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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

PERU

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CONSTITUTIONAL AND LEGISLATIVE REFORMS
CONCERNING THE JUDICIARY**

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I. Laws and draft laws in respect of the functioning of judiciary

- A. Draft Law amending Articles 150 and 102-A, 179 paragraphs 1, 2, 3, 4, and 5 of the Political Constitution of Peru; amending Articles 29, 74, and 81 of Legislative Decree No. 767 of the Organic Law of the Judiciary and incorporating Articles 29-A and 94-A; amending Article 2 of Organic Law No. 30916 of the National Board of Justice; amending Article 107 of the Judicial Career Law; amending Article 10 and 22 of the Organic Law of the National Elections Board (Bill No. 9675/2024-CR)**

Article 1. Purpose and objective.

The purpose of this law is to amend Articles 150, 102-A, 179 paragraphs 1, 2, 3, 4 and 5 of the Political Constitution of Peru, Articles 29, 74 and 81, and to incorporate Articles 29, 74 and 81 of the Organic Law of the Judiciary. It also amends Article 2 of the Organic Law of the National Board of Justice, Law No. 30916, amends Article 107 of the Judicial Career Law, and amends Articles 10 and 22 of the Organic Law of the National Elections Board, with the aim of reforming the country's justice system.

Article 2.- Amendment of Articles 150 and 102-A of the Political Constitution of Peru

Articles 150 and 102-A of the Political Constitution of Peru are hereby amended to read as follows:

"Article 150. The National Board of Justice is responsible for the selection and appointment of judges and prosecutors, **with the exception of supreme judges and prosecutors**, or those who are elected by popular vote.

The National Board of Justice is independent and governed by its Organic Law."

"Art. 102-A. The powers of the Senate are as follows:

[...]

4. To elect **the judges of the Supreme Court of Justice of the Republic and the supreme prosecutors** by a two-thirds vote of the legal number of its members."

Article 3.- Amend Article 179, paragraphs 1, 2, 3, 4, and 5 of the Political Constitution of Peru and Articles 10 and 22 of the Organic Law of the National Elections Board.

Article 179 of the Political Constitution of Peru

The highest authority of the National Elections Board is a Plenary composed of five members:

- 1. A representative elected by secret ballot from among its retired or former supreme magistrates.**
- 2. A representative elected by secret ballot by the board of supreme prosecutors from among its retired or dismissed supreme prosecutors.**
- 3. A representative elected by secret ballot by the Federation of Bar Associations of Peru.**
- 4. A representative elected by secret ballot by the senior professors of the law faculties of public universities.**
- 5. A representative elected by secret ballot by the senior professors of the law faculties of private universities.**

Article 10 of the Organic Law of the National Elections Board. The members of the Plenary of the National Elections Board are elected:

- a. **One representative elected by secret ballot from among retired or dismissed supreme court justices.**
- b. **A representative elected by secret ballot by the board of supreme prosecutors from among its retired or dismissed supreme prosecutors.**
- c. **One representative elected by secret ballot by the Federation of Bar Associations of Peru.**
- d. **A representative elected by secret ballot by the senior professors of the law faculties of public universities.**
- e. **A representative elected by secret ballot by the senior professors of the law faculties of private universities.**

Article 22. The members of the National Electoral Jury, in plenary session and by secret ballot, shall elect the president from among their members.

For the election, no fewer than three votes are required in the first ballot. If this number is not reached, a second ballot is held, in which the person who obtains the highest number of votes is elected. In the event of a tie, a final ballot is held. If the tie is repeated, the person with the most seniority in the position is elected and, in the event of a further tie, the person with the most seniority in the professional association is elected.

The president of the National Electoral Jury is elected for two years and has the following functions:

- a. To represent the National Electoral Board in all its activities.
- b. To convene and preside over plenary sessions, direct debates and maintain order during them.
- c. Implement the agreements of the Plenary Session of the National Electoral Board.
- d. Execute the budget of the National Elections Board.
- e. Exercise collegial authority with the heads of the National Office of Electoral Processes and the National Registry of Civil Status and Identification over the budget of the Electoral System.
- f. Coordinate with the heads of the other agencies of the Electoral System.

Article 3. Amend Articles 29 and 30 of Legislative Decree No. 767 of the Organic Law of the Judiciary and incorporate Article 29-A and Article 94-A.

Article 29 of Legislative Decree No. 767 of the Organic Law of the Judiciary shall be amended and Article 29-A and Article 94-A shall be incorporated, to read as follows:

"Article 29.- The Supreme Court is composed of 13 Supreme Justices, distributed as follows:

1. The President of the Supreme Court.
2. The other Supreme Justices who are members of the jurisdictional chambers.

The representative of the judiciary before the National Electoral Jury shall be a former or retired Supreme Court judge.

Article 29-A. The head of Judicial Oversight and the members of the Executive Council of the Judiciary of the Supreme Court shall be elected following a public competition organised by the human resources department of the Supreme Court, and no Supreme Court judge may assume such positions.

Article 30.- Specialised Chambers

The jurisdictional work of the Supreme Court is distributed among Permanent and Temporary Specialised Chambers, each with **four** members, presided over by those appointed by the President of the Supreme Court in civil, criminal, constitutional and social law matters.

Jurisdictional work in military and police criminal matters is carried out through the Supreme Military and Police Criminal Chamber.

Article 94 - A. The head of the Decentralised Office for the Control of the Judiciary shall be elected following a public competition organised by the human resources department of the High Court, and no senior judge may hold such a position.

Article 4. Amendment to Article 74 of Legislative Decree No. 767 of the Organic Law of the Judiciary.

Article 74. The Supreme Court shall elect its president from among its members by secret ballot. The term of office of the president of the Supreme Court shall be two years.

The election shall be held on the first working day of December. Those elected shall take office on the first working day of January of the year following the election. The candidate who obtains a simple majority shall win. In the event of a tie, the candidate with the most seniority shall be elected, in accordance with the last paragraph of Article 221 of this law.

Article 5. Amendment to Article 81 of Legislative Decree No. 767 of the Organic Law of the Judiciary.

Article 81. Members of the Executive Council of the Judiciary

The Executive Council of the Judiciary shall be composed of:

1. The President of the Judiciary, who presides over it and has the casting vote.
2. **A senior judge in office elected by the presidents of the superior courts of justice of the Republic.**
3. **A sitting judge, specialised or mixed, elected by the specialised or mixed judges of the superior courts of justice of the Republic.**
4. **A sitting judge of the peace, elected by the judges of the peace of the superior courts of justice of the Republic**
5. **A representative elected by the National Federation of Bar Associations of Peru.**
6. **A representative of the law faculties of the four oldest public universities in Peru.**
7. **A representative of the law faculties of the four oldest private universities in Peru.**

Article 6.- Amendment of Article 2 of the Organic Law of the National Board of Justice Law No 30916.

Article 2 of the Organic Law of the National Board of Justice Law No. 30916 is hereby amended to read as follows:

Article 2. Powers of the National Board of Justice The powers of the National Board of Justice are as follows:

- a. Appoint, prior to competition of merit and personal evaluation, judges and prosecutors at all levels, **with the exception of the Supreme judges and prosecutors**. The appointment requires a public and reasoned vote in accordance

with two-thirds of the legal number of its members. The vote does not alter the results of the public merit-based competition;

- b. To ratify, by public and reasoned vote, judges and prosecutors at all levels, **with the exception of supreme judges and prosecutors**, every seven (7) years. Those who are not ratified or who are dismissed may not re-enter the Judiciary or the Public Prosecutor's Office;
[...]

Article 7. Amend Article 107 of the Judicial Career Law

Article 107.- Termination of office.

The office of judge shall terminate upon:

1. Death;
2. dismissal or retirement;
3. resignation, once accepted;
4. dismissal in accordance with the relevant procedure;
5. separation;
6. supervening incompatibility;
7. permanent physical or mental cause, duly proven, that prevents the exercise of judicial functions;
8. having been convicted or subject to a suspended sentence for an intentional crime;
9. **Due to age limit for exercise of the function, which shall not exceed seventy (70) years of age;**
10. and other cases provided for in the Constitution and in the Organic Law of the Judiciary

COMPLEMENTARY REPEALING PROVISION.

SOLE PROVISION. Paragraph 3) of Article 94, paragraphs 5) and 6) of Article 80, paragraph 1) of Article 94 of the Organic Law of the Judiciary, and any provision that conflicts with this law.

