "democratic" gestures, or silencing his critics through threats, sanctions, or exile. Fujimori was able to maintain his balance on this diplomatic tightrope until the end of the decade, when his flagrant acts of corruption and illegal activities —especially those of his close adviser, the unofficial head of the SIN, Vladimiro Montesinos— tipped the delicate balance. of its legitimacy, causing it to collapse.[24]

3. *The reactions and the dimensions of the response*

As we have advanced in the introduction of this academic work, the situation described above, added to the fact that the country was stupefied through television, in an unprecedented way, the degree that this phenomenon had reached, when the famous " vladivideos", recorded in the room of the National Intelligence Service, SIN, by then-presidential adviser Vladimiro Montesinos Torres, triggered various and understandable reactions in all sectors of Peruvian society, since it was a public and evident finding that It produced great indignation throughout Peruvian society, which demanded the adoption of urgent and effective measures to end corruption promptly and effectively and with all that it meant.

We emphasize that in the visualization of the "vladivideos" the Peruvian society verified, with its own eyes, the degree of existing decomposition and as the typical crimes of corruption, such as concussion, improper collection, collusion, embezzlement, embezzlement and bribery, among oth-

[24] *Ibidem*, p. 12.

ers, were perpetrated with total impudence and without any hesitation by characters from the most diverse and high spheres of Peruvian society.

The natural indignation produced by the exhibition of the "vladivideos" caused multidimensional effects throughout the national social collective, that is, in the various sectors that comprise it and in various areas that comprise it; effects that we have already mentioned in the aforementioned introduction but that in this part we consider necessary to reiterate, among others:

1. It sharpened the population's sensitivity to everything that to some extent could mean corruption, which we could categorize as a hypersensitivity of the social group, which clouded many, leading them to a prejudiced attitude, lacking in objectivity, imbued with a spirit of intolerance and pregnant with an exacerbated desire to do "justice" without stopping to analyze in depth the peculiarity of each case and regardless of whether, in truth, those investigated were innocent or guilty. That is, a kind of blind vendetta in which the end justified the means. Obviously, in this climate of hypersensitivity, the fundamental rights of those involved became the last consideration that had to be considered.
2. It provoked a special zeal from the press, especially in investigative and denunciatory journalism, which focused its actions on the dissemination of the cases that were being discovered and that presented some hint of corruption, in a kind of competition between the media for the greater "uncovering", often abdicating certain rules governing journalistic activity, such as the verification of sources, the requirement to detect minimal elements of corroboration, respect for the right of those reported to hear their version of the facts and consideration of the rights of those involved, such as the right to a good reputation and image or the right to the presumption of innocence, among others;
3. It caused the refinement and sharpening of a kind of attitude of collective suspicion, of distrust in all orders, of a priori estimation that everyone was prone to crime, of devaluation of the person in general as a subject that makes up society, especially in the scope of the exercise of the public function, either by popular representation or by appointment or another modality of entry to the performance of the same, and in the sphere of private activity linked to public contracting; one could say a schizophrenic and even psychotic attitude in which the value of the human person was totally ignored;

4. It promoted a kind of collective summoning of civil society and the media to the political class, deteriorating its image and ignoring the recognition and guarantee of the exercise of political rights, and questioning its actions, to the point that new uncoverings were raised, multiple processes were opened at the level of the Public Ministry and the Judicial Power and a machinery was set in motion to persecute and punish the characters who were political actors and were accused of acts of corruption; all this without weighing the enormous damage that was being caused to Peruvian society by discrediting political activity, despite the fact that it is vital for the development of an authentic democracy; especially if what is intended is to consolidate a Constitutional State in Peru;
5. It inspired a draconian attitude of the prosecutors and judges in charge of investigating, prosecuting, sentencing and punishing the defendants, who relativized the constitutional guarantees, abdicating their constitutional and legal function, preferring the deprivation of liberty, even before the formalization of the complaint, the prosecution of the accused, the sentence and conviction of criminal responsibility, revealing a prisoner spirit and alien to the constitutional and conventional principles and values that should guide their actions;
6. It gave rise to the existence of a media and popular trial, irresponsibly encouraged by some sectors of the press, in which they were "condemned" in the face of the simple complaint, creating in the social imaginary the idea that the people who appeared to be involved were already guilty despite the fact that in many cases it was only simple speculation and a formal investigation had not even been initiated against them by the competent authority;
7. It encouraged merciless public pressure against prosecutors and judges, as well as against any authority in charge of the investigations that clamored for sanctions, encouraged by various media, opinion leaders, political figures, and civil society organizations, who did not hesitate to resort to prohibited methods. so that they pronounce themselves in the sense that they intended by sectarian sectors of society, which claimed the heritage, attributing the heritage of truth and despite the rights of those denounced and respect for the autonomy and independence of the authority; and finally;
8. It promoted a grotesque use of the issue of the fight against corruption as a banner for various opportunist, sectarian and manipulative social actors, extremist ideological politicians, parametric press and civil society organizations, among others.

