

La integridad profesional como parte del deber de ser ejemplo en la abogacía: Reflexiones a partir del “Caso Telmo”*

A integridade profissional como parte do dever de ser exemplo na advocacia: Reflexões a partir do “Caso Telmo”

Professional integrity as part of the duty to set an example in advocacy: Reflections from the “Telmo Case”

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Resumen


El presente artículo se basa en la denuncia presentada contra la abogada María Paola Carbajal Ponce ante el Consejo de Ética del Colegio de Abogados de Lima, por haber cometido infracciones éticas hacia el practicante a su cargo, Telmo Paz. En específico, se hace referencia al audio en el que se exponen los malos tratos verbales que recibía el practicante por encontrarse inconforme con el trabajo encargado. Al respecto, se plantea como la presentación de la denuncia, admisión a trámite y posterior resolución favorable -importante, aunque aún insuficiente- por parte del Consejo de Ética establecen un precedente sobre cómo se deben abordar las infracciones éticas hacia practicantes. Y a su vez, que los abogados tienen obligaciones más allá de las que se crean con sus clientes o centros de trabajo, las cuales refieren a ser íntegros y ser un ejemplo de profesionales para sus pares, haciendo énfasis en los profesionales en formación. Finalmente, también se desarrolla que el maltrato y la hostilización laboral horizontal hacia practicantes pre y profesionales es sistemático, e incluso forma parte de la cultura e identidad de la idea de la “adecuada” formación profesional en Derecho, en especial, en estudios de abogados. Lo cual, advierte sobre la carencia de una formación con enfoque ético, porque se construye una incuestionable impunidad y lealtad hacia ambientes de hostilización vertical y violencia cuando, lo natural, es el “pagar piso”.


Palabras clave: Prácticas preprofesionales, formación profesional, Código de Ética, Consejo de Ética, maltrato, integridad profesional, identidad profesional, Perú

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Resumo

Este artigo se baseia na denúncia apresentada contra a advogada María Paola Carbajal Ponce perante o Conselho de Ética da Ordem dos Advogados de Lima, por ter cometido violações éticas contra o profissional sob sua responsabilidade, Telmo Paz. Especificamente, é feita referência ao áudio em que são expostas as agressões verbais que o profissional recebeu por estar insatisfeito com o trabalho atribuído. Nesse sentido, propõe-se que a apresentação da denúncia, a admissão para processamento e a posterior resolução favorável – importante, embora ainda insuficiente –, pelo Conselho de Ética, estabeleçam um precedente sobre como devem ser abordadas as violações éticas contra os profissionais. Assim, e ao mesmo tempo, os advogados têm obrigações além daquelas criadas com seus clientes ou locais de trabalho, referindo-se à integridade enquanto exemplo de profissionais para seus pares, com destaque para os profissionais em formação. Por fim, desenvolve-se também que o abuso e o assédio laboral horizontal a praticantes pré-profissionais e profissionais é sistemático, e faz mesmo parte da cultura e identidade da ideia de formação profissional “adequada” em Direito, especialmente em escritórios de advogados. O que alerta para a falta de formação com enfoque ético, pois se constrói uma inquestionável impunidade e lealdade diante de ambientes de hostilidade vertical e violência, quando o natural é “pagar piso”.

Palavras-chave: *Práticas pré-profissionais, formação profissional, Código de Ética, Conselho de Ética, abuso, integridade profissional, identidade profissional, Peru.*

Abstract

The present article is based on the complaint filed against lawyer María Paola Carbajal Ponce before the Ethics Committee of the Bar Association of Lima, for having committed ethical violations towards her intern, Telmo Paz. Specifically, reference is made to the audio recording exposing the verbal abuse the intern received for being dissatisfied with the assigned work. In this regard, it is argued that the filing of the complaint, its admission for processing, and subsequent favorable resolution - although still insufficient - by the Ethics Committee set a precedent on how ethical violations towards interns should be addressed. Furthermore, it is emphasized that lawyers have obligations beyond those created with their clients or workplaces, which include being upright and setting an example of professionalism for their peers, with particular emphasis on professionals in training. Finally, it is also discussed that mistreatment and horizontal workplace harassment towards interns and professionals is systematic, and even part of the culture and identity of the notion of "proper" legal professional training, especially in law firms. This warns of the lack of training with an ethical focus, as it builds unquestionable impunity and loyalty towards environments of vertical harassment and violence when, naturally, "paying one's dues" should not be the norm.

Keywords: *internships, professional training, Code of Ethics, Ethics Council, mistreatment, professional integrity, professional identity, Peru.*

1 Introduction

In June 2020, the "Telmo" Case went viral on social networks and became a trend because it exposed the well-known and unfair power relations between lawyers and practitioners, so present in law firms. The case has to do with Telmo Paz, then an intern at a well-known law firm. In the audio released, he was reprimanded by lawyer María Paola Carbajal for not being satisfied with the result of an assigned pending.

