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April 26, 2024

Honorable Judge  
of the Constitutional Court  
of the Superior Court of Justice of  
Lima, Peru

[Columbia Global Freedom of Expression](#) is an initiative of Columbia University, founded in 2014, whose mission is to strengthen freedom of expression worldwide by disseminating and promoting the highest national and international standards in the field.

We, the undersigned, respectfully submit to your honorable office, the attached *amicus curiae* brief, with respect to Case No. 03388-2024-0-1801-JR-DC-01, regarding the amparo action filed against Provision No. 4 issued by the Second Transitory Supreme Prosecutor's Office Specializing in Crimes Committed by Public Officials, which ordered the opening of a preliminary investigation against journalist and director of IDL-Reporteros, Gustavo Andrés Gorriti Ellenbogen.

This brief is submitted in compliance with the admissibility conditions of Article V of the Preliminary Title of the New Constitutional Procedural Code, approved by Law 31307. Consequently, we, the undersigned, respectfully request that, if so deemed, this honorable court value and take into account the considerations that will be expressed. Its purpose is to present to the honorable court, the highest international standards on freedom of expression, directly applicable to the legal issues presented in the case of reference.



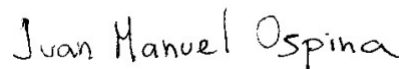
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***Amicus Curiae Brief***

**Presented to the  
Judge of the Constitutional Court of the Superior Court of Justice of Lima, Peru.**

**Regarding the  
Case No. 03388-2024-0-1801-JR-DC-01 regarding the amparo action filed by Gustavo  
Andrés Gorriti against Decision No. 4 issued by the Second Transitory Supreme  
Prosecutor's Office Specializing in Crimes Committed by Public Officials.**

**By**  
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## I. Context of the present case

1. As a preamble, it is relevant to mention that this case is part of a serious regional resurgence of the use of criminal mechanisms as a means of intimidation and silencing of journalists, researchers and other indispensable voices in a democratic society.
2. Recent cases decided by the Inter-American Court of Human Rights (IACHR), such as *Grijalva Bueno v. Ecuador* and *Palacio Urrutia v. Ecuador*, show a worrying panorama that evidences this use -and abuse- of the judicial system by powerful political actors to intimidate journalists and informants and impede the right to freedom of expression. *Ecuador* and *Palacio Urrutia v. Ecuador*, show a worrying panorama that evidences this use -and abuse- of the judicial system by powerful political actors to intimidate journalists and informants, and impede society's right to access information of notable public relevance.
3. Such acts of harassment deeply erode democracy by weakening accountability and public deliberation on matters of general interest.
4. Likewise, in order to properly contextualize this case, it is important to highlight that most of Gustavo Andrés Gorriti Ellenbogen's work as a journalist has focused -so far this decade and the last- on the investigation of transnational corruption cases in Latin America.
5. Thus, for example, since 2011, IDL-Reporteros -media that Gorriti directs- undertook the task of investigating the Lava Jato case -one of the largest corruption cases in the continent. The investigation and publication of several corruption cases led to the fact that, in 2018, on several occasions, Peruvian authorities initiated several actions aimed at obtaining journalistic material collected by IDL-Reporteros. <sup>1</sup>By virtue of these facts, on July 12, 2018, the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights expressed its concern about the actions that were being carried out in order for IDL-Reporteros to reveal its sources .
6. In addition, according to the Inter-American Commission on Human Rights (IACHR), since 2019, Gorriti has also been the victim of an escalation of acts of harassment and harassment, which even threaten his life and put him at risk of irreparable harm. The above led the IACHR to grant the journalist precautionary measures on July 24, 2023, through which it requested the Peruvian State to adopt the necessary measures to protect his life and integrity, as well as to guarantee that "he can develop his activities without being subjected to acts of violence, intimidation, threats, or harassment in the exercise of his work. **The aforementioned**

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<sup>1</sup> Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, Press Release R151/18: Office of the Special Rapporteur expresses concern over



# Global Freedom of Expression

## COLUMBIA UNIVERSITY

actions to make journalists reveal their sources and informational materials in Peru. July 12, 2018. At: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1110&IID=2>.

<sup>2</sup>includes the adoption of measures to enable it to properly exercise its right to freedom of expression" [emphasis added] .