In parallel, as we have also anticipated in the introduction, a change began to take place at the infra-constitutional normative level that translated into a series of modifications and innovations in the general material and procedural provisions of a penal nature and, in particular, in the norms regulations of the public sector, the exercise of the public function, the contracting carried out by the State, the control and monitoring of public management, criminal offenses, the management of funds held by state institutions, the Significant economic movements carried out by individuals and their monitoring, among many other measures that tended to facilitate the detection, denunciation, prosecution and punishment of acts related to corruption. That is to say, a change at the infra-constitutional normative level that led to an over-regulation elaborated as a reaction to what had been experienced, but in many cases lacking constitutional basis.

At this point it is necessary to emphasize that, as will be seen later, Peru, contrary to the constitutional and conventional regulations for the defense, protection and guarantee of human rights, as well as the jurisprudence of its Constitutional Court adopted in the facts the debatable theory of the expansion of criminal law, which under a simply punitive inspiration sacrifices the fundamental rights of those under investigation, under the underlying argument that the end justifies the means.

4. *The current landscape*

It is due to continue to make a description of the current landscape of Peru in regard to the phenomenon of corruption and its fight. In this regard, it is necessary to state, first of all, that in the time elapsed between 1995 (the year of the re-election of former President Alberto Fujimori) and so far this year 2021 of the 21st century, which is the year of the bicentennial of national independence, since next July 28, 2021, will be the two hundredth anniversary of our republican foundation, the country has lived in democracy and the various problems that have arisen in national life have been resolved following the constitutional thread, having passed practically twenty-six years of constitutional regularity, which is unprecedented in Peruvian history; years in which nine presidents have unusually succeeded each other and not six as it should have been, since the presidential term in Peru is five years. Namely: Alberto Fujimori (July 28, 1995 - November 21, 2000), Valentín Paniagua Corazao (November 22, 2000 – July 28, 2001), Alejandro Toledo Manrique (July 28, 2001 – July 28, 2006), Alan García Pérez (July 28, 2006 – July 28, 2011), Ollanta Humala Tasso (July 28,

2011 – July 28, 2016), Pedro Pablo Kuczynski Godard (July 28, 2016 – July 23, March 2018), Martín Vizcarra Cornejo (March 23, 2018 – November 9, 2020), Manuel Merino de Lama (November 10, 2020 – November 15, 2020) and Francisco Sagasti Hochhauser (November 17, 2020 to the date); It must mean that from 2016 to date there have been four presidents, due to a series of political events that it is not appropriate to address now, but, the most redeemable, within the constitutional framework.

Regarding the phenomenon of corruption, the situation has not abated. On the contrary, the scandals and uncoverings have continued in an ascending succession, within which the case of the Brazilian company Odebrecht stands out, in whose periphery many others appear, among which we can mention some only for illustrative purposes, such as the following: Case Lima Electric Train – Section I, Presidential Campaigns Case, White Collars of the Port Case, Chincheros Airport Case, South Interoceanic Case, No Revocation Case, Susana Villarán Re-election Case, Consulting Company Linked to PPK Case, South Peruvian Gas Pipeline Case Case of Costa Verde – Callao Section, Case of the Construction Club and Case of the Cusco Bypass Route.

These scandals and others have motivated investigations and judicial processes, having to date ex-president Fujimori sentenced and serving jail time, ex-president Toledo with an international arrest warrant, ex-president Ollanta Humala with a restricted appearance order after having been imprisoned with a preventive detention order for several months, former president Pedro Pablo Kuczynski with a preventive home detention order and former presidents Martín Vizcarra and Manuel Merino with ongoing tax investigations.

In this context, the hypersensitivity of the social group, the special zeal of the press for investigation and denunciation, the refinement and sharpening of a sort of attitude of collective suspicion and mistrust at all levels, the collective placement of civil society and the media to the political class, the draconian and anti-guarantee attitude of the prosecutors and judges in charge of investigating, prosecuting, sentencing and punishing those denounced, the media and popular trial, public pressure, the use of the theme of the fight against Corruption as a flag and hyper punitive regulation have been maintained when not increased, contrary to, we reiterate, the constitutional and conventional regulations for the defense, protection and guarantee of human rights, as well as the jurisprudence of the Constitutional Court.

Regarding the latter, it is worth mentioning that the Constitutional Court has recognized that the fight against corruption must be a consti-

tutionalized fight, insofar as it must always respect the human person and their fundamental rights. He has specified that although there is an attitude of distrust and suspicion in society for the acts of corruption that are known day by day, which devalues the human being by considering him "prone to crime", especially those who exercise public function or position , this attitude is unconstitutional and harmful because it deviates from the logic of the constituent that places the person above all, being his defense and respect for his dignity the supreme goal of society and the State. Thus, it has been pointed out in the Ollanta Humala-Nadine Heredia case, resolved in File No. 4780-2017-PHC and 0502-2018-PHC/TC (Joined), of which we were rapporteurs in our capacity as members of said Constitutional Collegiate; case of which we will account later.

III. The legal instruments to face the phenomenon

As we have stated when starting the treatment of the matter that concerns us today, we must now address the issue of existing legal instruments in Peru to deal with the phenomenon of corruption, reviewing the current constitutional and legal framework, as well as the regulations existing supranational, so we proceed below in that thematic order.