B. Draft Law Amending Law 30916, Organic Law of the National Justice Council, in Order to Appoint Provisional and Supernumerary Judges and Provisional Prosecutors (Draft Replacement Text of Bills 8657/2024-CR, 10585/2024-CR, and 11393/2024-CR)

Article 1. Amendment of Article II of the preliminary title of Law 30916, Organic Law of the National Board of Justice

Article II of the preliminary title of Law 30916, Organic Law of the National Board of Justice, is amended as follows:

“Article II. Purpose

The purpose of this organic law is to establish the legal requirements for the appointment of members of the National Board of Justice, **permanent, provisional and supernumerary** judges and prosecutors at all levels, except when they are elected by popular vote, and the head of the National Office of Electoral Processes (ONPE) and the head of the National Registry of Identification and Civil Status (RENIEC); as well as to guarantee, in accordance with the constitutional principle of equality and non-discrimination, appropriate, meritocratic and impartial procedures for the appointment, ratification, partial evaluation and disciplinary proceedings of judges, prosecutors and the head of the National Office of Electoral Processes (ONPE) and the head of the National Registry of Identification and Civil Status (RENIEC) in order to strengthen and improve the system, thereby promoting effective, transparent, appropriate and corruption-free justice.

Article 2. Incorporation of the seventh and eighth final supplementary provisions and the thirteenth transitional supplementary provision into Law 30916, Organic Law of the National Board of Justice

The seventh and eighth final supplementary provisions and the thirteenth transitional supplementary provision are incorporated into Law 30916, Organic Law of the National Board of Justice, with the following texts.

“FINAL SUPPLEMENTARY PROVISIONS

[...]

Seventh. Appointment of provisional and supernumerary judges of the Judiciary and provisional prosecutors of the Public Prosecutor's Office

The National Board of Justice, following a competitive examination, shall draw up a mandatory and binding list of merits for filling temporary positions as provisional and supernumerary judges and provisional prosecutors, in the following order:

a) Judiciary

1. For provisional supreme judges, senior judges and lawyers who meet the requirements established in Article 147 of the Political Constitution of Peru and who are not subject to the impediments established in the Organic Law of the Judiciary shall apply.
2. For provisional or supernumerary superior judges, specialised or mixed judges and lawyers who meet the legal requirements to be a superior judge, without incurring the impediments established in the Organic Law of the Judiciary, may apply.
3. For provisional or supernumerary specialised or mixed judges, applications may be submitted by lay justices of the peace or judicial assistants and lawyers who meet the legal requirements to be a specialised or mixed judge, without incurring any of the current impediments.
4. For provisional or supernumerary justices of the peace, judicial assistants and lawyers who meet the legal requirements to be a justice of the peace, without incurring legal impediments, may apply.

b) Public Prosecutor's Office

1. For provisional supreme prosecutors, senior prosecutors or deputy supreme prosecutors may be nominated, as well as lawyers who meet the requirements established in the Constitution and in the Organic Law of the Public Prosecutor's Office to be a supreme prosecutor, without incurring any legal impediments.
2. For provisional senior prosecutors, provincial prosecutors or deputy senior prosecutors and lawyers who meet the legal requirements to be senior prosecutors, without incurring any impediments, may apply.
3. For provisional provincial prosecutors, deputy provincial prosecutors or assistants in prosecutorial functions, and lawyers who meet the legal requirements to be provincial prosecutors, without incurring impediments, may apply.
4. For provisional provincial deputy prosecutors, assistants in prosecutorial positions and lawyers who meet the legal requirements to be provincial deputy prosecutors, without impediments, may apply.

The president of the Supreme Court, the presidents of the high courts, the attorney general, and the presidents of the boards of prosecutors may not assume the power to appoint magistrates at any level.

Eighth. Supplementary rules on selection, merit, and term of office

In accordance with the constitutional principle of meritocracy and the rules established in the Judicial Career Law and the Prosecutorial Career Law, the National Board of Justice appoints provisional judges, supernumerary judges, and provisional prosecutors in strict order of merit from the list resulting from the corresponding selection process.

Applicants who pass this process and do not obtain a permanent position may be temporarily appointed as supernumerary judges or provisional prosecutors, as appropriate.

Supernumerary judges and provisional prosecutors may not hold office for more than one year, unless duly renewed by the National Justice Board, taking into account the needs of the service and the current merit list.

Provisional or supernumerary status does not confer the right to permanence, renewal or expectation of appointment, and such persons shall remain subject to ongoing evaluation and the rules of removal provided for in the Constitution and the relevant organic laws, without prejudice to the administrative or criminal responsibilities arising from the exercise of their office.

ADDITIONAL TRANSITIONAL PROVISIONS

[...]

Thirteenth. Transitional rule

While the mandatory and binding merit table provided for in the seventh final supplementary provision is being implemented, currently appointed judges and prosecutors shall continue in their positions for a maximum period of one year, without this giving rise to acquired rights, expectations of permanence or stability, and they may be removed earlier in accordance with the Constitution and the relevant organic laws.

Once this period has expired, and only if the National Justice Board has not completed the preparation of the merit table, it may make provisional or supernumerary appointments on an exceptional and temporary basis, for a maximum period of six (6) months, by means of a reasoned decision certifying the need for the service, applying the minimum legal

requirements for the position and without the intervention of the Judiciary or the Public Prosecutor's Office.

FINAL COMPLEMENTARY PROVISIONS

FIRST. Repeal of provisions of Legislative Decree 767, Organic Law of the Judiciary

All provisions of Legislative Decree 767, Organic Law of the Judiciary, and other legal provisions that empower the appointment of provisional or supernumerary judges of the Judiciary at all levels are repealed.

SECOND. Repeal of provisions of Legislative Decree 52, Organic Law of the Public Prosecutor's Office

All provisions of Legislative Decree 52, Organic Law of the Public Prosecutor's Office, and other legal provisions that empower the appointment of provisional prosecutors of the Public Prosecutor's Office at all levels are repealed.

C. Law that amends Law 30483, Law of the Prosecutorial Career; Law 29277, Law of the Judicial Career; the New Criminal Procedural Code, Legislative Decree 957; and the Criminal Code, Legislative Decree 635, to optimize the administration of justice in the fight against organized crime. (Law No. 32182)

LAW N° 32182

THE PRESIDENT OF THE REPUBLIC WHEREAS:
THE CONGRESS OF THE REPUBLIC;

Has passed the following law:

LAW MODIFYING LAW 30483, LAW OF THE PROSECUTORIAL CAREER; LAW 29277, LAW OF THE JUDICIAL CAREER; THE NEW CRIMINAL PROCEDURAL CODE, LEGISLATIVE DECREE 957; AND THE CRIMINAL CODE, LEGISLATIVE DECREE 957; AND THE CRIMINAL CODE, LEGISLATIVE DECREE 957. CRIMINAL PROCEDURE CODE, LEGISLATIVE DECREE 957; AND THE CRIMINAL CODE, LEGISLATIVE DECREE 635, TO OPTIMISE THE ADMINISTRATION OF JUSTICE IN THE FIGHT AGAINST CRIMINALITY OF JUSTICE IN THE FIGHT AGAINST ORGANISED CRIME.

Article 1. Modification of article 47 of Law 30483, the Prosecutorial Career Law
Numerals 17, 18, 19 and 20 are incorporated into Article 47 of Law 30483, Law on the Prosecutorial Career, as follows 47 of Law 30483, Law on the Public Prosecutor's Career, in the following terms:

"Article 47. Very serious misconduct The following are very serious misconduct: [...]

17. To order the release of persons arrested in flagrante delicto by the National Police of Peru or of persons under citizen's arrest for committing crimes punishable by imprisonment for more than five years, in violation of their duties.
18. Failure to file a request for pre-trial detention for persons arrested in flagrante delicto by the National Police of Peru or detained by citizen's arrest for the commission of crimes whose custodial sentence is greater than five years, having had sufficient elements of conviction or, in doing so, omitting evidence for the judge to declare the request unfounded.
19. Issuing resolutions, provisions, orders, rulings, rulings or requirements in contravention of the exemptions from criminal liability set out in numbers 3 and 11 of Article 20 of the Criminal Code, Legislative Decree 635, or in contravention of Article 268 of the New Code of Criminal Procedure, Legislative Decree 957.
20. Facilitating or providing reserved information that, due to his or her condition or position as a prosecutor, is known to him or her".

Modification of Article 48 of the Law

29277, Judicial Career Law

Article 48, paragraph 18 of Law 29277, Judicial Career Law, is incorporated in the following terms:

"Article 48. Very serious misconduct The following are very serious misconduct: [...]

18. Ordering, by omitting their functional duties, the release of persons detained in flagrante delicto by the National Police of Peru or detained under citizen's arrest for the commission of crimes for which the custodial sentence is greater than five years".

Article 3. Modification of Article 268 of the New Criminal Procedure Code, Legislative Decree **Code of Criminal Procedure, Legislative Decree 957.**

Article 268(c) of the New Code of Criminal Procedure, Legislative Decree 957, is amended to read as follows:

"Article 268. Material Requirements

The judge, at the request of the Public Prosecutor's Office, may issue a pre-trial detention order, if it is possible to determine, on the basis of the initial requirements, that the following conditions are met:

[...]

c) That the accused, on the basis of his or her background and other circumstances of the particular case, reasonably suggests that he or she will attempt to evade justice (flight risk) or obstruct the investigation of the truth (danger of obstruction). In terms of criminal dangerousness, accredit the danger of absconding and the danger of obstruction in cases where the accused is linked as a perpetrator or participant in the offences typified in articles 108-C, 108-D, 152, 189 and 200 of the Criminal Code, Legislative Decree 635.