For the general public, the immediate reaction was indignation at the mistreatment that a superior exercised against her subordinate. However, the response of the law community was later and comments were even heard justifying that this was "paying derecho de piso."¹ It is no secret that from the beginning of vocational training we go through similar

¹ According to Arce Ortiz, paying dues consists of "accepting any current condition of practice, as long as I achieve, after several years, a job that compensates for the legal breaches to which I am now subjected. Thus, they ask me not to go to class because I have responsibilities to fulfill or do not claim better working conditions since you will

situations: bosses who have abusive behaviors and hostile work environments.

In response to this case, the Ethics Observatory of the Office of Social Responsibility of the Faculty of Law of the PUCP filed a complaint with the Ethics Council of the Lima Bar Association, requesting that the lawyer involved be sanctioned for having failed to comply with the ethical principles and duties required by the profession. This effort related the university's social responsibility obligations with strategic litigation (Bregaglio Lazarte; Constantino Caycho; Camino Morgado, 2021). In this particular case, a pronouncement was sought that would establish, clearly and for the first time, what were the ethical obligations of the lawyers who are in charge of practicing lawyers.

The response was favorable, since it was decided to sanction Carbajal with a written warning for not having an exemplary behavior towards the practitioner; However, during the development of this process, one issue became evident: it is necessary to take an ethical look at the behavior of lawyers with respect to their practitioners. Abuse between colleagues and future colleagues has been normalized in different environments, especially in vocational training; since, in other contexts, it would be immediately addressed as a case of labor hostility.

In relation to the above, it is important to specify that labor regulations do not distinguish whether labor hostility is carried out in a relationship between workers or worker and intern. On the contrary, the Regulations of the General Law of Labor Inspection, approved by Supreme Decree 019-2006-TR, does not distinguish whether the infractions are committed against interns or workers, the corresponding administrative sanction will be applied.

Likewise, Law No. 29783, Law on Safety and Health at Work, establishes that all personnel who provide services - including those subject to training modalities - in the facilities of the workplace have the right to develop in a safe and healthy environment. As for this term, it is also understandable that the work environment is not hostile.

That is why, in this article, we propose through the resolution of the Telmo Case² that there is a duty on the part of practicing lawyers to be an example that entails ethical obligations before professionals in training, which are found in the Code of Ethics of the Lawyer. To this end, the arguments used by the Council are analyzed and how it is the appropriate instance to legalize this problem is developed, and thus address the issue as an infringement of the proper exercise of the profession.

2 Facts of the case

In June 2020, through the social network Twitter, a user published an audio

lose the support of your boss." (Arce Ortiz, 2016)

² Although the case is called *Camila Swayne Salazar, Nadia Daniela Ibarra Serván and Paloma del Campo Tarmeño against lawyer María Paola Carbajal Ponce*; the situation or the file will be referred to as *the Telmo Case*.

accompanied by a description, which exposed the mistreatment of **María Paola Carbajal Ponce**, Senior Associate Attorney of the law firm "**CMS Grau**³" towards **Telmo Paz Valdez**, an intern in her charge (Redacción La República, 2020). It did not take long to go viral and receive opinions of different kinds, there was even a response from the protagonists, indicating that it was an old event and was already in the past.

In the audio, which is estimated to have been recorded between 2018 and 2020, the lawyer is heard in a derogatory, offensive and rude way, calling the attention of the practitioner because she is dissatisfied with the earring that was given to her. At that time, both belonged to the Environmental Law area of the firm.

To better illustrate the above, we can divide it into three moments, in which the lawyer highlights the power of attorney that exercised over the practitioner:

1. He doesn't understand the deliverable: *"I mean, you have to understand that you're working for a client. And therefore, we have to know what the customer understands. I don't understand, for example, what the fuck green, yellow and orange colors are. I don't get it. I know that the yellow must be from the first review delivery.*

What the fuck is green and orange? There has to be a legend, at least."

2. He demands that the format be modified: *"I don't understand, that is, take away the damn shitty filters so that the matrix is immobile, because every time I want to check well... damn it that moves me everything and I can't check it. And I don't want that. I want this fucking matrix to be immobile."*

3. She has power over the practitioner: *"Why the fuck do I have rules, numbers of rules that are in pink? What does that pink, melon or whatever the hell you want mean? I mean, I'm not going to do the work for you. You are the practitioner, you have to help me, because if I don't do it I fuck it."*

In response to these facts, on December 11, 2020, as members of the Ethics Observatory of the Office of Social Responsibility of the Faculty of Law of the PUCP, we filed a complaint with the Ethics Council of the Lima Bar Association (CAL) against the lawyer María Paola Carbajal for having failed in her duty to be an example to other colleagues and future colleagues. during her professional practice as a mentor and in charge of the practitioner in her charge, Telmo Paz.