## II. On the opening of a criminal investigation for the exercise of freedom of the press

7. As explained in the following paragraphs, the opening of a criminal investigation against journalist Gustavo Gorriti is incompatible with Article 13 of the American Convention on Human Rights, as interpreted by the jurisprudence of the Inter-American Court of Human Rights. Furthermore, such decision is contrary to other international and comparative law precedents that may provide guidance in resolving the legal issues applicable to the case.
8. Provision No. 4 issued by the Second Transitory Supreme Prosecutor's Office Specializing in Crimes Committed by Public Officials in the case *sub judice*, among other issues, provides for the opening of a preliminary investigation against journalist Gustavo Andrés Gorriti Ellenbogen for the crime of active bribery for allegedly giving "media support in favor of Rafael Ernesto VELA BARBA and José Domínguez PÉREZ GÓMEZ", who serve as prosecutors in the Lava Jato case, on which the journalist was reporting.
9. From the above it seems clear that, according to the Prosecutor's Office, the facts constituting the alleged crime of bribery refer to the expressions issued by Gorriti as a result of his journalistic investigations. In effect, it seems that the Prosecutor's Office understands that the journalistic reports that showed the progress of the investigation or the opinions in which the journalist recognized the work of the authorities, configure the factual assumptions of the typical conduct, that is to say, one of the extremes of the crime of active bribery is configured by the mere exercise of freedom of expression and opinion by the journalist. Such an interpretation of the crime of active bribery is contrary to all international standards on freedom of expression and would end up completely suppressing the space for the exercise of investigative journalism, especially if such investigations depend on confidential sources.
10. The investigations published by the journalist that seem to justify the opening of the preliminary investigation, not only cannot be the cause of a criminal proceeding, but, according to all international jurisprudence on the matter, they are expressions that deserve special protection by the State. In effect, the expressions evaluated as "favorable" by the Prosecutor's Office correspond to publications

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<sup>2</sup> IACHR, Press Release No. 172/23: IACHR Grants Precautionary Measures to Journalist Gustavo Gorriti in Peru. 28 of July 28 from 2023. At: <https://www.oas.org/es/CIDH/jsForm/Default.asp?File=/es/cidh/prensa/comunicados/2023/172.asp#:~:text=Washington%2C%20D.C.%2D%20La%20Comisi%C3%B3n%20Interamericana,da%C3%B1o%20irreparable%20a%20sus%20derechos.>

The company has been reporting on the progress of investigations into issues that, such as the alleged corruption of some public officials, are of the highest public relevance.

11. In this regard, it is important to mention that, according to the reiterated jurisprudence of the Inter-American Court of Human Rights, freedom of the press and, in particular, reports on matters of public interest, constitute specially protected speech and, therefore, should be subject to enhanced protection.
- 12.<sup>3</sup> Indeed, the IACHR Court has indicated in cases such as *Alvarez Ramos v. Venezuela* that freedom of expression deserves reinforced protection "with respect to opinions or information on matters in which society has a legitimate interest in being kept informed [and on that which] affects the functioning of the State, or affects general rights or interests or has important consequences for it" .
13. This special protection implies that the State cannot use criminal law to prosecute a person who has expressed such opinions or information, as this would be tantamount to criminalizing the expression of matters of public interest. <sup>4</sup>In this regard, the IACHR has been emphatic in stating that "***the mere fact of subjecting a person to criminal proceedings as a consequence of the legitimate exercise of his or her right to freedom of expression violates this right***" .
14. For its part, the Inter-American Court has pointed out that "the use of criminal law for disseminating news of this nature would directly or indirectly produce an intimidation that would ultimately limit freedom of expression and prevent the public scrutiny of conduct that violates the legal system, such as, for example, acts of corruption, abuse of authority, etc. <sup>5</sup>In short, this would weaken public control over the powers of the State, with notorious damage to democratic pluralism" .
15. In sum, according to the highest international standards, criminal law cannot be used to punish expression on matters of public interest. <sup>6</sup>According to Inter-American standards, the mere opening of a criminal investigation for the exercise of freedom of expression on matters of public relevance is contrary to Article 13 of the American Convention on Human Rights . In this sense, the Inter-American Court ruled in the case of *Uzcátegui and others v. Venezuela* when it determined that the existence of a criminal proceeding against Mr. Uzcátegui kept him in a situation of uncertainty, insecurity and intimidation that arbitrarily limited his right to freedom of expression and that was contrary to the State's obligation to guarantee the free and full exercise of this right in an environment of freedom of expression, and that was contrary to the State's obligation to guarantee the free and full exercise of this right in an environment of freedom of expression.