[...]"

Article 4. Amendment of Article 418 of the Penal Code, Legislative Decree 635.

Criminal Code, Legislative Decree 635

The second paragraph is incorporated into Article 418 of the Criminal Code, Legislative Decree 635, in the following terms:

"Article 418.- Prevaricato.

[...]

Likewise, the Judge or Prosecutor who, maliciously failing to comply with his or her functional duties, orders or arranges the release of a person detained in flagrante delicto by the National Police of Peru or detained by citizen's arrest for the commission of offences punishable by imprisonment for a term of more than five years shall be punishable by imprisonment for a term of not less than eight nor more than twelve years.

Communicated to the President of the Republic for its promulgation.

In Lima, on the eighteenth day of November of the year two thousand and twenty-four.

D. Draft Legislative Resolution of Congress Amending Article 89 of the Rules of Congress (Bill No. 9938/2024-CR)

Sole Article. Amendment of Article 89 of the Rules of Procedure of Congress

Article 89 of the Rules of Procedure of Congress is amended as follows:

"Constitutional impeachment procedure

Article 89. The constitutional impeachment procedure is used to conduct the **impeachment and** preliminary hearing of senior State officials covered by Article 99 of the Constitution.

The constitutional impeachment procedure shall be conducted in accordance with the following rules:

[...]

c) The Subcommittee on Constitutional Accusations is the body responsible for assessing the admissibility and validity of constitutional complaints filed, as well as conducting investigations into constitutional impeachment proceedings and issuing the corresponding final report. The number of members and their composition reflect the principles of plurality and proportionality of all parliamentary groups. Its members, including its Chair, are appointed by the Standing Committee.

The assessment of the admissibility and/or appropriateness of complaints shall be carried out within a maximum period of ten (10) working days from **the date of notification of the complaint**, in accordance with the following criteria:

[...]

d) The Subcommittee on Constitutional Accusations shall submit its assessment report to the Chair of the Standing Committee. The latter shall approve, on the basis of the assessment report and with a majority of its members present, the period within which the Subcommittee on Constitutional Accusations shall conduct its investigation and submit its report, which may not exceed fifteen (15) working days, extendable for a single period determined by the Permanent Commission. Exceptionally, a longer period may be set when the case to be investigated is likely to be combined with one or more other constitutional complaints.

The aforementioned period shall be calculated from the day following the session in which the plenary session of the Subcommittee on Constitutional Accusations takes note of the notification of the period agreed upon by the Permanent Commission.

The Subcommittee on Constitutional Accusations shall perform its function in accordance with the following procedure:

[...]

d.3 On the date and at the time established, the hearing shall be held with the attendance of half plus one of the legal number of members of the Subcommittee. **If necessary, the hearing may be held in more than one session.** The absence of the accused from the hearing shall not be an impediment to continuing with the proceedings.

In the event that the complaint comes from the Attorney General, the latter may appoint a prosecutor to participate in the hearing.

[...]

i) After the report has been presented and the constitutional indictment has been formulated by the Accusatory Subcommittee and debated, the Plenary Session of Congress votes on whether or not there are grounds for bringing a case as a result of the indictment. In the first case, the Plenary Session of Congress debates and votes, in the same session, on whether

or not to suspend the accused from office, who shall be subject to trial in accordance with the law. In the second case, the file is closed.

[...]

k) During the different stages of the constitutional indictment procedure, the accused may be assisted or represented by a lawyer. The debate on the constitutional indictment before **the Standing Committee** or the Plenary shall not be suspended due to the unjustified absence, as determined by the Presiding Board, of the accused or their defence counsel. In this event, and after verification of the procedural acts proving due notification to the accused and their defence counsel, the constitutional accusation shall be debated and voted on."

II. Laws and draft laws in respect of the diffuse control of constitutionality and the protection of human rights by the judiciary

A. Draft Law amending Article 14 of the Organic Law of the Judiciary on diffuse control (Bill No. 9171/2024-CR);

Article 1. Purpose of the Law

The purpose of this law is to amend Article 14 of the Organic Law of the Judiciary to clarify the scope of diffuse control.

Article 2. Amendments

Article 14 of the Organic Law of the Judiciary is amended as follows:

Article 14. In accordance with Article 236 of the Constitution, when magistrates, at the time of ruling on the merits of the matter within their jurisdiction, in any type of proceeding or speciality, find that there is an incompatibility in their interpretation between a constitutional provision and a provision with the force of law, they shall resolve the case in accordance with the former.

Judgments thus issued shall be referred for consultation to the Constitutional and Social Chamber of the Supreme Court if they are not challenged. The same shall apply to judgments in the second instance in which this same provision is applied, even when no appeal may be lodged against them.

In all these cases, judges shall limit themselves to declaring the legal provision inapplicable due to constitutional incompatibility in the specific case, without affecting its validity, which is controlled in the manner and form established by the Constitution.

In the case of lower-level rules, the same principle applies, without the need for referral for consultation, without prejudice to the process of popular action.

Article 3. Additions

Articles 14-A, 14-B and 14-C are incorporated into the Organic Law of the Judiciary, in the following terms:

Article 14-A. When the judges and courts of the Republic (Superior Chambers of the High Courts and Supreme Chambers of the Supreme Court of Justice of the Republic), in any proceeding or speciality, find that there is incompatibility between a constitutional provision and a law approved by Parliament, they shall refrain from applying the latter to the specific case, shall suspend the proceeding they are conducting, and shall raise the respective question of unconstitutionality before the Constitutional Court.

Article 14-B. The decision of the judge or court that suspends the proceedings and raises the question of constitutionality before the Constitutional Court is unchallengeable before the higher court.

Article 14-C. The Constitutional Court shall evaluate the admissibility of the constitutionality inquiry with regard to its importance for the development of constitutional law. If admissible, it shall order the judge to submit the file in physical and/or virtual form. The Constitutional Court shall give priority to the resolution of this type of case, limiting its review to the question of constitutionality.

B. Draft Law amending article 146 of the Consolidated Text of the Organic Law of the Judiciary and other texts (Bill No. 9638/2024-CR),

Article 1. - Subject matter

The purpose of this law is to amend Article 14 of the Consolidated Text of the Organic Law of the Judiciary, incorporate Article 3-A into the New Organic Law on Constitutional Procedure, and repeal Article 408, paragraph 3, and the last paragraph of the Consolidated Text of the Code of Civil Procedure.

Article 2. Modify Article 14 of the Consolidated Text of the Organic Law of the Judiciary amend Article 14 of the Consolidated Text of the Organic Law of the Judiciary, as follows:

Article 14.- Supremacy of the constitutional norm and diffuse control of the Constitution

In accordance with Article 236 of the Constitution, when judges, in ruling on the merits of an issue within their jurisdiction, in any type of proceeding or specialty, find an incompatibility in the interpretation between a constitutional provision and one with the rank of law, they shall resolve the case according to the former.

Judgments thus issued shall be referred for consultation to the **Constitutional Court**, if they are not appealed. The same applies to judgments in the second instance in which this same precept is applied, even if an appeal for cassation does not proceed against them.

In all these cases, judges shall limit themselves to declaring the inapplicability of the legal provision due to constitutional incompatibility for the specific case, without affecting its validity, which is controlled in the manner and form established by the Constitution.

When it comes to norms of lower hierarchy, the same principle applies, but referral for consultation is not required, without prejudice to the process through popular action.

Article 3. Incorporation of Article 3-A into the New Constitutional Procedural Code

Article 3-A is hereby incorporated into the New Constitutional Procedural Code:

Article 3-A. Jurisdictional decisions adopted by application of the diffuse control of the constitutionality of norms shall be referred for consultation to the Constitutional Court, if not appealed. The same applies to judicial resolutions in the second instance in which this same precept is applied, even when no remedy proceeds against them.

When consultation is applicable, the file shall be sent ex officio.

The judicial assistant shall send the file to the Constitutional Court within seven days, under responsibility.

The definitive resolution shall be issued within seven days after the hearing. An oral report request does not proceed.

During the processing of the consultation, the effects of the resolution are suspended.

Article 4. Repeal of Article 408, subsection 3, and last paragraph of the Consolidated Text of the Civil Procedure Code

Subsection 3 and the last paragraph of Article 408 of the Consolidated Text of the Civil Procedure Code are hereby repealed, with the article to read as follows:

Article 408. Consultation only proceeds against the following first instance resolutions that are not appealed:

1. The which declare interdiction and the appointment of a guardian or curator,
2. Those which declare interdiction and the appointment of guardian, curator or designation of support
3. Others as determined by law.