In the petition, we request that the violation of articles 70⁴ and 76⁵ of the Code of

³ CMS Grau is associated with the prestigious global firm CMS, located among the top 10 Global Law Firms. For its part, the firm in Peru is also it is located in the ranking of Chambers and Partners, Leaders League, among others.

⁴ Article 70.- Mutual respect.- Lawyers must maintain due respect and consideration for other colleagues and the opposing party.

⁵ Article 76.- Professional example.- The lawyer must strive to be an example of ethical suitability for his colleagues, especially for future ones legal professionals.

Ethics of the Lawyer, which include the duties mentioned above, be indicated. Specifically, the first article establishes the obligation to maintain mutual respect between colleagues and third parties during professional practice; and the second article establishes the obligation to be an example of ethical suitability for colleagues and future legal professionals. It should be noted that the practitioners are considered to be within both cases.

Thus, in the letter we request that some of the sanctions provided for in Article 102 of the Code of Ethics of the Lawyer be applied, with the intention that what happened is legalized from an ethical perspective and addressed as an infraction of the responsible practice of law, so that it can be made visible that the mistreatment of practitioners is a systematic behavior that must be questioned and sanctioned.

Continuing with the line of procedure, the complaint was admitted for processing through Resolution of the Ethics Council 0082-2021-CE/DEP/CAL and, subsequently, the scheduling of the Single Hearing for December 1, 2022 was notified⁶. By way of parenthesis, diligence was significant for us as students-at that time we were still in undergraduate- because it was our first experience litigating.

Finally, in July of this year, Ethics Council Resolution 0444-2023-CE/DEP/CAL was notified, which resolved to impose a written reprimand on lawyer Carbajal Ponce, for the ethical faults set out in articles 3, 4, 5, 6.1, 8, 70 and 76 of the Code of Ethics for Lawyers.

3 Pre-professional law practitioners in Peru

3.1 A normative vision

Our legal system considers that pre-professional internships are a type of training modality, they are included within Law 28518, Law of Training Modalities⁷ and its Regulations, approved by Supreme Decree 007-2005-TR⁸. Unlike a common job, pre-professional internships are characterized by having two dimensions: training and learning (Verano Calero; Flores Huamani; Constantino Caycho, 2020, p. 54). In other words, despite the fact that there is a subordinate and remunerated provision of service, there is not, in the eyes of the law, an employment relationship.

Thus, in reality, despite the fact that the legal system does not provide them with this *status*, the labor nature of the internships is not complementary, the interns are treated as workers. In this sense, from a positivist point of view, they are denied a series of rights, which

⁶ Given a complication of the first author of the article with an academic trip outside the country, the representation of the case was assumed in that hearing by Professor Erick Giancarlo Beyá González.

⁷ This regulation was published in the Official Gazette El Peruano on May 13, 2005.

⁸ This regulation was published in the Official Gazette El Peruano on September 16, 2005.

implies a lack of judicial protection to which workers can access. For example, interns have fewer rights, Peruvian regulations do not recognize their right to have union representation, they are at a disadvantage with respect to working conditions, they do not have job stability, they do not have CTS⁹ or the right to profit sharing or family allowance or severance pay (Verano Calero; Flores Huamani; Constantino Caycho, 2020, p. 54).

However, when it comes to labor hostility¹⁰, the legal treatment does not distinguish that it is a training modality, since they can file their complaint or complaint with the National Superintendence of Labor Inspection (SUNAFIL), report the incident to their workplace or learning center, that is, the parties to the agreement signed. Depending on the circumstances, a judicial complaint can also be filed.

In the case of SUNAFIL, the complaint is filed as with any other infraction; therefore, the sanction against the company is economic (fine). It is worth mentioning that the sanction procedure in reference to the employment relationship is limited to the provisions on serious misconduct that are grounds for dismissal and dismissal of the TUO of Legislative Decree 728, approved by Supreme Decree 003-97-TR; that is, Articles 25, 30, 31 and 32 of this regulatory text.

Despite the fact that employers can be sanctioned¹¹ for committing these labor infractions classified as very serious (with fines¹² ranging from S/ 13,018.50¹³ to S/ 260,023.50¹⁴ in the case of Non-MSEs) and that there are "traditional" channels (because they address the problem from a perspective of violation of rights) in which mistreatment in the field of labor training can be reported, these are not used by the practitioners¹⁵. This is because, unlike an average worker, interns do not have job stability, which prevents any type of compensation in case it is decided to terminate the agreement. Therefore, this has formed a culture of abuse that encourages silence.

3.2 Reality outside the norm

Interns often go through various situations of abuse such as performing functions that do not correspond to the position they hold, working overtime without pay, not receiving credit for

⁹ The CTS (compensation for time of service) is a benefit that aims to protect the worker economically in the event of the termination of the employment relationship, and consists of two deposits per year (in May and November) in addition to the remuneration, made by the employer to the worker.