1. *The current constitutional and legal framework*

Regarding the constitutional framework itself, we specify that the current Political Constitution of Peru, which dates from 1993, does not contain any rule that expressly enshrines the word "corruption" or the phrases "fight against corruption", "fight against corruption" or similar. However, the Constitutional Court, as the supreme interpreter of the Constitution, has developed an important line of jurisprudence related to the fight against corruption; line in which, among other aspects, it has recognized the importance and imperative need to confront the phenomenon, has established that there are constitutional mechanisms to do so and has recognized the existence at the constitutional level of a "principle of proscription of corruption", the one that little by little has been profiling.

On the other hand, it has established that the fight against corruption must be a constitutionalized fight, in the understanding that its legitimacy involves placing the human person and their fundamental rights, such as

due process, the presumption of innocence, honor, defense, good reputation or respect for their dignity, above any other objective of the State. That is to say, that the firmness and determination of the State in combating corruption cannot in any way avoid the scrupulous respect for the fundamental rights of the human person, which is prior to and superior to the State itself. This, at the risk of delegitimizing it.

Now, and in relation to the jurisprudence of the Constitutional Court, we point out that in the third part of this work, which contains our proposal to confront corruption in a constitutional key, we will refer to some of its most important sentences in order with the jurisprudential line before pointed out.

Regarding the legal framework that includes the respective infraconstitutional regulations, we note that since the year 2000, at the beginning of this millennium, the Peruvian criminal justice system has undergone important modifications, among which is the implementation of the new Criminal Procedure Code, which has implied a significant change, since it has gone from the inquisitorial model established in the old Code of Criminal Procedures to an accusatory model, in which both the role and the powers of the Public Prosecutor's Office have been strengthened in terms of ownership of criminal action public, to the promotion and direction of the criminal investigation, the complaint, the promotion of the process and the accusation itself, conferring a series of powers that include the preliminary investigation and the possibility of obtaining restrictive measures for the investigated before the formulation of the complaint, which includes even the deprivation of liberty and has been left to the Power Judiciary, from the point of view of a guaranteeing role, the task of the trial itself, in addition, by the way, to pronounce against the requirements formulated by the parties, both by the Public Ministry and by the accused or third parties.

Now, although the new model has sought to put the emphasis on the human being, since this has as guiding lines the respect for the principle of equality, the right of defense, the plurality of instance, the no *reformatio en peius*, the presumption of innocence, judicial impartiality, among others, subsequently a series of legal provisions have been issued that have been assuming an essentially persecutory and punitive character, invoking the banner of the fight against corruption and despite constitutional guarantees, which have not been exempt from criticism for their questionable constitutionality, such as those that regulate the "conviction of the acquitted", in which the person acquitted in the first instance and convicted in the second instance does not have an effective remedy that enables the review of his sentence; the application of "pretrial detention", which has received many questions and pronouncements by the Constitutional Court; the "early ter-

mination", which can lead to the acceptance of the charges by a desperate innocent person, without further evidence; among others.[25]

It is in terms of the fight against corruption that the so-called "Integrity and Fight Against Corruption Policy" has been implemented for several years, giving rise to a lush subconstitutional legislation, a marked overregulation of questionable constitutionality, a hardening, and a prioritization of punitive mechanisms, which collide in many cases with the humanistic and guarantees philosophy that inspires the Peruvian constituent legislator. It is reflected in said legislation, according to some scholars, the logic of dealing with this phenomenon under the premise of the end justifies the means, making the system increasingly draconian and more severe, but without considering the constitutional norms that guarantee, for above all, the recognition, protection, guardianship and rescue of fundamental rights.

Having made these clarifications, we must point out that, among others, at the legal and infralegal level, the following regulations have been issued:

1. Law 27806, of July 13, 2002, called the Law of Transparency and Access to Public Information, on transparency of State acts and the fundamental right of access to public information.
2. Law 27815, dated August 12, 2002, which approved the Code of Ethics for the Public Function, establishing the principles, duties and ethical prohibitions that apply to public servants.
3. Legislative Decree 957, dated July 29, 2004, which approved the new Code of Criminal Procedure, which, as we mentioned earlier, introduced a new model for the application of criminal justice, of an accusatory nature.
4. Law 29976, dated January 4, 2013, which created the High-Level Anticorruption Commission, which aims to articulate efforts, coordinate actions and propose short, medium and long-term policies aimed at preventing and combating corruption in the country.
5. Law 30077, dated August 20, 2013, Law Against Organized Crime, which establishes the rules and procedures related to the investigation, prosecution and punishment of crimes committed by criminal organizations; which extends its application to crimes against the Public Administration, in the modalities of concussion, improper collection, simple and aggravated collusion, fraudulent and negligent embezzlement, own passive bribery, passive international brib-

[25] Vásquez Arana, César, *El sistema acusatorio y las inconstitucionalidades del nuevo Código Procesal Penal*, *Lex*, *Revista de la Facultad de Derecho y Ciencia Política de la Universidad Alas Peruana*, Lima, Year XII, núm. 14, pp. 189 et seg.

ery, improper passive bribery, specific passive bribery, passive corruption judicial assistants, generic active bribery, transnational active bribery, specific active bribery, incompatible negotiation or improper use of office, influence peddling and illicit enrichment; defining as a criminal organization any group of three or more people who share various tasks or functions, whatever its structure and scope of action, which, with a stable character or for an indefinite period of time, is created, exists or functions, unequivocally and directly, in a concerted and coordinated manner, with the purpose of committing one or more serious crimes. Allowing, in addition, the use of special investigation techniques, including the interception of communications.