SUPPLEMENTARY REPEALING PROVISIONS

SOLE PROVISION. – Repeal

Any provision opposing the articles approved in this Law is hereby repealed

**C. Draft Law Draft Law Amending Articles 138 and 202 of the Constitution of Peru
(Bill No. 9676/2024-CR)**

Article 1. Purpose and objective.

The present bill aims to amend Articles 138 and 202 of the Political Constitution of Peru, with the aim of strengthening the justice system in the country.

Article 2.- Amendment of Articles 138 and 202 of the Political Constitution of Peru.

Articles 138 and 202 of the Political Constitution of Peru are hereby amended to read as follows:

"Article 138.- Justice Administration. Diffuse Control and conventionality.

In any proceeding, if there is an incompatibility between a constitutional provision and a legal provision, judges shall give preference to the former. Likewise, they shall give preference to legal provisions over any other provisions of lower rank. **If, at the time of ruling, the judge decides to apply diffuse control of conventionality, this decision must be referred to the Constitutional Court for consultation.**

"Article 202.- Powers of the Constitutional Court

The Constitutional Court shall:

[...]

5. Approve or disapprove, through consultation, diffuse control and control of conventionality."

COMPLEMENTARY MODIFYING PROVISION

SINGLE. Amendment to Article 14 of the Organic Law of the Judiciary.

Article 14 of the Organic Law of the Judiciary is hereby amended to read as follows:

"Article 14. In accordance with Article 138 of the **Political Constitution of Peru**, when magistrates, at the time of ruling on the merits of a matter within their jurisdiction, in any type of proceeding or speciality, find that there is an incompatibility in their interpretation of a constitutional provision and a provision with the force of law, they shall resolve the case in accordance with the former. **The decision of judges ruling on diffuse control or conventionality must be referred to the Constitutional Court for a binding decision.**

[...]

D. Law amending Law 31307, New Constitutional Procedural Code, with the aim of strengthening the purposes of constitutional procedures (Law No. 32153)

Article 1. Amendment of Articles VI and VIII of the Preliminary Title and Articles 6, 12, 18, 26, 42, 101, 110, 111 and 112 of Law 31307, New Constitutional Procedural Code
Articles VI (third paragraph) and VIII of the Preliminary Title and Articles 6, 12—sixth paragraph—, 18 —incorporating the fifth paragraph—, 26 — incorporating the third paragraph—, 42, 101, 110, 111 — first paragraph — and 112 of Law 31307, New Constitutional Procedural Code, are amended as follows:

“Article VI. Binding precedent

[...]

In class action proceedings, the competent chamber of the Supreme Court of the Republic may also create, modify or repeal binding precedents of the Judiciary with the concurring vote of four Supreme Court justices, provided that they are consistent with the interpretation resulting from the rulings of the Constitutional Court. The ruling so establishing formulates the legal rule that constitutes the precedent, expresses the extent of its normative effect and, in the event of its departure, the factual and legal grounds on which it is based.

Article VIII. Interpretation of human rights and international treaties

The content and scope of the constitutional rights protected by the processes regulated in this code must be interpreted in accordance with the Universal Declaration of Human Rights, human rights treaties to which Peru is a party, as well as judgments handed down by international human rights courts in cases to which Peru is a party.

In the event of incompatibility between a conventional norm and a constitutional norm, or incompatibility between decisions of international courts and the Constitutional Court, judges shall give preference to the norm or decision that most favours the individual and their human rights.

Article 6. Prohibition and exception of summary dismissal

In accordance with the purposes of constitutional proceedings for the defence of fundamental rights, in constitutional proceedings for habeas corpus, amparo, habeas data, and compliance, the preliminary rejection of the claim shall not be admissible, unless its claim is physically or legally impossible or the legislative process is questioned, in which case the dispute shall be processed via an unconstitutionality proceeding in accordance with the provisions of Articles 97 and 105 of this Code. Preliminary rejection requires qualified justification.

Article 12. Processing of constitutional proceedings for amparo, habeas data and compliance
[...]

If, based on the response to the claim, the judge concludes that it is inadmissible or that the harmful act is manifestly illegitimate, he or she may issue a ruling without holding a single hearing, except as provided for in Article 52-A. [this special procedure is described below]

Article 18. Precautionary measures

[...]

The provisions of this article do not apply to the cases referred to in Article 52-A.

Article 26. Enforcement of the judgment

[...]

The provisions of this article shall not apply to the cases referred to in Article 52-A.

Article 42. Competent judge

The constitutional judge of the place where the right was affected, or where the affected party is domiciled, or where the perpetrator of the infringement is domiciled, shall have jurisdiction to hear the amparo proceedings, at the plaintiff's discretion.

The constitutional chamber or, if there is none, the civil chamber on duty of the respective superior court of justice shall have jurisdiction, and the Constitutional and Social Chamber of the Supreme Court shall have jurisdiction to rule in the second instance if the infringement of rights originates from:

- a) A substantive judicial ruling issued by the Supreme Court of Justice of the Republic.
- b) An arbitration award.
- c) A public works selection or execution procedure.
- d) A decision by the organs of Congress within a parliamentary procedure, in accordance with Article 52-A.

The constitutional court has jurisdiction if the violation of rights originates from a final judicial decision issued by a judge or specialised chamber, with the constitutional chamber or civil chamber having jurisdiction to rule in the second instance.

In the amparo process, the extension of territorial jurisdiction shall not be admitted, under penalty of nullity of all proceedings.

Article 101. Annexes to the claim

The claim shall be accompanied, where applicable, by:

- 1) Certification of the agreement adopted by the Council of Ministers, when the claimant is the President of the Republic;
- 2) certification of the agreement adopted by the Plenary Chamber of the Supreme Court of Justice of the Republic, when the claimant is the president of the Judiciary;
- 3) certification of the agreement adopted by the Board of Supreme Prosecutors when the plaintiff is the Attorney General;
- 4) certification of the corresponding signatures by the chief clerk of Congress if the plaintiffs represent 25% of the legal number of congressmen;
- 5) certification by the National Elections Board, in the formats provided by the Court, and as applicable, if the plaintiffs are five thousand citizens or one per cent of the citizens of the respective territorial area, in accordance with Article 203, paragraph 6) of the Constitution;
- 6) certification of the agreement adopted by the board of directors of the respective professional association; or
- 7) certification of the agreement adopted by the regional coordination council or provincial council, when the actor is a regional governor or provincial mayor, respectively.

Article 110. Precautionary measure

The claimant may request the Court to suspend the provision, resolution or act that is the subject of the dispute, in whole or in part. The Court grants the precautionary measure, which must be based on the plausibility of the alleged infringement of powers, the danger of delay, the appropriateness of the claim and the principle of reversibility. When a constitutional dispute is brought on the basis of a provision, resolution or act whose challenge is pending before any judge or court, the latter may suspend the proceedings until the Constitutional Court has issued its ruling.

The approval of the precautionary measure requires four votes in favour. In the event of a tie, the president of the Constitutional Court has the casting vote.

Article 111. Assessment of the claim

If the Constitutional Court considers that there is a matter of conflict whose resolution falls within its jurisdiction, it shall declare the claim admissible and issue the corresponding summons. The affirmative vote of four judges is required to declare it inadmissible.

[...]

Article 112. The ruling in jurisdictional proceedings and its effects

In jurisdictional proceedings, the ruling shall be obtained with the affirmative vote of four judges. In the event of a tie, the president of the Constitutional Court shall have the casting vote. If the required number of votes is not reached, the claim shall be deemed unfounded.

The Court's ruling is binding on public authorities and has full effect on all parties. It determines which state powers or entities have jurisdiction over the disputed powers or attributions and annuls any provisions, resolutions or acts that are invalid due to lack of jurisdiction. It also resolves, where appropriate, any legal situations arising from such administrative acts. When a negative conflict of powers or attributions has been brought, the ruling, in addition to determining their ownership, may indicate, where appropriate, a period within which the State power or entity in question must exercise them.

Article 2. Incorporation of Article 52-A into Law 31307, New Constitutional Procedural Code
Article 52-A is incorporated into Law 31307, New Constitutional Procedural Code, with the following wording:

"Article 52-A. Special procedure

The processing of amparo proceedings challenging the exercise of the exclusive and exclusive powers of the Congress of the Republic relating to the election, appointment, ratification and removal of senior officials, as well as those relating to impeachment and political trial, and to presidential vacancy and suspension, shall be subject to the following provisions:

- a) The claim shall be filed by the holder of the right directly affected who invokes the violation of due process;
- b) In the first instance, the claim is heard by the Constitutional Chamber, which adopts all its decisions by a three-vote majority; it must be resolved within a maximum period of 60 working days from the filing of the claim.
- c) The appeal is filed with the same chamber and is granted with suspensive effect.
- d) The Constitutional and Social Chamber of the Supreme Court of the Republic resolves the appeal and makes decisions with four concurring votes.
- e) Precautionary measures are not applicable.
- f) The single hearing cannot be dispensed with; and
- g) Immediate enforcement of the judgment is not applicable.