¹⁰ Article 30 of the TUO of the Law on Labour Productivity and Competitiveness establishes the cases regulated by law.

¹¹ The fines imposed by SUNAFIL vary according to the number of workers affected and the type of company.

¹² Administrative fines are determined by the table in Article 48.1 of the Regulations of the General Labor Inspection Law, approved by Supreme Decree 019-2006-TR.

¹³ Approximately \$3493

¹⁴ Approximately US\$69,763.65.

¹⁵ Currently, the intern can file a complaint with SUNAFIL if he or she is doing an internship in the private sector, the human resources office of the vocational training center and in the internship office of his or her learning center.

their participation in the so-called "pending" (preparation of writings or reports), verbal or physical abuse, labor hostility, mobbing or sexual harassment (Constantino Caycho; Del Mastro Puccio, 2020).

The root of this is in education. As Gorki Gonzáles has pointed out, the way in which law is taught in Peru aims to understand and practice it in a way that maintains the *status quo* favorable to the powerful (Gonzales Mantilla, 2010, p. 295). This is not a uniquely Peruvian characteristic, but is also present in other latitudes (Kennedy, 2004, 2014). In this regard, Del Mastro essays that part of the explanation lies in the way students understand authority during their learning at the Faculty of Law (Del Mastro Puccio, 2020a). This misunderstanding of loyalty and silence establishes a culture of mistreatment in career professionals. Students will accept, without murmuring and peacefully, abusive behavior, even if it is incorrect. This allows us to deduce that there is a relationship between power relations in the home, which then continues in school and, subsequently, in the teaching method of the profession and the behavior of the subjects, because the first contact they have with a legal professional is the teachers.

To the above, the presence of the hidden curriculum is added. A number of Peruvian law schools have already accepted that, through unregulated practices, values contrary to the profession are transmitted (Del Mastro Puccio, 2020a, p. 130). These learnings are of different kinds. From experiences of mistreatment, authoritarianism, and humiliation (Del Mastro Puccio, 2020a, 2020b), students acquire a series of knowledge that will accompany them as future lawyers. Thus, for example, they learn that there are differentiated roles: those who command and those who obey (Del Mastro Puccio, 2020b, p. 426). They also learn that those in charge do not require justification and that they reaffirm their authority in the possibility of harm (D Del Mastro Puccio, 2020b, p. 427). Finally, they learn that in the face of injustice, the best way out is to remain silent (Del Mastro Puccio, 2020b, p. 428).

As can be seen, the autonomy and thinking of students is annulled. And in their interactions as practitioners, they will replicate those learnings with respect to their bosses. And they are going to justify the mistreatment because it is more important to feel useful to the lawyers with whom they work. In the workplace, the learning of the Faculty becomes three thoughts: "[i]t is necessary to work excessively to learn, [ii] that there is no problem with abuse if it happens to everyone and [iii] that one's role consists of fulfilling orders without thinking or questioning" (Del Mastro Puccio, 2022, p. 147)

These thoughts generate justification for labor infractions, which directly affects the construction of students' identity, because being in a stage of training they seek to be recognized and valued in their future work environment. So, this generates two consequences: they do not question the situation of abuse or they question it, but they prefer not to act because they doubt whether reporting is the right thing to do (Del Mastro Puccio, 2022).

The second point, about abuse, is of special interest, because it is the situation suffered by Telmo Paz and the one that is reported to the CAL Ethics Council. Again, Del Mastro Puccio (2022) mentions that abuse is systematic and general, but even so it is not questioned, on the contrary, it is accepted because it is a necessity to be part of the group of practitioners who will later enter, in "equality" to the "legal world" where their current abusive bosses, later, will be their colleagues. Within this dynamic, a spirit of solidarity is generated between peers and young lawyers, because in the face of an episode of abuse the response is one of inclusion. Thus, in the face of workplace abuse, the answer for inclusion is that everyone has gone through such humiliation. This generates identity and inclusion (Del Mastro Puccio, 2022). This, in addition, generates a kind of vicious circle because the abused person will then be able – by justice and custom – to do the same with their practitioners.

Finally, from this dynamic, a profile of adversarial lawyer is constructed¹⁶, since young professionals internalize that there are no consequences for their actions, even if it is intrinsically recognized that they are acts that violate the dignity of other people. This means that meeting the objective weighs on how they carry it out.

4 Ethical obligations towards practitioners in Peru

4.1 The paradigms of professional ethics

Given the complexity of the work of lawyers, it is difficult to determine what values really guide our actions. In fact, there are those who argue that there is an axiological pluralism in the profession (Wendel, 2000). This plurality of values, in turn, gives rise to different paradigms of understanding the profession. In this regard, Christine Parker states that it is necessary to understand that there are different understandings of professional ethics (Parker, 2004). She summarizes the ideas as four paradigms: theoretical models that help to understand how lawyers decide. By way of summary, they will be briefly presented, and then provide more detail in the following sections.