6. Law 30111, dated November 26, 2013, which incorporates the penalty of a fine as an accessory in the crimes of concussion, simple and aggravated collusion, fraudulent and negligent embezzlement, embezzlement of use, embezzlement, own passive bribery, passive international bribery , improper passive bribery, passive corruption of judicial assistants, generic active bribery, transnational active bribery, specific active bribery, incompatible negotiation or improper use of office, influence peddling and illicit enrichment.
7. Law 30214, dated June 29, 2014, which grants the category of extraprocedural institutional expertise with specific probative weight to the control reports of the Comptroller General of the Republic.
8. Law 30424, of April 21, 2016, which regulates the administrative responsibility of legal persons for the crime of active transnational bribery, modified by Legislative Decree 1352, dated January 7, 2017, which expanded the administrative responsibility of legal persons in other crimes related to corruption.
9. Law 30304, of February 28, 2015, which prohibits the suspension of the execution of the sentence in the crimes of simple and aggravated collusion, and fraudulent and negligent embezzlement committed by public officials and servants.
10. Legislative Decree 1243, dated October 22, 2016, which modifies the Criminal Code and the Criminal Enforcement Code, establishing and extending the duration of the main disqualification sentence, and incorporating perpetual disqualification for crimes committed against Public administration; in addition to creating the Single Registry of Disabled Convicted.
11. Legislative Decree 1279, dated December 28, 2016, which establishes the duty of all people to register family ties with the National Reg-

istry of Identification and Civil Status to facilitate the fight against corruption.
12. Legislative Decree 1291, dated December 29, 2016, Legislative Decree that approves tools for the fight against corruption in the Interior Sector.
13. Legislative Decree 1295, dated December 30, 2016, on the disqualification for the exercise of public function and impediments of sanctioned servants.
14. Legislative Decree 1307, dated December 30, 2016, on effective measures in the prosecution and punishment of crimes of corruption of officials and organized crime.
15. Legislative Decree 1327, of January 6, 2017, on protection measures for whistleblowers of acts of corruption.
16. Legislative Decree 1353, dated January 7, 2017, Legislative Decree that creates the National Authority for Transparency and Access to Public Information.
17. Law 30737, of March 12, 2018, on ensuring the immediate payment of civil compensation in favor of the Peruvian State in cases of corruption and related crimes.
18. Emergency Decree 020-2019, dated December 5, 2019, which provided for the mandatory submission of the sworn declaration of interests by civil servants, those who perform public functions and others, regardless of the labor or contractual regime in which they are in public administration entities.

Having made the mention of the regulations detailed above, it is necessary to emphasize that the Peruvian penal system has been hardening, typifying new criminal figures, increasing some penalties, empowering the Public Ministry, and minimizing, if not ignoring, the protection and guarantee of fundamental rights.

2. *The supranational regulation*

Regarding the supranational regulations on corruption, there are two main international treaties that Peru has concluded, in addition to a series of other legal instruments, resolutions, reports, recommendations or international working documents that deal with specific issues on said phenomenon.

The aforementioned two main international treaties concluded by Peru in the fight against corruption are the following:

1. The Inter-American Convention against Corruption, called CICC, which was approved by Legislative Resolution 26757, of March 5, 1997 and ratified by Supreme Decree 012-97-RE, dated March 21, 1997; Article II of which establishes that its purposes are to promote and strengthen the development, by each of the States Parties, of the necessary mechanisms to prevent, detect, punish, and eradicate corruption; as well as to promote, facilitate and regulate cooperation between the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate acts of corruption in the exercise of public functions and acts of corruption specifically related to such exercise. To this end, it regulates a series of topics, such as preventive measures aimed at creating, maintaining and strengthening standards of conduct for the correct performance of public functions, mechanisms to enforce compliance with said standards of conduct, among others (article III); the scope of application of the Convention (article IV); the adoption of the necessary measures by each State to exercise its jurisdiction over the crimes it has established based on the Convention (article V); the types of acts of corruption (article VI); the adoption of internal legislative measures (article VII); the regulation of the figure of international bribery (article VIII); among others.
2. The United Nations Convention against Corruption, called UNCAC, which was approved by Legislative Resolution 28357, dated October 6, 2004, and ratified by Supreme Decree 075-2004-RE, dated October 19, 2004, the whose purpose is to promote and strengthen measures to prevent and combat corruption more effectively and efficiently; promote, facilitate and support international cooperation and technical assistance in preventing and combating corruption, including asset recovery; and promote integrity, accountability and proper management of public affairs and property.

   This treaty regulates a series of very important aspects in the fight against corruption. Its article 3, for example, contemplates its scope of application, which includes the prevention, investigation and prosecution of corruption and the preventive seizure, seizure, confiscation, and restitution of the proceeds of crimes established in accordance with it. Its article 5 regulates the policies and practices of prevention of corruption, establishing the obligation of each State party to formulate and apply or maintain in force coordinated and effective policies against corruption that promote the participation of

> society and reflect the principles of the rule of law. the law, proper management of public affairs and public goods, integrity, transparency, and accountability.