This special procedure shall be given preferential and urgent treatment in all instances within the maximum time limits established, under functional responsibility.

FINAL SUPPLEMENTARY PROVISION**SOLE. Pending proceedings**

Constitutional proceedings initiated before the entry into force of this law shall be conducted in accordance with the procedural rules in force when they began, until their completion, with the exception of cases pending before the Constitutional Court, to which this law shall apply immediately.

E. Law amending the Criminal Code, Legislative Decree 635, and the New Criminal Procedure Code, Legislative Decree 957, in order to guarantee the principle of presumption of innocence and provide greater protection to the personnel of the National Police of Peru (Law No. 32181)

LAW No. 32181
THE PRESIDENT OF THE REPUBLIC

WHEREAS:
THE CONGRESS OF THE REPUBLIC;

Has enacted the following Law:

LAW AMENDING THE CRIMINAL CODE, LEGISLATIVE DECREE 635, AND THE NEW CRIMINAL PROCEDURE CODE, LEGISLATIVE DECREE 957, IN ORDER TO GUARANTEE THE PRINCIPLE OF PRESUMPTION OF INNOCENCE AND PROVIDE GREATER PROTECTION TO THE PERSONNEL OF THE NATIONAL POLICE OF PERU

Article 1. Amendment of Article 22 of the Criminal Code, Legislative Decree 635

Article 22 of the Criminal Code, Legislative Decree 635, is amended by adding a third paragraph, as follows:

"Article 22. Restricted liability due to age

[...]

Persons over the age of eighty, for humanitarian reasons, shall serve their sentences in accordance with the provisions of Article 288 or Article 290 of the New Criminal Procedure Code, Legislative Decree 957."

Article 2. Amendment of Articles 255, 261 and 292-A of the New Code of Criminal Procedure, Legislative Decree 957

Articles 255 (paragraph 1), 261 (paragraph 1) and 292-A of the New Criminal Procedure Code, Legislative Decree 957, are amended as follows:

"Article 255. Legitimacy and variability

1. The measures established in this title, without prejudice to those recognised to the police and the prosecutor, shall only be imposed by the judge at the request of the prosecutor, considering the provisions of Articles 261-A, 268-B and 292-A, except for seizure and provisional administration of possession, which may also be requested by the civil plaintiff. The request shall indicate the reasons on which the request is based and, where appropriate, shall be accompanied by the relevant investigative acts or evidence.

[...].

Article 261. Preliminary judicial detention

1. The investigating judge, at the request of the prosecutor, shall issue a duly reasoned decision, having regard to the proceedings referred to him, and shall issue a preliminary detention order when:

[...].

Article 292-A. Restrictive appearance for personnel of the Peruvian National Police

The restrictions set forth in Article 288 shall be imposed on active members of the Peruvian National Police who, in the exercise of their constitutional duties, use their weapons or means of defence in accordance with regulations and, as a result, cause injury or death. The prosecutor and judge shall be prohibited from requesting and issuing a preliminary judicial arrest warrant and preventive detention, respectively, under functional responsibility."

Article 3. Incorporation of Articles 261-A and 268-B into the New Criminal Procedure Code, Legislative Decree 957

Articles 261-A and 268-B are incorporated into the New Code of Criminal Procedure, Legislative Decree 957, in the following terms:

"Article 261-A. Impediment to preliminary judicial detention

The prosecutor is prevented from requesting preliminary judicial detention against personnel of the Peruvian National Police who are on active duty and who, in the exercise of their constitutional purpose, make use of their weapons or means of defence in accordance with regulations and, as a result, cause injury or death.

Article 268-B. Impediment to preventive detention

The prosecutor is prevented from requesting preventive detention against active members of the Peruvian National Police who, in the exercise of their constitutional duties, use their weapons or means of defence in accordance with regulations and, as a result, cause injury or death."

COMPLEMENTARY REPEALING PROVISION**SOLE. Repeal**

Subsection a) of section 1 of Article 261 of the New Criminal Procedure Code, Legislative Decree 957, is repealed.

III. Other laws

A. Law that clarifies the application and the scope of the crime of crimes against humanity and war crimes in Peruvian legislation (Law No. 32107)

LAW No. 32107

THE PRESIDENT OF THE CONGRESS OF THE REPUBLIC

WHEREAS

THE STANDING COMMITTEE OF THE CONGRESS OF THE REPUBLIC;

Has enacted the following Law:

LAW THAT CLARIFIES THE APPLICATION AND THE SCOPE OF THE CRIME OF CRIMES AGAINST HUMANITY AND WAR CRIMES IN PERUVIAN LEGISLATION

Article 1. Purpose

The purpose of this law is to clarify the application and scope of crimes against humanity and war crimes in Peruvian legislation, considering the entry into force of the Rome Statute of the International Criminal Court in Peru and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, in accordance with the principles of legality and the prohibition of retroactivity.:

Article 2. Entry into Force of the Rome Statute of the International Criminal Court

The Rome Statute of the International Criminal Court entered into force in the Peruvian legal system on July 1, 2002, in accordance with Article 126 of the aforementioned statute.

The Rome Statute of the International Criminal Court has temporal jurisdiction only with respect to acts that occurred after its entry into force in the Peruvian legal system.

Article 3. Entry into Force of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity entered into force in the Peruvian legal system on November 9, 2003, in accordance with Article VIII of the aforementioned convention.

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity is only applicable to acts that occurred after its entry into force in the Peruvian legal system.

Article 4. Prescription and Nullity

Crimes committed prior to the entry into force, for Peru, of the Rome Statute and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, as provided in Articles 2 and 3, are subject to the statute of limitations periods established in national law.

Non-compliance with the provisions contained in this law constitutes a violation of the principle of legality and the guarantees of due process; all sanctions imposed are null and unenforceable in administrative or judicial proceedings.

Article 5. Non-Retroactivity of Crimes Against Humanity or War Crimes

No one shall be prosecuted, convicted, or punished for crimes against humanity or war crimes for acts committed prior to July 1, 2002, under penalty of nullity and functional liability. No act committed before that date may be classified as a crime against humanity or a war crime.

FINAL SUPPLEMENTARY PROVISION

SOLE. Scope

The scope of this law is automatically applicable throughout the national jurisdiction of the Republic of Peru starting the day after its publication in the official newspaper El Peruano, under responsibility.

B. Law amending the Criminal Code, Legislative Decree 635; Law 30077, Law Against Organised Crime; and Law 27379, law on procedures for adopting exceptional measures to limiting rights in preliminary investigations, in order to determine the concurrent characteristics for the criminality of a criminal organisation (Law No. 32108); and Law amending Law 30077, Law Against Organised Crime, amended by Law 32108

LAW No. 32108

THE PRESIDENT OF THE CONGRESS OF THE REPUBLIC

WHEREAS

THE STANDING COMMITTEE OF THE CONGRESS OF THE REPUBLIC;

Has enacted the following Law:

LAW AMENDING THE CRIMINAL CODE, LEGISLATIVE DECREE 635; LAW 30077, LAW AGAINST ORGANISED CRIME; AND LAW 27379, LAW ON PROCEDURES FOR ADOPTING EXCEPTIONAL MEASURES TO LIMITING RIGHTS IN PRELIMINARY INVESTIGATIONS, IN ORDER TO DETERMINE THE CONCURRENT CHARACTERISTICS FOR THE CRIMINALITY OF A CRIMINAL ORGANISATION

Article 1. Amendment of Article 317 of the Criminal Code, Legislative Decree 635

Article 317 of the Criminal Code, Legislative Decree 635, is amended as follows:

“Article 317. Criminal organisation

317.1. Anyone who organises, establishes or participates in a criminal organisation shall be punished with imprisonment of not less than eight and not more than fifteen years and with a fine of one hundred and eighty to three hundred and sixty-five days, and disqualification in accordance with Article 36, paragraphs 1), 2), 4) and 8).

317.2. A criminal organisation is defined as any group with a complex structure and greater operational capacity, composed of three or more persons on a stable, permanent or indefinite basis, who, in a concerted and coordinated manner, distribute roles among themselves for the commission of serious crimes punishable by imprisonment for more than six years, with the aim of obtaining, directly or indirectly, control of the value chain of an illegal economy or market, in order to obtain economic benefit.