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<sup>3</sup> I/A Court H.R., Case of *Álvarez Ramos v. Venezuela*. Case of *Álvarez Ramos v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2019. Series C No. 380, para. 116.

<sup>4</sup> IACHR, Merits Report No. 88/10 *Néstor José and Luis Uzcátegui et al. v. Venezuela*, July 14, 2020, para. 280.

<sup>5</sup> I/A Court H.R., Case of *Álvarez Ramos v. Venezuela*. Case of *Álvarez Ramos v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2019. Series C No.



Global Freedom of Expression  
COLUMBIA UNIVERSITY

380, para. 122.

<sup>6</sup> IACHR, Merits Report No. 88/10 Néstor José and Luis Uzcátegui et al. v. Venezuela, July 14, 2020, para. 280.



<sup>7</sup>democratic society . <sup>8</sup>Consequently, the Court declared that the State of Venezuela had failed to comply with Article 13.1 of the Convention .

- 16.<sup>9</sup>Furthermore, in order for any restriction on freedom of expression - including the opening of an investigation - to be compatible with Article 13 of the American Convention, which protects the right to freedom of thought and expression, and with what has been established by the Inter-American Court in its constant jurisprudence, judges must ensure that they apply strict scrutiny and, therefore, make sure that measures intended to limit freedom of expression, among other requirements, are clearly enshrined in a law, <sup>10</sup>judges must ensure that they apply strict scrutiny and therefore make sure that measures aimed at limiting freedom of expression, among other requirements, are clearly enshrined in law, pursue a legitimate aim, and are appropriate, necessary and proportional in a democratic society .
17. The application of ambiguous criminal definitions to investigate, prosecute or convict someone who has limited himself to expressing expressions of public interest, with or without the support of official information, does not respect the principles of legality, necessity and strict proportionality enshrined in Article 13 of the American Convention. On the contrary, the use of ambiguous criminal definitions, based on conjectures contrary to the exercise of fundamental rights, generates an intimidating effect that is clearly contrary to the general duty of the State to establish conditions conducive to the robust, uninhibited and open exercise of freedom of expression.
18. Whatever the purpose to be achieved in this type of case, given that criminal law is the most restrictive means available to the State to achieve its goals, its use must be carefully oriented so as not to generate the opposite effect to the one sought. Criminal law outside the principle of legality, necessity and proportionality and the constitutional and international human rights standards mentioned above, ceases to be a legitimate instrument for the protection of rights through the prosecution of crime and ends up becoming an instrument of intimidation, intimidation and infringement of fundamental rights. One of these cases occurs, according to the Inter-American Court, when criminal law is used to investigate, prosecute and convict those who have limited themselves to exercising their right to freedom of expression on matters of public interest. <sup>11</sup>In these cases, not only the right of the communicator and the tranquility for his peers to exercise their right to freedom of expression is affected, but also the right of democratic societies to know information or opinions on matters of their clearest and most direct interest .
19. The jurisprudence of the IACHR Court in this regard is reiterated. One of the first cases on this subject is that of *Herrera Ulloa v. Costa Rica*, in which the Court held in

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<sup>7</sup> I/A Court H.R., Case of Uzcátegui et al. v. Venezuela. Case of Uzcátegui et al. v. Venezuela. Merits and Reparations. Judgment of September 3, 2012. Series C No. 249, para. 189.

<sup>8</sup> I/A Court H.R., Case of Uzcátegui et al. v. Venezuela. Case of Uzcátegui et al. v. Venezuela. Merits and Reparations. Judgment of September 3, 2012. Series C No. 249, para. 191.

<sup>9</sup> See, for example: I/A Court H.R., Case of Uzcátegui et al. Case of Uzcátegui et al. v. Venezuela. Merits and Reparations. Judgment of September 3, 2012. Series C No. 249, para. 189.

<sup>10</sup> I/A Court H.R., Case of Álvarez Ramos v. Venezuela. Case of Álvarez Ramos v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 30, 2019. Series C No. 380, para. 104.





# Global Freedom of Expression

## COLUMBIA UNIVERSITY

<sup>11</sup> See, for example: I/A Court H.R., Case of Usón Ramírez v. Venezuela. Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 80.