The first model is that of the adversarial lawyer. This lawyer will do everything that is legal to defend the interests of his client, and he will be able to do so, even if in principle he seems to be disloyal or does not apply the principle of good faith. It is the most widespread in the Anglo-Saxon (Markovits, 2008). He is confident that the system will work from the intense confrontation of two lawyers. From that discussion, the best solution will be reached. Several of

¹⁶ The profiles of the legal profession will be developed in the following section

the traditional institutions of professional ethics, such as client control¹⁷ or professional secrecy¹⁸, are based on this view.

The second paradigm is that of the lawyer responsible for the system. Not only does he feel that he has to defend his client, but this lawyer thinks that he is a key piece of the justice system; so you must take that into account. This respect can function as a brake on the client's intentions and allows him to regain some of the control that the adversarial vision suggests should be ceded (Anzola Rodríguez, 2019, chap. 1). On the other hand, thirdly, the ethical activist will want to change things through the law; so he does not care so much about the client himself, but he cares that the client's case allows him to change an unfair legal situation. Their ethical vision is not presented as a minimum but as the search for maximums (Shah, 2018). Finally, fourthly, the care lawyer will seek to maintain the client's human relationships and avoid confrontation that damages and maintains their relationships. By way of summary, the following table is presented.

Table 1 - Visions of professional ethics

Paradigm	Social vision of the legal profession	Relationship with the client and the legal system	Preponderant value
Adversarial Counsel	The ethics of lawyers are governed by the role of defender and assume the following characteristics: partisanship, loyalty and non-responsibility.	The duty of lawyers is to advocate for the client's interests in the best possible way within the limits of the law.	Service to customer
Responsible Lawyer	The role of lawyers is to facilitate the administration of justice	The duties of the defense are tempered by the duty to ensure integrity and compliance with the spirit of the law; The attorney is responsible for making the law work as fairly and equitably as possible. You may have to act as a guardian of the law and advocate for the legal system against what the client is seeking.	Justice System and Rule of Law
Moral activist	The ethics of lawyers is based on their own philosophical and social conceptions, mainly those that seek robust notions of justice.	Lawyers must take advantage of their position within the legal system to improve access to justice and seek substantial changes in the law. That can lead to seeking to convince your customers about certain paths to take.	Justice

¹⁷ Art. 14 Code of Ethics: Will of the client The lawyer must act strictly in accordance with the client's instructions; will not act in a matter except by the express will of the client and in accordance with the assignment entrusted. The lawyer must not contradict the client's will, even if he believes that this would be the most appropriate for the defence of the client's interest. In the event that the client's will could harm his own interest, the lawyer must explain in a timely manner the implications of what he wishes to achieve; however, he must respect his client's decision regarding the objectives of the representation and the means to be used to achieve them. When the client's ability to make reasoned decisions about his or her own interest is impaired by minority, mental condition, or any other reason, the attorney shall consult with individuals or entities who have the capacity to make decisions to protect the client's interest. The lawyer must take the measures he or she deems appropriate if he or she considers that the person responsible is making decisions that affect the customer interest.

¹⁸ Chapter III and other articles of the Code of Ethics.

Care Lawyer	The ethical conception is guided by the responsibility that arises before individuals and communities	The goal of the attorney-client relationship should be the kindness and care that can arise in such situations.	Care
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Source: Parker (2004)¹⁹

We consider that from the four visions it is possible to understand what happened as a fault. Workplace abuse should be understood as outside the law and, therefore, prohibited by the adversarial vision. From the responsible point of view, emphasis is placed on obligations towards third parties, beyond responsibilities to the client. From the perspective of an ethical activist, the fair treatment of an intern can be part of the political and transformative agenda of those who are lawyers. Finally, based on an ethics of care, it is possible to determine that there is a greater responsibility for guidance and mentoring over the subordinates who are going to be included in the professional work of the legal profession. In this context, it is necessary to understand interns as subjects in a training process that requires a mentoring bond that, as required by Article 2 of Law No. 28516, satisfactorily fulfills their employability, labor productivity and training them and training them for work. In addition, in accordance with article 21 of Legislative Decree No. 728, the requirements inherent to employers regarding the duty to provide guidance, technical and professional training to the practitioner (subsection a) and, mainly, to direct, supervise and evaluate the practices carried out by them are thus fulfilled.

4.2 Ethical obligations to practitioners

The lawsuit was based on the duties and obligations contained in the Code of Ethics for Lawyers²⁰, which allow us to interpret that the mentoring exercised by lawyers over the practitioners in their charge is an expression of professional practice. Thus, in accordance with the second paragraph of Article 1 of the aforementioned Code of Ethics²¹, as in other activities such as litigation, consulting, or academic research, the lawyer is required to maintain an ethical level that responds to the principles of the profession.

The central article, the one that supports the central argument of the complaint, is article 76 referring to the professional example:

Article 76.- Professional example

The lawyer must strive to be an example of ethical suitability for his colleagues, especially for future legal professionals.