317.3. The penalty shall be no less than fifteen nor more than twenty years and with one hundred and eighty to three hundred and sixty-five days' fine, and disqualification in accordance with Article 36, paragraphs 1), 2), 4) and 8) in the following cases:

a) When the agent is a leader, head, financier or director of the criminal organization. When, as a result of the criminal actions of the criminal organisation, any of its members causes the death of a person or causes serious injury to their physical or mental integrity.

b) When the agent identifies himself, uses or avails himself of trademarks, signs, objects, codes, names or pseudonyms of a national, international or transnational criminal organisation for the purposes of intimidation, prevalence or hegemony of the criminal activity in which he is engaged.

c) When the members or the commission of serious crimes or the profits obtained by the criminal organisation are transnational in nature.

d) When the agent has carried out the criminal activity of the criminal organisation from a prison and/or through any information or communication technology or any other similar means.

Article 2. Amendment of Articles 2 and 4 of Law 30077, Law Against Organised Crime

Articles 2 and 4 of Law 30077, Law Against Organised Crime, are amended as follows:

“Article 2. Definition and criteria for determining the existence of a criminal organisation

2.1. For the purposes of this law, the following definitions shall apply:

- a) Criminal organisation. This is a group with a complex structure and greater operational capacity, composed of three or more persons on a stable, permanent or indefinite basis, who, in a concerted and coordinated manner, distribute roles among themselves for the commission of serious crimes punishable by imprisonment for more than six years, with the aim of obtaining, directly or indirectly, control of the value chain of an illegal economy or market, in order to obtain economic benefit.
- b) Group with a developed structure. This is a group of three or more people that has not been formed by chance and in which its members necessarily have specific roles that are interrelated, thereby ensuring its permanence over time and integration into the organisation.
- c) Operational capacity. The sum of the means and resources, de facto or de jure, necessary for the execution of the criminal plan.
- d) Serious crime. These are crimes punishable by imprisonment for more than six years.

2.2. The commission of the punishable act is materialised by the concurrence of a group with a complex structure and greater operational capacity, potentially capable of carrying out a criminal programme.

Article 4. Scope of application

For the investigation, prosecution, and punishment of members of a criminal organisation, persons linked to it, or persons acting on its behalf who commit crimes punishable by imprisonment for more than six years, the rules and provisions of the Criminal Procedure Code approved by Legislative Decree 957 shall apply, without prejudice to the special provisions contained in this Law.

Article 3. Amendment of Article 2 of Law 27379, Law on the procedure for adopting exceptional measures to limit rights in preliminary investigations.

Paragraphs 5 and 7 —first paragraph—of Article 2 of Law 27379, Law on Procedure for adopt exceptional measures limiting rights in preliminary investigations, with the following texts:

"Article 2. Measures limiting rights

The provincial prosecutor, in cases of strict necessity and urgency, may request the criminal judge to take the following measures limiting rights:

[...]

5. Lifting of bank secrecy and tax confidentiality. If the provincial prosecutor decides to request these measures from the criminal judge, he explains the reasons justifying the need for their imposition. The criminal judge decides whether they are necessary and relevant for clarifying the facts under investigation.

In the event of the lifting of bank secrecy, the order covers accounts linked to the person under investigation, even if they do not appear or are not registered in their name. The prosecutor may request the criminal judge to freeze and immobilise the accounts, with the exception of pension income and, in the case of accredited employment income, in accordance with Article 648(6) of the Code of Civil Procedure and in relation to the property and assets of legally recognised political organisations. This freezing and immobilisation may not last more than fifteen days and, exceptionally, may be extended for a further fifteen days, upon request by the provincial prosecutor and a reasoned decision by the criminal judge.

[...]

7. Search of properties or enclosed spaces outside of cases of flagrante delicto or imminent danger of its perpetration, provided that there are reasonable grounds and sufficient evidence

to do so. The measure is intended to search the property and, if necessary, seize it. The search is carried out in the presence of the interested party and their solicitor. If they do not have a solicitor, one will be provided. The request and the court order shall expressly state the purpose of the search and seizure.

[...]

8. [...]".

LAW No. 32138

THE PRESIDENT OF THE REPUBLIC

WHEREAS:

THE CONGRESS OF THE REPUBLIC;

Has enacted the following Law:

LAW AMENDING LAW 30077, LAW AGAINST ORGANISED CRIME, AMENDED BY LAW 32108

Article 1. Amendment of section 317.2 of article 317 of the Penal Code, Legislative Decree 635 Section 317.2 of article 317 of the Penal Code is amended Penal Code, Legislative Decree 635, to read as follows:

“Article 317. Criminal organisation

[...]

317.2. A criminal organisation is defined as any group with a complex structure and greater operational capacity, composed of three or more persons on a permanent or indefinite basis, who, in a concerted and coordinated manner, divide among themselves interrelated roles for the commission of crimes of extortion, kidnapping, contract killing and other crimes punishable by imprisonment of five years or more, with the aim to obtain, directly or indirectly, an economic or other material benefit.

[...]

Article 2. Amendment of Article 2 of Law 30077, Law against Organised Crime

Article 2 of Law 30077, Law against Organised Crime, is amended to read as follows:

"Article 2. Definition and criteria for determining the existence of a criminal organisation

2.1. For the purposes of this law, the following definitions shall apply:

a) Criminal organisation. A criminal organisation is considered to be any group with a complex structure and greater operational capacity, composed of three or more persons on a permanent or indefinite basis, who, in a concerted and coordinated manner, divide up interrelated roles among themselves for the commission of crimes of extortion, kidnapping, contract killing and other crimes punishable by imprisonment of five years or more at the minimum, with the aim of obtaining, directly or indirectly, financial or other material gain.

[...]”.

Article 3. Amendment of paragraph 3 of Article 216 of Law 32130, Law amending the Criminal Procedure Code, Legislative Decree 957, to strengthen the investigation of crime as a function of the Peruvian National Police and to expedite criminal proceedings

Paragraph 3 of Article 216 of Law 32130, Law amending the Criminal Procedure Code, Legislative Decree 957, is amended to strengthen crime investigation as a function of the Peruvian National Police and to expedite criminal proceedings, as follows:

“Article 216. Conduct of proceedings

[...]

3. The search shall be limited to what has been authorised, and a report shall be drawn up. During the search, the necessary precautions shall be taken to preserve the reputation and modesty of the persons present at the premises being searched.

The search and seizure shall be carried out with or without the presence of the person under investigation and with the mandatory presence of a public defence lawyer, who must be present from the start of the execution of the measure under functional responsibility. If the person under investigation is present and expresses a desire to have their own defence lawyer, this shall not suspend the execution of the court order, which shall continue to be executed in the presence of the public defence lawyer until the person under investigation's own defence lawyer arrives at the premises.

[...]"

Article 4. Amendment of paragraph 7 of Article 2 of Law 27379, Law on the procedure for adopting exceptional measures to limit rights in preliminary investigations.

Paragraph 7 of Article 2 of Law 27379, Law on the procedure for adopting exceptional measures to limit rights in preliminary investigations, is amended as follows:

"Article 2. Measures limiting rights

In cases of strict necessity and urgency, the provincial prosecutor may request the criminal judge to take the following measures limiting rights:

[...]

7. Search of premises or enclosed spaces outside of cases of flagrante delicto or imminent danger of its perpetration, provided that there are reasonable grounds for doing so. This measure is intended to search the premises and may be for the purpose of arresting persons or seizure or confiscation of property related to the subject of the investigation.

To execute the measure, the prosecutor shall summon the public defender to be present from the start of the search, under functional responsibility. If, during the search and seizure, the person under investigation is present and expresses their desire to have a lawyer of their choice, this shall not suspend the execution of the court order, which shall continue to be executed in the presence of the public defender until the private defence lawyer of the person under investigation arrives at the scene. The request and the court order shall expressly indicate the purpose of the search and seizure and the presence of the public defender.

[...]"

C. Law amending articles 473, 476-a and 481-a of the New Criminal Procedure Code, in order to strengthen the special process for effective cooperation (Law No. 31990)

LAW No. 31990

THE PRESIDENT OF THE CONGRESS OF THE REPUBLIC

WHEREAS:

THE CONGRESS OF THE REPUBLIC;

The following law has been enacted:

LAW AMENDING ARTICLES 473, 476-A AND 481-A OF THE NEW CRIMINAL PROCEDURE CODE, IN ORDER TO STRENGTHEN THE SPECIAL PROCESS FOR EFFECTIVE COOPERATION

Article 1. Amendment of Articles 473, 476-A and 481-A of the Criminal Procedure Code, promulgated by Legislative Decree 957

Articles 473, 476-A and 481-A of the Criminal Procedure Code, promulgated by Legislative Decree 957, are amended as follows:

“Article 473.- Corroboration phase

1. Upon receipt of the request, the Prosecutor may order the initiation of the effective collaboration procedure, ordering the corroboration proceedings he deems relevant to determine the effectiveness of the information provided. In such cases, he may request the intervention of the Peruvian National Police to carry out the corroboration proceedings under his direction and submit a Police Report.
2. The proceedings, including the preliminary investigations against the applicant, shall continue with their corresponding processing.
3. The prosecutor may hold meetings with the applicant in the presence of their defence lawyer. They shall also draw up a preparatory agreement, which shall specify — on the basis of the quality of the information provided and the nature of the charges or criminal acts that are the subject of the indictment or non-contradiction — the benefits, obligations and mechanism for providing information and corroborating it.
4. The applicant's statement shall be taken directly by the Prosecutor in charge of the case in the presence of their solicitor. It shall be taken at the location specified by the Prosecutor and shall be recorded in the minutes, as well as on an audiovisual medium, which shall be kept until it is forwarded to the judge together with the other proceedings.
5. The applicant is obliged to provide all relevant information in their possession, as well as all the necessary means for its corroboration. Failure to do so or providing false information will affect the viability of the agreement, depending on the significance of the omission or falsehood. When the falsehood is discovered after the judicial approval of the agreement, the prosecutor will request its revocation in accordance with the provisions of Article 480. If the agreement is revoked, the prosecution of the accused will continue under the rules of criminal procedure, as appropriate.
6. During the proceedings, if applicable, the applicant shall be subject to the necessary personal security measures to ensure the success of the investigations, the successful conclusion of the proceedings, and their personal safety. If necessary, and provided that it is not within the scope of his powers, the Prosecutor shall apply to the Preliminary Investigation Judge, requesting that he issue the appropriate coercive and protective measures, which shall be issued confidentially and in coordination with the Prosecutor.