It is also interesting to highlight article 30, numeral 4, of this Convention, which literally indicates:

> In the case of crimes established in accordance with this Convention, each State Party shall adopt appropriate measures, in accordance with its domestic law and taking due account of the rights of the defense, with a view to ensuring that, when imposing conditions in relation to the decision to grant release pending trial or appeal, bearing in mind the need to ensure the appearance of the accused in any subsequent criminal proceedings.

In other words, when people are judged internally for crimes of corruption, their rights to defense must be duly considered. Later, in numeral 6 of the same article, this Convention also refers to the presumption of innocence, expressly stating that:

> Each State Party shall consider establishing, to the extent consistent with the fundamental principles of its legal system, procedures under which a public official charged with an offense established in accordance with this Convention may, when appropriate, be dismissed, suspended, or reassigned by the corresponding authority, bearing in mind respect for the principle of presumption of innocence.

These two main treaties are part of domestic law in accordance with the provisions of article 55 of the Political Constitution of Peru.

For the rest, as we pointed out in the previous paragraph, there are many other legal instruments, resolutions, reports, recommendations, or international working documents that deal with specific issues regarding this phenomenon, such as:

1. The Convention to Combat Bribery of Foreign Public Officials in International Business Transactions;
2. United Nations Resolution 51/59, dated December 16, 1996, which approved the International Code of Conduct for public office holders and recommended that Member States be guided by it in their fight against corruption;
3. The United Nations Convention against Transnational Organized Crime, approved by Resolution 55/25, of November 15, 2000, which contains some provisions related to corruption;

4. Resolution 55/188, of December 20, 2000, on "Prevention of corrupt practices and illicit transfer of funds and fight against them and repatriation of those funds to their countries of origin"; and
5. The "Declaration of Lima on the Basic Lines of Auditing", from the end of 1998.

From the supranational regulations referred to above, it is observed that the States have the inescapable obligation to fight, fight and defeat corruption, for which purpose a series of instruments oriented to the detection of the phenomenon and its confrontation are consecrated, with respect to which it would be necessary to delimit that everything dealt with in it must be developed in a framework of full respect for the fundamental rights of those who are investigated, prosecuted and convicted of crimes of corruption, since no matter how rigorous a regulation may be in situations arising from acts of corruption this should not deviate from the value of the human person, from respect for their rights, from their recognition and guarantee, and from a righteous action legitimized by its conventionality and its constitutionality with respect to each State.

IV. Our proposal to face it constitutionally

1. *The return to constitutional principles and values*

What has been discussed so far translates that the battle against corruption that Peru has been waging on various fronts is fueled by abundant legislation, both national and supranational, which for many is excessive, but runs the risk of losing its legitimacy, due to its mismatches with the recognition, guarantee and protection of the fundamental rights established by the Supreme Law of the Republic; situation that our Constitutional Court has hinted at in the judgment issued in the Ollanta Humala-Nadine Heredia Case, File No. 4780-2017-PHC/TC and 0502-2018-PHC/TC (joined), on whose grounds 124, 125, 126 and 127 has literally expressed the following:

> It is important to state that, because of the current social situation of mistrust of authority as a result of recent cases of corruption, the country as a whole has been living in an attitude of collective suspicion that has ended up placing the person in general who exercises a public function or position in particular as a subject considered in his own right "prone to crime". In other words, a totally unconstitutional, prejudiced and harmful attitude has been implanted,

which abdicates the logic of the Peruvian Constituent Legislator, who has opted for a system that considers the human person as the supreme goal of society and the State, which is prior and superior to the State and holder of a series of rights that are inherent to it, called, beyond the academic digressions that the doctrine collects, human rights, fundamental rights, rights of the person or constitutional rights; among which are the right to honor and good reputation, the right to defense and respect for their dignity, and the right to the presumption of innocence until their guilt has been judicially proven, by means of a firm and definitive sentence.

This attitude totally contradicts the clear mandate contained in article 1 of the Constitution, which to the letter prescribes that: "The defense of the human person and respect for his dignity are the supreme goal of society and the State". This precept shows the logic and philosophy of the Constituent Legislator, who, in rescue of the human person value, establishes the constitutional obligation for everyone, society as a whole and each one of its members, as well as the State itself as a national entity and a set of organs and institutions that integrate it within its structure, to defend the human person, and by the way all his rights, and to respect his dignity, as a human being who is the center of the political, social, and economic organization of the country. It then contains an inescapable mandate and that, in addition, contains the concept of solidarity, which is essential in the Constitutional State.

Along the same lines, article 2 of the Constitution enumerates a set of rights, which in what concerns the case, it is interesting to highlight, in addition to the right to human dignity, the rights to honor, good reputation, privacy and personal freedom and security. And, among these last fundamental rights, that of not being forced to do what the law does not command or prevented from doing what it does not prohibit; that of enjoying personal freedom; that of not being imprisoned for debts, except food; not to be prosecuted or sentenced for an act or omission that at the time it was committed was not previously qualified in the law, expressly and unequivocally, as a punishable offense or sanctioned with a penalty not provided for in the law; and that of being considered innocent until his responsibility has been judicially declared; provided for in article 2, subsections 7 and 24, sections a), b), c) and d) of the Political Constitution of Peru.