¹⁹ (Parker, 2004).

²⁰ Approved by the Board of Deans of the Peruvian Bar Associations on June 12, 2012.

²¹ "Article 1. [...] All lawyers, without distinction of any kind, must observe this Code, whether the act violating ethical norms has been committed in the exercise of the profession, in public or private activity, or whatever the position held, whether it is popularly elected or by appointment. [...]"

The ethical obligations of lawyers arise from the previous article, since it is explicit in mentioning that there is a duty to be a professional example for their peers and future professionals, that is, students. This is because their behavior influences the professional training of their subordinates, both in the academic field and in their work performance.

Following this line, the complaint for the behavior of María Paola Carbajal responds to the fact that he was not worthy of being imitated by those in his charge (Constantino Caycho; Del Mastro Puccio, 2020). Therefore, the duty lies in the fact that lawyers have to maintain ethical behavior during the exercise of their profession, because they are showing society what a lawyer is like. This ethical behaviour, moreover, is fully related to the notion of integrity and to one of the principles of the profession and which, in accordance with article 4 of the Code of Ethics for Lawyers, must be maintained at all times when practising law -including, of course, the formative work in this- that of probity, Article 76 is reinforced by a series of values and principles established in the first articles of the Code of Ethics for Lawyers.²² This is reinforced through three ideas that are defended by the Code: compliance with the rules, respect for the rights of other people and upright behaviour.

With regard to compliance with the rules, article 5, "Essence of the lawyer's professional duty", states that the lawyer "must act with strict observance of legal norms and ethical conduct that reflects professional honour and dignity". In addition, Article 6 indicates that the lawyer must "timely and efficiently fulfill the other professional duties and obligations established by law" and in the rules of the Bar Association to which they belong. Article 7 also states that lawyers must "obey the law." In the case of respect for the rights of third parties, Article 3 indicates that the purpose of the legal profession is "the defense of the rights of individuals." In these cases, there is an affectation to the dignity of the practitioners by ignoring that the relations between guide and practitioner must also be governed by the Constitution and international human rights treaties (Redacción Economía La República, 2020). In the same article on the web portal of La República, Raúl Saco, a Peruvian labor lawyer, mentions that there is an "affectation to the dignity of the subject in the field of labor law. [...] This conduct cannot be allowed because it is harmful to dignity of the individual." (Editorial Economía La República, 2020).

In the particular case, but also in almost all spaces, law enforcement lawyers do not usually comply with these duties, because it has been normalized that the treatment is hostile and offensive without it being necessary to assume responsibility for the damage caused. On the contrary, practitioners are expected to resist these behaviors or else they are not considered as material for the career (Constantino Caycho; Del Mastro Puccio, 2020).

In addition, Article 70 states the following:

²² Second Section. Fundamental principles. Lawyer's mission, fundamental duties and prohibitions. Articles 3 – 11.

*Article 70.- Mutual respect
Lawyers must maintain due respect and consideration for other
colleagues and the opposing party.*

The article is explicit in pointing out that lawyers have the duty to maintain due respect and consideration for their colleagues and the opposing party. This provision highlights the requirement of high treatment towards peers, and as we mentioned in previous lines, interns are also considered as colleagues because they share a work and training space.

Finally, integrity has to do with a coherence between values and behaviors (Luban, 2003, p. 279). In our code, Article 3, called "Mission of the profession" indicates that the "integrity of the conduct of the lawyer, whatever the field in which he or she works, is essential for the proper functioning of the justice system, the validity of the rule of law and life in society." To this can be added that Article 8 indicates the following:

*Article 8.- Probity and integrity
The lawyer must inspire with his actions the confidence and respect of the
public for the profession of lawyer. He must refrain from any conduct that may
discredit the profession.*

That integrity to which the Code refers (and which generates trust and respect from citizens) would have to do with the coherence between what is proposed in the Code and what lawyers do. Abusing is, at the same time, a disobedience to the law and a violation of the rights of others. Such incoherence becomes a lack of integrity and, simultaneously, a lack of ethical suitability. In addition, such conduct generates a bad image of the profession and generates distrust towards the values of the law community. This is noticed by society as a whole and also by those who are practitioners.

The three duties give rise to an idea that was established in Article 76: ethical action responds to the fact that the behavior of lawyers will demonstrate the quality of professionals they are, not only individually, but also collectively. For this reason, they are required to have a high ethical behavior, but also honest, fair and aware of the ethical duties of the profession.

Now, with the content of the articles and the duties contained in each of them, it is possible to define what are the obligations that lawyers have towards practitioners. As can be seen, the example of ethical suitability also includes respect in treatment, acting with probity and integrity and not performing acts that are contrary to ethical behavior. Lawyers should take this into account when dealing with practitioners.