The Court concluded that the sanctions imposed against journalist Mauricio Herrera Ulloa, for faithfully reproducing critical information published in the foreign press about the conduct of a Costa Rican diplomatic official, constituted an excessive and unnecessary use of the punitive power of the State that had a dissuasive effect on the practice of journalism and the debate on matters of public interest in Costa Rica.

- 20.<sup>12</sup>In this regard, the IACHR Court indicated that "the effect of this requirement resulting from the judgment entails a restriction incompatible with Article 13 of the American Convention, since it produces a dissuasive, frightening and inhibiting effect on all those who exercise the profession of journalist, which, in turn, prevents public debate on issues of interest to society" .
- 21.<sup>13</sup>In the same sense, the IACHR Court in the case of *Palacio Urrutia v. Ecuador* regarding the criminal conviction of a journalist for a publication critical of the president of Ecuador, determined that "the use of criminal law [...] would produce, directly or indirectly, an intimidation that would ultimately limit freedom of expression and prevent the public scrutiny of conduct that violates the legal system, such as, for example, acts of corruption, abuses of authority, etc." . In the case at hand, the inhibiting effect would affect both the journalist Gorriti and other journalists, since any favorable pronouncement on the actions of public officials related to his journalistic work could be interpreted as an indication of the crime of bribery as in the present case. And if the journalist has had interviews, information or any contact with the authorities whose work he considers appropriate, it would seem, in light of the decision of the Prosecutor's Office, the crime of bribery. In other words, it would be a crime in Peru to receive information from the authorities and then publish journalistic investigations in which the communicator considers that such authorities are fulfilling their duties. It is, in fact, the end of investigative and independent journalism.
22. If favorable appraisals of the work of officials with whom the journalist has had contact or from whom he or she has received information constitute a crime, the right to freedom of opinion, which in a democratic society has special protection, would also be eliminated. With this, the prosecutors would dictate the editorial line of the media according to whether they like the coverage or not.
23. In accordance with international standards on freedom of expression, while no person is exempt from being subjected to a criminal investigation, the competent authorities must exercise their power in a manner compatible with fundamental rights. To open a criminal investigation for a conjecture arising from the legitimate exercise of freedom of expression is not compatible with the requirements set forth in Article 13 of the American Convention on Human Rights.

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<sup>12</sup> I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Judgment of July 2, 2004. Series C. No. 107, para. 133.

<sup>13</sup> I/A Court H.R., Case of Palacio Urrutia et al. Case of Palacio Urrutia et al. v. Ecuador. Merits, Reparations and Costs. Judgment of November 24, 2021. Series C No. 446, para. 118.

24.<sup>14</sup>The State's duty not to violate fundamental rights and to exercise its sanctioning power with caution is reinforced in cases such as this one, in which the competent authorities have already been informed of the context of harassment, intimidation, violence and threats that seek to impede the journalist's activities and in which the State has been requested to **"adopt measures so that he can duly exercise his right to freedom of expression"** [emphasis added] .

### III. On the protection of the source reserve

25. In the present case, the Prosecutor's Office issued orders regarding the lifting of the confidentiality of all of Mr. Gorriti's telephone communications for the last 5 years. This measure contravenes the highest Inter-American standards on freedom of expression. On the one hand, the mere threat of lifting the secrecy of the communications of a journalist investigating acts of corruption immediately generates an inhibiting effect that makes it very difficult for him and all his peers to have access to his sources in the future: what confidential source will interview a journalist if he knows that the confidentiality will be lifted? On the other hand, if the measure were to be implemented and the officials could access all the sources consulted by the journalist in the years 2016-2021, as the Prosecutor's Office intends, it would be adopting a measure that is not only disproportionate, since they would have access to communications that have nothing to do with the fact that they are investigating, but also openly violates the confidentiality of the source. To explain the seriousness of this decision, below is a review of comparative law that allows us to understand the importance, nature and scope of the confidentiality of the source as an indispensable institutional guarantee for the practice of journalism.

26. Indeed, the guarantee of confidentiality of the source has been recognized by many international human rights bodies as an indispensable guarantee for the exercise of freedom of the press.<sup>15</sup>

27. Both the IACHR and the IACHR and its Office of the Special Rapporteur for Freedom of Expression have pointed out the nature and scope of the confidentiality of the source. Thus, for example, in the case of *Moya Chacón v. Costa Rica*, the IACHR indicated that the protection of the confidentiality of the source was essential given its value in journalistic work, and its importance in the search for relevant information on matters of public interest.