With regard specifically to the State and more especially to the ordinary judiciary, respect for such rights must be the pivot of all its actions, especially when acting in the field of criminal justice, in which the following principles prevail: respect and defense of fundamental rights; the presumption of innocence in favor of the investigated; doubt favors the accused; the burden of proof corresponds to the Public Ministry as the head of the public criminal action; and the clear, precise and indubitable criminal classification of the act attributed as punishable. Thus, it is necessary to constitutionalize the full exercise of the criminal judiciary, within the framework of its autonomy and

> independence, to guarantee maximum probity, suitability, impartiality, honesty and courage, and, in addition, compliance with the principles of reasonableness, weighting, proportionality and interdiction of the arbitrariness that the Constitutional Court has developed in its jurisprudence, as the supreme interpreter of the Constitution, of the law and, in general, of all positive law. (Foundations 124-127).

Note the review of the aforementioned foundations that the Constitutional Court of Peru reveals with all clarity and forcefulness:

1. The existence of a situation of mistrust and an attitude of collective suspicion because of recent cases of corruption.
2. The pejorative conceptualization that the person in general and who exercises a public function or position in particular is a subject prone to crime.
3. The implantation of a totally unconstitutional, prejudiced and harmful attitude with respect to the human person, which abdicates the humanist logic of the Peruvian constituent legislator.
4. The contradiction, violation and disregard of the clear mandate contained in article 1 of the Political Constitution of Peru, which in its first part stipulates that "The defense of the human person and respect for their dignity are the supreme goal of society and of the state".
5. Failure to comply with the constitutional obligation for all, which includes society as a whole and each of its members, as well as the State itself, both as a national entity and as a set of bodies and institutions that comprise it, to defend the person and of course all their rights, respecting their dignity and their character of being the center and reason for being of the political, social and economic organization of the country.
6. The forgetting of the concept of solidarity, which is inherent in the very essence of the Constitutional State and which radiates an obligation for all with regard to the defense of the human person and respect for their dignity as well as their rights.

7. The reminder to the State and especially to the judiciary, that they owe the utmost respect to such rights, as the axis of all their actions; especially in the field of criminal justice, so that the following principles prevail:

   a) Respect for and defense of fundamental rights;
   b) The presumption of innocence in favor of the investigated;
   c) Doubt in favor of the accused;
   d) The burden of proof for the Public Ministry as head of the public criminal action; and
   e) The clear, precise and indubitable criminal classification of the act attributed as punishable.
   f) The claim of the need to constitutionalize the full exercise of the criminal judiciary, within the framework of its autonomy and independence, to guarantee the maximum probity, suitability, impartiality, honesty and courage.

It is, then, as the Constitutional Court points out, to battle with the phenomenon of corruption without abdicating the value of the human person advocated by the Peruvian Constitutional State as the highest of all. To imbue in criminal proceedings the guarantee of full respect for fundamental rights in each procedural act and in all instances of the process, since the fight against corruption cannot become an excuse to relativize the validity of the fundamental rights of the person, in a kind of justification to put aside all the measures conducive to always protecting those rights, no matter how serious and despicable the crimes that are imputed may be.

It is clear, therefore, that a confrontation with the phenomenon of corruption in a constitutional key is necessary. That is, adjusting it to the constitutional canons and patterns, as well as the constitutional telos, which implies looking back at the essential values and principles that constitute the foundation and base of the National Constitution.

For the rest, also regarding the phenomenon of corruption, the Constitutional Court has established the following:

In the first place, that corruption is in itself "a social phenomenon that cannot be avoided", and that it is found "inside and outside the administration of the State itself", so that in the anti-corruption policy it must be established " the link between the State and civil society, to the extent that the defense of the constitutional 'program' requires comprehensive action". (foundation 53 of Judgment 0009-2007-PI/TC and joined)

Secondly, that the constitutional order "requires combating all forms of corruption", for which purpose "the constituent has established mecha-

nisms of parliamentary political control (articles 97 and 98 of the Constitution), ordinary judicial control (article 139 ° of the Constitution), constitutional legal control (article 200 of the Constitution), administrative control, among others" (ground 54 of Judgment 0009-2007-PI/TC and joined).

Thirdly, that the process of fighting corruption, both that linked to the state apparatus and those that exist in other areas,

> compels the classic powers of the State, to which the Constitutional Court is added in the fulfillment of the duty of the concentrated and diffuse constitutional jurisdiction, take concrete constitutional measures in order to strengthen democratic institutions, thereby avoiding a direct attack against the social and democratic State of Law, as well as against the integral development of the country (foundation 55 of Judgment 0009-2007-PI/TC and joined).

Fourth, that the Constitutional Court "also has to establish itself in a position of defense and support of the same, which allows the consolidation of a normative project to overcome any form of crisis of social and political coexistence, of the different interests of public importance, which enable its responsible management and the reestablishment of a social ethic" (ground 56 of Judgment 0009-2007-PI/TC and accumulated).