These measures shall also apply to the representatives, partners and members of the legal entity, where applicable.

7. When the personal security measure must be imposed on an applicant who is incarcerated in a prison, the Prosecutor shall follow the procedure described above before the Preliminary Investigation Judge. When the Judge considers, after the corresponding evaluation, that a personal security measure should be established that falls within the powers of the National Penitentiary Institute (INPE), he or she shall notify the INPE so that it may proceed in accordance with its powers. The INPE shall inform the Judge of the measure adopted.
8. When the defendant is under preventive detention, the judge may vary this at the request of the prosecutor, as appropriate; the rules on termination provided for in ordinary proceedings do not apply. In this case, the variation is granted for security reasons or because it is part of the Preparatory Agreement and must be justified by minimal investigative acts carried out during the corroboration phase; the hearing is private and only the prosecutor, the applicant and their defence counsel may participate.
9. When it is necessary, for corroboration and other proceedings, to transfer the suspect from a prison to another location, the Preliminary Investigation Judge, at the request of the prosecutor, may order this, setting the date of the proceeding and notifying the Peruvian National Police and the National Penitentiary Institute within a period of no less than three (3) days for their timely execution. Once the proceedings are complete, the inmate returns to the prison to which he or she belongs.
10. It is prohibited to corroborate the statement of an applicant for effective collaboration with the statements of other applicants.
11. The period from the request to the conclusion of the Agreement on Benefits and Effective Collaboration or its rejection shall be a maximum of eight (8) months; for justified reasons, the Prosecutor may extend this period for up to four (4) months; in the case of organised crime, the extension shall be for up to eight (8) months. Once the period has expired, the Prosecutor shall proceed in accordance with the provisions of Article 477 of this Code.
12. The Provincial, Superior or Supreme Prosecutor in charge of the investigation, as appropriate, has the duty to protect the secrecy or confidentiality of the entire effective collaboration process and the content of the statements of the prospective collaborators, as well as to safeguard their identities, under administrative, civil and criminal liability.

Article 476-A.- Effectiveness of corroboration proceedings and their incorporation into other proceedings

1. If the information provided by the collaborator provides sufficient evidence of criminal involvement by the persons accused by him or by other natural or legal persons, it shall be subject, where appropriate, to the corresponding investigation and decision by the Public Prosecutor's Office for the purposes of determining the prosecution and subsequent punishment of those responsible.
2. The prosecutor shall decide whether the information contained in the effective collaboration file shall be incorporated in whole or in part into the corresponding proceedings, taking care to protect the identity of the declarant.
3. The prosecutor, in accordance with Article 65, shall decide whether to present the collaborator's testimony at trial. If there is a risk to their life, their identity shall be kept confidential. The judge shall assess their statement in accordance with the provisions of Article 158(2).
4. If the judge approves the agreement and the cases in which the collaborator is charged are in preliminary proceedings, the prosecutor may close the investigation and, where appropriate, shall abide by the ruling on effective collaboration.
5. If the judge approves the agreement and the proceedings in which the collaborator is charged are in the preliminary investigation stage, the prosecutor may decide not to

charge the collaborator and, where applicable, the judge in charge of the preliminary investigation will abide by the ruling on effective collaboration.

6. If the judge approves the agreement and the proceedings in which the collaborator is accused are in the trial phase, the prosecutor may withdraw the charges and, where appropriate, the single-judge or collegiate criminal court shall abide by the ruling on effective collaboration.
7. The effective collaboration ruling shall be enforceable at any stage of the proceedings before the prosecutors and courts that are party to the Agreement on Benefits and Effective Collaboration.

Article 481-A.- Usefulness of information in other proceedings

1. The evidence gathered in the corroboration proceedings may be used to request measures limiting rights or coercive measures in proceedings derived from or related to the special effective collaboration process.
2. The statement of the prospective collaborator may also be used for such purposes, in which case their identity must be protected, ensuring that the information used does not allow for identification. In such cases, it must be accompanied by other evidence from the special collaboration process, in accordance with Article 158(2).
3. When the request is based on several statements from applicants for effective collaboration, these will only be assessed if they are independently corroborated in their own collaboration file.
4. When the request is based on one or more statements from applicants for effective collaboration or protected witnesses, the prosecutor shall confidentially inform the judge of the identity of those persons in order to avoid double assessment of the same statement.

FINAL SUPPLEMENTARY PROVISIONS

FIRST. Adaptation of the Regulations

The Executive Branch, at the proposal of the Ministry of Justice and Human Rights, within a period not exceeding thirty (30) working days from the day following the publication of this regulation, shall adapt the Regulations of Legislative Decree 1301, approved by Supreme Decree 007-2017-JUS, to the provisions contained in the Law.

SECOND. Effective collaboration processes in progress

It is established that, for effective collaboration processes currently in progress, the time limits set forth in paragraph 11 of Article 473 of the Criminal Procedure Code shall apply. In these cases, the calculation of time limits shall begin on the day following the entry into force of this law.

D. Law No. 32326 on the extinguishment (forfeiture) of ownership

LAW NO. 32326

[...]

parties to the proceedings.

THE PRESIDENT OF THE REPUBLIC INASMUCH AS:

THE CONGRESS OF THE REPUBLIC;

Has passed the following Law:

LAW THAT AMENDS LEGISLATIVE DECREE 1373, LEGISLATIVE DECREE ON THE EXTINGUISHMENT OF OWNERSHIP, IN ORDER TO PERFECT THE PROCESS OF EXTINGUISHMENT OF OWNERSHIP.

Modification of the Preliminary Title, Articles 2, 3, 5, 7, 13, 14, 15, 19, 22, 32, 35, 37 and 39 and the fourth final complementary provision of Legislative Decree 1373, Legislative Decree on Extinction of Ownership.

Articles I, II -numerals 2.3, 2.7 and 2.9 and the incorporation of numeral 2.10- and III – section 3.1— of the Preliminary Title, articles 2, 3 —incorporating a second paragraph—, 5 —section 5.1—, 7 —letter f) of paragraph 7.1—, 13 —second and third paragraphs—, 14 —incorporating paragraph 14.3—, 15 — paragraphs 15.1 and 15.4—, 19 —paragraph 19.2—, 22 — paragraph 22.3—, 32, 35 —paragraph 35.1—, 37 and 39 —letter a) of the first paragraph— and the fourth final supplementary provision —third paragraph— of Legislative Decree 1373, Legislative Decree on Asset Forfeiture, in the following terms:

“Article I. Scope of application

This legislative decree applies to all assets that constitute objects, instruments, effects or profits related to or derived from the following criminal activities: against the public administration, against the environment, illicit drug trafficking, terrorism, kidnapping, extortion, human trafficking, money laundering, smuggling, customs fraud, tax fraud, illegal mining, fraud, computer crimes against property and others with the capacity to generate money, goods, effects or profits of illicit origin or activities linked to organised crime.

Article II. Principles and criteria applicable to the declaration of forfeiture of ownership

The following principles and criteria shall govern the application of this legislative decree:
[...]

2.3. Autonomy: the process of forfeiture is independent and autonomous, but subject to a final and binding judgment or award issued in criminal, civil, or other proceedings of a jurisdictional or arbitral nature.

A final and binding judgment or award is not required if they relate to the following criminal activities: illicit drug trafficking, terrorism, kidnapping, extortion, human trafficking, smuggling, customs fraud, tax fraud, illegal mining, fraud, and computer crimes against property. In these cases, the judicial or arbitration proceedings are not enforceable and the judge will reject outright any request to suspend the proceedings. The decision is final and cannot be appealed.

[...]