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<sup>14</sup> IACHR, Precautionary Measures No. 341-23 Gustavo Andrés Gorriti Ellenbogen regarding Peru, July 24, 2023, available at: [https://www.oas.org/es/cidh/decisiones/mc/2023/res\\_42-23\\_mc\\_341-23%20pe\\_en.pdf](https://www.oas.org/es/cidh/decisiones/mc/2023/res_42-23_mc_341-23%20pe_en.pdf).

<sup>15</sup> See, Declaration of Principles on Freedom of Expression of the Special Rapporteur for Freedom of Expression of the IACHR; General Comment No. 34 of the UN General Committee on Human Rights; Recommendation No. R (2000) 7 on the right of journalists not to reveal their sources of information, adopted by the Committee of Ministers of the Council of Europe; and the *Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019* of the African Commission on Human and Peoples' Rights.

28. The IACHR, in turn, enshrined the defense of confidentiality of sources in its Declaration of Principles on Freedom of Expression. <sup>16</sup>According to Principle 8, "[e]very social communicator has the right to the confidentiality of his or her sources of information, notes and personal and professional archives" .
29. <sup>17</sup>For its part, the Rapporteurship, in its interpretation of the Declaration of Principles on Freedom of Expression, reiterated that the aforementioned principle establishes the right of all communicators to "refuse to reveal the sources of information as well as the product of their investigations to private entities, third parties, public or judicial authorities" .
30. In turn, the European Court of Human Rights (ECtHR) has developed the subject in depth. Thus, in the case *Telegraaf Media Nederland Landelijke Media v. The Netherlands*, the ECtHR stressed the importance of the confidentiality of the source as a basic precondition for freedom of the press in democratic societies: "without such protection [the Court has consistently reiterated in several cases such as *Goodwin v. United Kingdom*, among others] sources would be deterred from supplying information to the press on matters of public interest, thus undermining the vital role of the press as public-watchdog".
31. <sup>18</sup>In line with the ECtHR and the IACHR Court, the Rapporteurship has also considered that the importance of the confidentiality of sources "is based on the fact that journalists, in their work of providing information to individuals and satisfying their right to receive information, render an important public service by gathering and disseminating information that otherwise, without the secrecy of sources, could not be known" [emphasis added] .
32. As exemplified in the above quotations, judicial standards on the confidentiality of the source recognize that this guarantee is an essential condition for the full exercise of freedom of the press. <sup>19</sup>Indeed, this guarantee is essential to facilitate the conditions that allow the flow of information on matters of public interest, since it offers sources judicial safeguards "that ensure their anonymity and avoid possible reprisals that may arise after having disclosed information" , as mentioned by the Office of the Rapporteur itself.
33. On this point, the case law of the ECtHR on the protection of journalistic sources has been emphatic on the need to seriously consider the inhibiting effect on freedom of expression of the adoption of measures such as the interception of telephone communications or the exhibition of documents, among others. These can only proceed when there is a public motive that

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<sup>16</sup> IACHR, Principles on Freedom of Expression of the Office of the Special Rapporteur for Freedom of Expression of the IACHR, 2000. At <https://www.oas.org/es/cidh/mandato/documentos-basicos/declaracion-principios-libertad-expresion.pdf>.

<sup>17</sup> Special Rapporteur for Freedom of Expression Inter-American Commission on Human Rights, Background and Interpretation of the Declaration of Principles. At: <https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=132&IID=2>.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

explains its absolute necessity and its strict proportionality for the pursuit of a purpose as or more important than the right affected.