Fifth, that the aforementioned regulatory project acquires its own legal dimension in the constitutional principles of transparency and publicity, as well as cooperation between the State and the different social agents, in "the fulfillment of the constitutional duty to respect, fulfill and defend the Constitution and the legal system of the Nation (article 44 of the Constitution)", to enable the creation and consolidation of "a fundamental ethical environment that strongly rejects social tolerance with respect to all possible forms of corruption and irregularity in the management of public interests" (foundation 57 of Judgment 0009-2007-PI/TC and accumulated).

Sixth, that the following four principles and values of the democratic order must be guaranteed: "the public's right to information, the constitutional principle of publicity, the constitutional principle of transparency, and the constitutional principle of the prohibition of corruption" (foundation 58 of the Judgment 0009-2007-PI/TC and accumulated).

2. *The revaluation of the human person and their rights*

It is urgent to achieve a real and effective fight against corruption, that attacks its very foundations, which undoubtedly have germinated in many due to the educational deficiencies produced from an early age, that the task

of revaluing the person be addressed and to society itself, insofar as the former constitutes the reason for the existence of the State and the very core of the conception that inspires it.

This implies undertaking a great national crusade to rescue the value of the human person, through joint action and solidarity of all social sectors, which must assume a patriotic commitment to put all their efforts into what we could call a process of revaluing the human person, through educational campaigns at all levels to disseminate, explain and make the entire population aware of the constitutional principles and values, in the line of sowing an individual and collective identification with them, which allows ensuring in each member of the social group a respectful attitude towards them and a defender of fundamental rights.

Thus, the logic that currently reigns, characterized, as has been anticipated, by a sort of pejorative conceptualization of all members of Peruvian society, which makes us unscrupulous and prone to crime, will be modified, to establish a conception that is not only humanistic , but also principled and respectful of others, as well as their rights, which constitutes an incentive for the most honest and qualified people to participate in public life and in the various tasks required by the Constitutional State, in all its dimensions.

We could say, revalue and not devalue the human person, applying a constitutional logic that respects the aforementioned rights.

3. *The adaptation of the regulation of the Constitution*

The pejorative conceptualization of the human person to which we have made reference in the previous paragraphs has become, for approximately twenty-five years, in an infraconstitutional overregulation, which starts from the erroneous premise of considering the members of Peruvian society as people who are always predisposed to crime, to the point that in matters of State contracting, for example, the bidder who has won the award in a selection process has to sign a so-called "non-bribery agreement", by virtue of which he undertakes not to commit criminal offenses in the execution of the contract or, in the same field of public contracting, the impediment that the relatives of various public officials have, such as the spouse, cohabitant or relatives up to the fourth degree of consanguinity and second of affinity, to be a participant, bidder or contractor in the contracting processes with the State.

This collective attitude has surpassed the spectrum of Criminal Law towards other areas of sanctioning Law, to the point that today mechanisms

such as the polygraph are used in the private sector so that the employer can have confidence in his worke;[26] while in the public sector mechanisms have been overregulated to combat any irregular conduct with the full force of the law (sanctioning procedures for complaints,[27] post audit procedures,[28] disciplinary procedures, internal control procedures[29] and external,[30] simultaneous control procedures, tax presumptions,[31] virtual and physical claims

[26] Constitutional Court of Peru, Judgment 273-2010-PA/TC, March 18th, 2014.

[27] Article 235 of Law 27444, Law of General Administrative Procedure. Entities in the exercise of their sanctioning power will adhere to the following provisions: 1. The sanctioning procedure is always initiated ex officio, either on its own initiative or because of a superior order, motivated request from other bodies or entities or by complaint.

[28] Numeral 1.16 of article III of the Preliminary Title of Law 27444. The processing of administrative procedures will be based on the application of subsequent auditing; reserving the administrative authority, the right to verify the veracity of the information presented, compliance with the substantive regulations and apply the pertinent sanctions in case the information presented is not truthful.

[29] Article 7 of Law 27785, Organic Law of the National Control System and the Comptroller General of the Republic. Internal control includes the prior, simultaneous and subsequent verification actions carried out by the entity subject to control, with the aim that the management of its resources, goods and operations is carried out correctly and efficiently. Its exercise is prior, simultaneous, and subsequent …

[30] *Idem*. External control is understood as the set of policies, standards, methods, and technical procedures that the Comptroller General or another body of the System commissioned or designated by it is responsible for applying, for the purpose of supervising, monitoring and verify the management, collection and use of State resources and assets. It is carried out fundamentally through selective and subsequent control actions.