To this it must be added that the position of responsibility that lawyers have during the professional training of practitioners becomes especially serious when they fail to comply with the duties and obligations described, because they directly influence the construction of their professional identity.

According to Article 81²³, the transgression of the rules contemplated in the Code of Ethics for Lawyers, and specifically the mistreatment of a practitioner, such as that described in this text, constitutes an act contrary to the professional ethics of the Law, since it occurs within the framework of the work of the lawyer and seriously discredits the profession. For all these reasons, it can be concluded that in the Telmo Case it was clearly identified that the actions of the lawyer Paola Carbajal were contrary to the ethics of the professional.

5 Admissibility as a problema

We filed the complaint with the CAL Ethics Council because we agreed that the Telmo case went beyond the particular case, and should be approached from an ethical and legal approach, which implied identifying the infraction committed by the lawyer and the instance to which it was appropriate to judge her actions.

In accordance with numeral 1, article 9 of the Regulations of the Disciplinary Procedure of the Ethics Control Bodies of the CAL, whoever files the complaint must have an interest and legitimacy to act, and article 92 of the aforementioned Code of Ethics. In accordance with this, Article 15 of the same normative text provides that the complaint will be declared inadmissible if the accused is not a lawyer.

With this in mind, the complaint was filed with the CAL invoking Article 92 of the Code of Ethics for Lawyers, proposing as an interpretation that being law students represented a status of future legal professionals, and, therefore, by soon belonging to the community of professionals we had legitimacy, even more so when Article 76 recognizes that we are in a particular and expectant situation.

The interest lies in the fact that, like Telmo Paz, those of us who participate in this project are mostly students and pre-professional interns, therefore, there is a duty to denounce abuses or unethical behaviors in professional training environments.

In this sense, the students who author this article, being future professionals, enjoy two faculties based on the aforementioned articles: (i) resort to instances of the professionals of the career to denounce abuses and bad practices of the profession; and, consequently, (ii) initiate sanctioning procedures in these bodies.

Although this interpretation was accepted by the CAL and resulted in the admission of the lawsuit through Resolution of the Ethics Council 0082-2021/CE/DEP/CAL (Ethics Council of the Lima Bar Association, 2021a) (hereinafter, Admissory Resolution), it is not the usual pronouncement of the Council. As an example, there is the complaint that was filed on November 2, 2020 before the same body, against Paul André Muñoz Valdeiglesias, the lawyer of the

²³ Article 81.- Acts contrary to professional ethics.

members of the La Manada Case²⁴ (Ethics Council of the Lima Bar Association, 2021b).

In that Resolution, the complaint against attorney Muñoz filed by a group of lawyers was declared inadmissible, since the seventh recital of the Resolution mentions that the required requirements were not presented. Likewise, they do not express what requirements are lacking, but in the third ground they emphasize in italics that the complaints must be filed by people "with interest and legitimacy to file it."

Additionally, it should be noted that a month before the aforementioned complaint was filed, in October 2020, the then dean María Elena Portocarrero declared to the national press that the Directorate of Professional Ethics initiated an ethical procedure against Muñoz Valdeiglesias, for the comments he made about the victim: "The lady is eventually, a person that we say... that he liked social life, he couldn't say more." (Redacción EC, 2020). However, to date there is no record of the final resolution on the ex officio procedure opened by the CAL Council.

For this reason, the admissibility of the complaint filed by the Telmo Case is relevant for the legal community, since it raises an innovative interpretation regarding the legitimacy and interest that students have to act on cases of ethical matters. Specifically, admitting the case for processing demonstrates that lawyers have obligations as professionals, not only to their clients but also to the community of lawyers and students that compose it. To close, the Admission Resolution also creates an obligation towards the CAL Ethics Council as an instance, because it establishes a precedent on how to act in cases where ethical duties are violated during professional practice.

6 Resolution Analysis

Prior to the analysis, it is worth mentioning that it was surprising that the CAL Ethics Committee ruled in favor of the complaint and finally decided to impose the disciplinary measure of written reprimand on the lawyer María Paola Carbajal. This is because there are not many resolutions that address the obligations of lawyers that go beyond the lawyer-client relationship. A solitary example is that of the Pedro Chávarry case, where the former Attorney General's tuition was suspended for lying in his statements about his links and communications with members of the "Los Cuellos Blancos" gang, made up of judges and prosecutors. (Ethics Council of the Lima Bar Association, 2018)

²⁴ *Acts contrary to professional ethics are the transgression of the statutory rules of the respective association, as well as those contained in this code. Acts contrary to professional ethics are also included: the conduct or acts committed by the members of the Order which, without having occurred in the exercise of their profession, have a direct or indirect impact on the quality of the service provided by the lawyer and which discredit the profession.*

²⁴ It was a case of gang rape that occurred in October 2020 in the district of Surco, Lima.