34. In both the *Financial Times LTD et al. v. United Kingdom* and *Telegraaf* cases, the ECtHR found violations of the right to freedom of expression as a result of orders issued by state bodies that sought to undermine the confidentiality of the source. In both cases, in analyzing the consequences of the challenged measures, the European Court emphasized the future chilling effect that such measures could have, in that they would deter sources from reporting on matters of public interest.
35. It is precisely this argument that, according to the European Court, in democratic societies there is an overriding interest in protecting the confidentiality of sources since, precisely, this guarantee is an instrument through which freedom of the press is realized. Consequently, validly limiting this guarantee requires careful weighing in order to demonstrate that the restriction is useful and indispensable for the safeguarding of rights or interests of equal or higher hierarchy.
36. On this aspect, again the case law of the ECtHR is enlightening, especially in the case *Sedletska v. Ukraine* (2021), which presents numerous similarities with the situation of journalist Gustavo Gorriti Ellenbogen. In the referred case, The European Court assessed whether the Ukrainian Prosecutor General's Office's orders, approved by the judiciary, to access telephone data of a journalist between July 2016 and November 2017 (16 months) violated freedom of expression. These warrants were intended to determine whether the journalist had met with the head of the country's anti-corruption bureau, who may have provided her with confidential information.
37. In its analysis, the ECtHR considered that the measures described above violated the right to freedom of expression. In reaching this conclusion, it noted that, in light of the importance of the confidentiality of the source for freedom of the press in the context of democratic societies, any interference with this guarantee should be analyzed through the "strictest scrutiny".
38. The ECtHR thus considered that the orders were grossly disproportionate in that they "authorized the collection of a large amount of Sedletska's information for 16 months, which could lead to the identification of sources" without any connection to the investigation carried out by the Prosecutor's Office. In the case of Gorriti, it should be noted that the measure ordered by the Prosecutor's Office covers a period of 5 years without any precaution, restriction or guarantee for the journalist and all his sources regarding the investigated facts and any other.
39. In *Sedletska*, the ECtHR found that there was a violation of freedom of expression because the orders issued by Ukraine lacked procedural safeguards to prevent the Prosecutor General's Office from identifying additional sources, "which undermines Sedletska's work in investigating corruption within the Prosecutor General's Office itself". In the case at hand, this also

could be raised as a legitimate concern that requires a judicious weighing by the Honorable Judge.

40. Finally, the European Court concluded that Ukraine failed to prove that there were no less harmful alternative measures to collect the information, questioned whether the measure could be effective in obtaining the information sought, and found that the duration of the measure was too long, so that, again, it could lead to obtaining information irrelevant to the facts under investigation. Based on these arguments, the ECtHR concluded that the measures of the Prosecutor's Office were indeed in violation of the confidentiality of the source, and thus of the right to freedom of expression.
41. A similarly strict standard has been applied, among others, by the Colombian Constitutional Court in cases on the confidentiality of the source. For example, in judgment T-594 of 2017, said court explained that any restriction of the aforementioned guarantee "must be absolutely justified in the guarantee of another fundamental right, and in any case, pass a strict balancing test".
42. Taking into account the aforementioned international standards -in light of the criminal investigation against Gorriti, and the accompanying orders regarding the lifting of all his telephone communications for a period of 5 years-, it is important then that the Honorable Judge takes into account the quality of Gorriti as an investigative journalist, whose work has focused on the investigation of acts of corruption; the lack of grounds for the opening of the investigation -given that the constituent fact of the crime is the legitimate exercise of the right to freedom of expression and opinion-, and the disproportionality of a measure that, moreover, is unnecessary. Indeed, even if such interference in the confidentiality of the source leads to identify that the journalist had telephone contact with the prosecutors in charge of the Lava Jato corruption case, how can this constitute a crime by a journalist whose professional task is, precisely, to talk to official and unofficial sources in order to publish information of public interest?
43. If the measures requested by the Prosecutor's Office materialize, there is an imminent and real risk that the confidentiality of the source -and therefore freedom of expression- will be unjustly sacrificed, thus creating a perverse disincentive for sources to bring to light information of public interest, which in turn makes the work of investigative journalism impossible and compromises, as explained in the following paragraphs, the right of democratic societies to know information on matters of public interest.

#### **IV. On the protection of the collective dimension of the right to freedom of expression**

44. The opening of a criminal investigation on the basis of the exercise of a fundamental human right and the disproportionate restriction of the confidentiality of the source have, as mentioned above, a notable inhibiting effect. This effect, in turn, impacts





# Global Freedom of Expression

## COLUMBIA UNIVERSITY

The right of individuals and societies to access information that is in the public interest, such as information needed to fight corruption, to exercise democratic control over public officials or to defend human rights, is substantially affected. Faced with the threat of criminal prosecution or breach of confidentiality of the source, for publishing information in possession of authorities or for giving a positive opinion on their management, neither journalists nor informants would be willing to communicate to society on matters of their greatest interest. As the Inter-American Court has reiterated - in cases such as *Fontevicchia and D'amico*

<sup>20</sup>*v. Argentina, Claude Reyes v. Chile, Palamara Iribarne v. Chile* and its *Advisory Opinion on Compulsory Membership of Journalists*, among many others-, the scope of protection of freedom of expression also safeguards "the right of society to seek and receive any information, to know the thoughts, ideas and information of others and to be well informed" .