2.7. Publicity: the asset forfeiture process is public from the moment the order admitting the claim is notified or from the moment the precautionary measures are implemented. The proceedings from the start of the investigation are confidential, except for parties to the proceedings.

[...]

2.9. Burden of proof: in order to admit and declare the claim for extinguishment of ownership well-founded, it is up to the Prosecutor to offer evidence or concurrent and reasonable indications of the illicit origin or destination of the asset.

2.10. Right to property. Extinction of ownership is limited by the right to property obtained lawfully and in good faith, exercised in accordance with the common good and the limits of the law.

Article III. Definitions

For the purposes of this legislative decree, the following definitions shall apply:

3.1. unlawful activity: any criminal action or omission contrary to the criminal legal system with a final and consented criminal court sentence, related to the scope of application established in Article I of the Preliminary Title of this legislative decree.

[...].

Article 2. Object of the Legislative Decree

The purpose of this legislative decree is to regulate the process of extinction of ownership that proceeds against the assets mentioned in the assumptions of fact of Article I of the Preliminary Title, and whose origin or destination is related to illicit activities that have a previous firm and consented criminal judicial sentence or award. Article 7 must also be observed for the origin, regardless of who has acquired the property or has it in their possession.

Article 3. Legal nature and prescription of the process of extinguishment of ownership

[...]

The action for forfeiture of ownership is time-barred after five years from the date on which the judgment has become final and consented or from the issuance of the award.

Article 5. Rights of the requested party

During the proceedings, the requested party shall have the following rights:

5.1. Access to the proceedings directly or through the assistance and representation of a lawyer from the beginning of the patrimonial enquiry stage.

[...].

Article 7. Conditions for the proceeding for the extinguishment of ownership

7.1. The following are the prerequisites for the proceeding for the extinguishment of ownership:

[...]

f) In the case of assets and resources that have been affected in criminal proceedings, following a final and consented court judgment or award.

[...]

Article 13. Initiation of the patrimonial enquiry.

[...]

Once the asset investigation has been initiated, the Specialised Public Prosecutor's Office and the requested party shall be notified so that they may participate in accordance with their functions and powers in order to exercise their right to defence.

The asset investigation stage is confidential, except for the parties to the proceedings.

Article 14. Investigation of assets stage

[...]

14.3. The patrimonial investigation is carried out from the period in which the illicit activity was committed, in order to respect the patrimonial rights of the person who has acquired his or her assets in a lawful manner.

Article 15. Precautionary measures

15.1. The Specialised Prosecutor, ex officio or at the request of the Public Prosecutor, in order to guarantee the effectiveness of the process of extinguishment of ownership, may request the Judge for the precautionary measures that he/she considers necessary.

The judge decides in a reserved hearing within 24 hours of receiving the request, assessing the probability of the claim, the danger of delay and reasonableness. For these purposes, the judge may order the search and seizure of real estate.

The order admitting the precautionary measure may be opposed within five working days from the day following receipt of the notification. The opposition is resolved under the application of the principles of immediacy and contradiction, for which the judge must convene a hearing within five working days from the day following receipt of the notification.

Exceptionally, an interim measure may be ordered without informing the requested party, where it is justified that it is necessary not to do so in order to ensure that the effectiveness of the measure is not frustrated. Once the measure has been executed, opposition may be lodged.

If registration of the measure is necessary, the judicial reports are issued at the same time as it is granted.

[...]

15.4. In the case of registrable assets, the Public Registrar registers the precautionary measure ordered by the Judge, under his responsibility, without prejudice to the immediate allocation or use of the same, using the relevant legal mechanisms in the event that they are occupied. These registrations shall be made by the sole merit of the judicial decision ordering the measure. Once the precautionary measure ordered by the competent judicial authority has been registered and is in force, no act or contract, regardless of its nature, shall be recorded or registered in the registry entry of the property, until the registration of the respective sentence, if applicable, except for those acts of administration or disposition carried out or requested by the National Programme of Seized Property (PRONABI); a circumstance that is expressly stated in the respective entry. The annotation of the precautionary measure is made under the heading of charges and encumbrances in the corresponding registry entry. The acts of disposition or execution carried out by a third party in good faith, holder of real property or guarantee rights registered in the public registers, are not affected by the provisions of this paragraph.

Article 19. Notification

[...]

19.2. Personal notification is made by means of a letter addressed to the requested party or other persons who appear as holders of rights in rem over the property or who are directly affected by the process. Necessarily, the writ of admissibility must be notified to third parties with registered rights, according to the identification specified in the claim and in accordance with the entries registered and in force in the public registers.

[...]

Article 22. Initial Hearing

[...]

22.3 At the Initial Hearing, the Judge decides on the exceptions and the admissibility or rejection of the evidence offered. The evidence must be admitted in accordance with the criteria of lawfulness and relevance. However, the judge must suspend the process for prior questions or any other procedural mechanism that opposes the process, unless they are immersed in the illicit activities included in the second paragraph of numeral 2.3 of article II of the Preliminary Title of the present law.

[...].

Article 32. Scope of the judgement

The judgment declaring the claim to be well founded must be based on relevant, legal and timely evidence, as well as on the reasonableness and proportionality of the measure. It must declare the extinction of all rights in rem, whether principal or accessory, as well as the nullity of any act relating to the property which is the subject of the proceedings or the confiscation of the property previously seized in favour of the State. The judgement must also expressly rule on the good faith of the third parties appearing in the proceedings who claim to have real property or security rights registered over the assets concerned.

Likewise, it orders that these assets shall pass to the administration of the National Programme of Seized Assets (PRONABI) within twenty-four hours of the issuance of the judgment that acquires the quality of *res judicata*.

Article 35. Effects of the judgement that rejects the claim for extinguishment of ownership

35.1. If the judgement rejects the claim for extinguishment of ownership, the return of the goods or of any other patrimonial title is ordered, and their return must be ordered within forty-eight hours of the judgement becoming *res judicata*, or within seventy-two hours in the event of the goods being occupied, in both cases, under civil, administrative and criminal liability.

In no case may assets be auctioned prior to the judgment that ends the proceedings, with the exception of the illicit activities established in the second paragraph of numeral 2.3 of article II of the Preliminary Title of the present law.

[...]

Article 37. Procedure for appeals

Appeals for reconsideration, appeal and cassation may be lodged against decisions issued by the competent court of first instance.

Article 39. Appeal

Appeals may be lodged against the following decisions:

a) The one that resolves the opposition of the interim measure.

[...].

FINAL SUPPLEMENTARY PROVISIONS

Fourth. Powers of the National Programme of Seized Assets (PRONABI)

[...]

With the prior and express authorisation of the Judge, the National Programme of Seized Assets (PRONABI) may auction, before the conclusion of the process for the illicit activities established in the second paragraph of numeral 2.3 of article II of the Preliminary Title of the present law, the seized or confiscated assets that, due to their nature or characteristics, may be subject to loss or deterioration, as well as when the value of their custody or conservation is onerous. In these cases, the goods and effects are valued or commercially appraised and auctioned publicly. Likewise, in the case of vehicles in a situation of loss or destruction, it may definitively deregister them and enter them in the respective register, without prejudice to the fact that PRONABI may arrange for periodic maintenance of the goods that by their nature require it, only at the cost of the required party.

[...]"

Article 2. Addition of Article 40-A to Legislative Decree 1373, Legislative Decree on Extinction of Ownership

Article 40-A is incorporated into Legislative Decree 1373, Legislative Decree on Extinction of Ownership, with the following text:

"Article 40-A. Procedure for appeals in cassation

40-A.1 The appeal in cassation is admissible against judgments and orders issued by the superior chambers which, as second degree bodies, put an end to the proceedings on any of the following grounds:

- a) It has been issued in disregard of some of the constitutional guarantees of a procedural or substantive nature, or with an improper or erroneous application of such guarantees.
- b) It has been considered necessary for the development of the jurisprudential doctrine.
- c) It has been misapplied or there has been an erroneous interpretation or a failure to apply the law or other legal rules necessary for its application.
- d) It has been issued with a lack of or manifestly illogical statement of reasons, when the flaw results from its own wording.
- e) It has departed from the jurisprudential doctrine established by the Supreme Court of Justice or, as the case may be, by the Constitutional Court.

40-A.2 The time limit for lodging the appeal is ten working days. It shall be processed in accordance with the provisions established in the Code of Civil Procedure.

FINAL COMPLEMENTARY PROVISIONS**FIRST. Application to the proceedings for the extinction of ownership in progress**

The modifications provided for in the present law are immediately applicable to all forfeiture proceedings underway, regardless of the procedural stage they are in.

SECOND: Adaptation of the Regulations

The Executive Branch shall adapt the Regulations of Legislative Decree 1373, Legislative Decree on Extinction of Ownership, approved by Supreme Decree 007-2019-JUS, to the amendments provided for in the present law within one hundred and twenty calendar days of its entry into force.