The Council, in this case, evaluated in the Resolution whether the lawyer violated articles 3, 4, 5, 6.1, 8, 70 and 76 of the Code of Ethics for Lawyers. The Council is based on the principles that govern the exercise of the profession to determine that María Paola Carbajal's actions were not ethically appropriate. In the same way, it emphasizes that their behavior must also observe that there is a commitment and social responsibility towards the practitioners (Ethics Council of the Lima Bar Association, 2023, tenth paragraph).

In the eleventh recital, it establishes a relationship between the identified faults and the lawyer-practitioner relationship. It is mentioned that the bond was not characterized by being respectful or maintaining a high language, in addition, that Carbajal did not understand the position he had before Telmo Paz, whose objective was to promote in the practice space the learning and "development of legal skills in a real work environment." (Ethics Council of the Lima Bar Association, 2023, paragraph eleventh).

Without prejudice to this analysis and recognizing that Carbajal did not act in accordance with the principles and duties indicated above, the Council welcomes the behavior of the lawyer after the event in question. In the complainant's defenses, she mentions three important points, which the Council subsequently considers to determine the sanction:

- (i) Telmo Paz's practices ended "due to his poor performance and bad behavior in the area" (Ethics Council of the Lima Bar Association, 2023, eighth paragraph).
- (ii) He personally apologized to Telmo Paz for the wake-up call when he returned from vacation.
- (iii) His reaction was not directed at the practitioner, but at the poor quality of his work. At this point, he stresses that he was not diligent in executing his work, despite the fact that he knew of the urgency of the pending.

The Council interprets the above as a sign of regret on the part of the lawyer, and adds that, during the hearing, Carbajal reiterated the apologies of the case and stated that his action was improper. This behavior was enough for the directors to decide that the sanction in accordance with the infractions committed against articles 3, 4, 5, 6.1, 8, 70 and 76 of the Code of Ethics of the Lawyer corresponded to a written reprimand.

Although the favorable resolution by the Council is welcomed, it accepts two of the three points set out in the petition of the complaint: (i) it is indicated that María Paola Carbajal violated articles 70 and 76 of the Code of Ethics of the Lawyer and (ii) to issue a sanction within the framework of article 102 of the same regulatory text (File 013-2021).

However, the Final Resolution does not mention the third point that is also relevant to the case, because it proposes a direct action regarding the treatment received by practitioners of law: to issue a directive on the correct treatment of practitioners within the legal profession. Thus, the Final Resolution limits itself to relating the facts to the infractions, emphasizing that there is a duty to be an example of ethical suitability on the part of lawyers

towards practitioners, because there is a relationship of power.

Although the Final Resolution sets a precedent on the treatment of law practitioners, the situation is addressed from the regulatory framework and in particular, the development of any preventive or action policy (with an ethical approach) is not proposed. Which we believe is necessary because it is a systematic problem that has an ethical component, therefore, it is up to an institution such as the Bar Association (in this case of Lima) to influence the problem.

Another point that could be developed in the Final Resolution is the behavior of the practitioners in the mentoring relationship. It has already been determined that the mistreatment and abuse of law practitioners is systematic, that is, it responds to a teaching of how law should be, which rewards the student who adapts and contradicts himself with the intention of training leading and autonomous professionals (Del Mastro Puccio, 2020a, p. 129).

Finally, despite the lack of a directive, it does indicate principles that should govern the relationship with practitioners such as: "tolerance, freedom, dialogue, equality, non-discrimination, understanding and cooperation" (Ethics Council of the Lima Bar Association, 2023, tenth paragraph). This, from this moment on, will have to become a criterion for evaluating the professional integrity of lawyers. Thus, in the words of Christa Caro for *El Comercio* (2020), "[i]f you have an unmotivated practitioner, it will be difficult for them to meet their goals. A practitioner's effectiveness also reveals the development as a leader of the person supervising him."

7 Conclusions and lessons for the future

The identity of legal professionals is formed through the common situations they go through, which includes the mistreatment they suffer in the workplace. This leads them not to reflect on situations of abuse or to choose to normalize them because it is the social norm.

This being the case, practicing lawyers are not expected to understand that they have ethical obligations towards the practitioners in their charge, because there is also no awareness of the professional responsibility they have towards them. Professionally, their work is compromised if they fail, which seems to take precedence over the duty to teach and to be an example of a professional, which is present because they are actively participating in the training of a student.

In this sense, the Final Resolution, although incipient and insufficient, is a significant advance to address the problem of mistreatment of law students, which not only occurs in law firms, but also in other workplaces. The ethical perspective of this case stands out, because although it can also constitute a case of labor hostility (at a legal level), the loyalty to this type of behavior must be questioned.

The Ethics Council sets a precedent in terms of the solution of these cases and sends a message to lawyers who continue with the discourse of abuse: actions have consequences. In addition to the labor and special regulations on the matter, power relations with practitioners must be carried out within the parameters of a norm that exists, but is not given due importance, such as the Code of Ethics of the Lawyer.

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