45. This guarantee, precisely, seeks to strengthen civic participation in democratic societies through informed deliberation. <sup>21</sup> <sup>22</sup>Hence, in the Inter-American System, for example, speeches on matters of public interest and on public officials in the exercise of their functions or candidates for public office enjoy special protection. What makes this information have a reinforced protection, and the sources must be specially safeguarded and the journalists specially protected, is the public's right to know this information.
46. The expanded margin of protection afforded to expressions dealing with these matters is intended to protect both the individual right to broadcast a message and the collective right of society to receive it, by virtue of its value for a robust public debate, in line with the democratic principles that inspire the American Convention on Human Rights.
47. In comparative law, recent decisions have focused on the importance of investigative journalism in exposing acts of corruption, emphasizing the need to protect these reporting practices and the methods that enable them.
48. For example, in the 2023 case *Mazetti Management Services v. amaBhungane Centre for Investigative Journalism* (2023-050131), the South African Supreme Court held that, "the public interest in eliminating corruption is a factor of the utmost importance" in weighing a private company's interest in preventing private documents - which were leaked - from serving as the basis for a journalistic investigation into corruption. In the case at hand, with respect to the public interest, it is not unknown the informative value of the investigations by

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<sup>20</sup> Special Rapporteur on Freedom of Expression Inter-American Commission on Human Rights, Inter-American Legal Framework on the Right to Freedom of Expression, 2010. At [https://www.oas.org/es/cidh/expresion/docs/cd/sistema\\_interamericano\\_de\\_derechos\\_humanos/index\\_MJIAS.html](https://www.oas.org/es/cidh/expresion/docs/cd/sistema_interamericano_de_derechos_humanos/index_MJIAS.html).

<sup>21</sup> See *Tristán Donoso v. Panama, Kimel v. Argentina, Ivcher Bronstein v. Peru*.

<sup>22</sup> See *Herrera Ulloa v. Costa Rica, Ricardo Canese v. Paraguay, Usón Ramírez v. Venezuela*.



Gorriti, and the consequent civic detriment that would result from silencing or hindering his work.

49. The conclusions of the ECHR case *Halet v. Luxembourg* are, for their part, very enlightening with regard to the social value of certain information. In this case concerning the *Luxleaks* scandal, the European Court indicated that the scope of protection of the freedom of expression of *whistleblowers* - essential parts of the work of investigative journalism - must be determined in light of the public interest of the information disclosed - such that matters relating to "political debates, misconduct by high-ranking officials, government surveillance practices, governmental surveillance practices, and the protection of the freedom of expression of *whistleblowers* - essential parts of the work of investigative journalism - must be determined in light of the public interest of the information disclosed, **misconduct by high-ranking officials**, government surveillance practices, **suspected serious crimes**, failures of institutional care, and controversial conduct by the armed forces" [emphasis added], are undoubtedly matters of public interest that merit a higher degree of protection.
50. Taking into account the nature of the investigations that Gorriti has advanced with respect to acts of corruption, it is necessary to emphasize that any measure that may undermine the legitimate exercise of his freedom of the press does not only have a negative impact on the individual dimension of the aforementioned right, but also on its collective dimension.
51. Depriving Peruvian society of investigations on corruption matters such as those mentioned above also implies irreparable damage to its democratic participation processes. Peruvian society has the right to be informed on matters of public interest. This is but an essential precondition for the consolidation of modern democracies in which the State -whose authority and power emanate from its citizens- is obliged to be accountable.

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52. We, the undersigned, as *amici curiae*, would like to respectfully request your honorable office to admit this brief in accordance with the requirements enumerated in Article V of the Preliminary Title of the New Constitutional Procedural Code, approved by Law 31307. Likewise, we respectfully request the evaluation of the considerations that were previously exposed with the sole purpose of assisting the important work of the Court regarding the protection of the freedom of opinion, expression and press in the present case.

April 26, 2024

 **Global Freedom of Expression**  
COLUMBIA UNIVERSITY



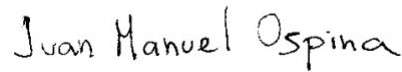
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