[31] Article 65 of the Single Ordered Text of the Tax Code. The Tax Administration may make the determination based, among others, on the following presumptions: 1. Presumption of sales or income due to omissions in the sales register or income book, or failing that, in the affidavits, when no present and/or said record and/or book is not displayed. 2. Presumption of sales or income due to omissions in the purchase register, or failing that, in the sworn declarations, when said register is not presented and/or displayed. 3. Presumption of income omitted from taxable sales, services, or operations, due to the difference between the amounts registered or declared by the taxpayer and those estimated by the Tax Administration by direct control. 4. Presumed sales or purchases omitted due to the difference between registered goods and inventories. 5. Presumption of omitted sales or income due to undeclared or unregistered assets. 6. Presumption of omitted sales or income due to differences in accounts opened in Companies of the Financial System. 7. Presumption of omitted sales or income when there is no relationship between the inputs used, production obtained, inventories, sales and provision of services. 8. Presumption of sales or income in case of omissions. 9. Presumption of omitted sales or income due to the existence of negative balances in the flow of income and cash outflows and/or bank accounts. 10. Presumption of Net Income and/or omitted sales through the application of economic tax coefficients. 11. Presumption of omitted income and/or omitted taxable operations in the exploitation of slot machine games. 12. Presumption of remuneration for failure to declare and/or register one or more workers. 3. Others provided for by special laws. The application of the presumptions will be

book,[32] face-to-face complaints and reports,[33] online[34] and telephonic,[35] etc.).

Such regulations affect, among others, the fundamental rights to honor, good reputation, respect for their dignity, the presumption of innocence and also the right to contract for lawful purposes; and reveals the idea that the legislator has had many times when exercising his legislative powers, since by regulating various topics, he has forgotten the humanistic principles that inspire our Fundamental Charter.

This dislocation between what happens with the Constitution, which advocates respect for and defense of the human person, as an ontological project that is prior to and superior to the State itself, around which the entire legal system must revolve, and the infra-constitutional norms, which they ignore the values, principles and goods that the Constitution protects and that contemplate a philosophy of distrust in the human being, since they always see him with an inclination to commit crimes, as if this were the rule and not the exception, he must be overcome in his integrity, articulating the infraconstitutional regulations to the Supreme Charter of the Republic.

4. *The role of the press and social actors*

Our reality currently shows us that there is a criminal process in which responsibilities are determined against offenders, officials and/or public or private servants, for allegedly having incurred in acts of corruption (within which all guarantees of due process must be respected). , and alongside this there is a "media trial" that is promoted by the media and in which the guilt of the person who is still on trial is often presumed and he is burned at

considered for the purposes of the taxes that constitute the National Tax System and will be subject to the application of the fines established in the Table of Tax Offenses and Penalties.

[32] Article 150 of Law 29571 (Consumer Defense Protection Code). Commercial establishments must have a claim book, in physical or virtual form. The regulation establishes the conditions, the assumptions, and the other specifications for the fulfillment of the obligation indicated in this article.

[33] Submitting a form to *Super Intendencia Nacional de Aduanas y de Administración Tributaria, http://www.sunat.gob.pe/defensoriacontrib/denuncias/formulario/FormatoDenuncias.pdf.*

[34] National Complaints Attention System (SINAD in Spanish) of the Comptroller General of the Republic, *//appscgr.contraloria.gob.pe/sinad,* SUNAT Office for Ethical Strengthening and Fight against Corruption, *http://www.sunat.gob.pe/institucional/plananticorrupcion/denuncias.html.*

[35] Ministry of the Interior: Line 1818, Ministry of Women, and vulnerable populations: *aló transparencia* 0800-17474.

the stake without the possibility of defending himself; accusations are made without evidence and thereby irreparably damage the image, honor and good reputation of people; public opinion is conditioned; and, what is even worse, the administration of justice is indirectly pressured so that in certain cases it resolves in a certain sense. Journalists are the new judges of the 21st century. It seems that the press has become a special judiciary, with its own rules, of a single instance and of unquestionable rulings.

This situation, then, seriously reflects the ethical crisis that the press has been suffering in relation to what is supposed to be the serious development of the right to information through the media.

Today, any fact that over time may presumably lead to an incorrect exercise of public functions is immediately accused of "corruption" and displayed by the media on the front page in those terms, without considering that the way of presenting the information ends up subjecting an official or public servant to public ridicule —who may be correctly exercising their functions—, since it presents and directs the news towards the worst of interpretations for the sole fact of giving a "supposed scoop" (sensationalism), behind which, due to the haste that the publication evidences for not having concluded with the journalistic investigation —as it would have been to confirm the validity of the representation with the association involved—, only the economic purpose of the total sale of the print run is identified.

This ethical crisis, which shows an overwhelming and implacable press with any hint of irregularity, becomes at the same time, one of the compelling reasons why the "honest" citizen has lost interest in participating in public management and for which the "honest" public servant maintains the culture of secrecy, since both feel that working for the State means lacking mechanisms to defend their privacy, their honor and good reputation.

V. Conclusive Remarks

The fight against corruption that is taking place in Peru must, as a matter of urgency, adapt its actions to the principles, values, rights, and precepts contained in the Constitution. To achieve this, along with initiating a solidarity campaign of awareness and the creation of a true constitutional sentiment, which revalues the human being and the entire society, it is urgent to constitutionalize said struggle, which will legitimize it. The abundant punitive legislation created as a result of the "infamous decade" must be adapted to the constitutional regulations and demand a more serious and responsible attitude from the press, which does not overwhelm the rights of the people,

such as the rights of defense, honor, good reputation, the presumption of innocence and respect for the dignity.

Progress has been made, there is no doubt, denouncing, prosecuting and convicting many public and private figures who committed criminal offenses, but many innocent people have also been harmed, who were convicted by "media trials". This is not compatible with an authentic Constitutional State. It is a priority to constitutionalize the fight against corruption.