

**2021 Hypothetical Case**  
**Chavero v. Vadaluz**

**I. Background**

1. The Federal Republic of Vadaluz is located in South America. It covers approximately 200,000 square kilometers and has a population of 60 million people. After decades of struggle against the Spanish empire and border wars with neighboring countries, Vadaluz formally declared its independence in 1831.

2. Unlike almost all its neighbors, Vadaluz did not have a military dictatorship during the second half of the 20<sup>th</sup> century. Indeed, to this day, the country is proud of its democratic tradition and of having held elections without interruption for more than a century. However, during the latter part of the 20<sup>th</sup> century, Vadaluz did face a great deal of institutional and social problems. Several sectors of the country called for a new Constitution since the one then in force—dating from 1915—did not adequately meet social demands. The vast majority of people called for the country to abandon the centralist, confessional model to become a state governed by the rule of law, organized under a federalist and secular model.

3. Between 1980 and 1999, in particular, the relationship between the executive branch and Congress was marked by disagreements and mutual accusations of corruption. Divided political representation meant that none of the elected presidents ever obtained a majority for their party in Congress. Under the constitutional rules, organic laws and amendments to the Constitution required a qualified majority of two-thirds of the members of each house of Congress. The lack of collaboration and consensus between the executive and legislative branches effectively blocked draft organic laws that were essential for institutional and social reform; nor was there any progress towards laying the groundwork for the drafting and enactment of major reforms to the Constitution.

4. The bills and proposed constitutional amendments introduced by the cabinet of ministers were held up by the majority in Congress, which postponed the debates; and the constitutional reform initiatives introduced by civil society were not passed because the lawmakers from the ruling party skipped the sessions to prevent a quorum from being reached. Meanwhile, the constitutional reform bills that were introduced by members of Congress were boycotted by their colleagues in the governing party. The few bills that did get through Congress were, in turn, challenged by the President of Vadaluz in the Supreme Court of Justice, which could take months to rule on their constitutionality.

5. The 1915 Constitution set no substantial limits on states of emergency, which were not subject to congressional approval. Nor did it specify whether the declaration of a state of emergency was subject to judicial review by the Supreme Court. It only stated the formal requirements for a state of emergency to be declared, such as the signature of all the cabinet ministers and publication in the official gazette. This allowed the executive branch to constantly invoke states of emergency as a way to assume extraordinary powers and carry out its government plan.

6. Tired of institutional paralysis and the rejection of constitutional reform initiatives, civil society—led by the student movement—began to mobilize, demanding a new Constitution. The student movement had massive public support. In the year 2000, after major social mobilization and a “great social-federal pact,” Congress finally adopted a new Constitution, which was popularly endorsed. With the new Constitution, Vadaluz became a social state under the rule of law,

organized around a federalist and secular model, with a generous catalog of rights. In its commitment to democracy and human rights, the State—which was already a member of the Organization of American States (OAS)—ratified without reservation all the instruments of the inter-American human rights system, except for the Protocol of San Salvador, and recognized the contentious jurisdiction of the Inter-American Court of Human Rights (Inter-American Court). The new Constitution of Vadaluz established the constitutional status of ratified human rights treaties.

7. The new Constitution also set strict limits on the executive branch's ability to declare a state of emergency, including having such a declaration approved or rejected by Congress within eight days. Furthermore, it established that decrees declaring a state of emergency would be subject to judicial review by the newly created Federal Supreme Court at the request of any person.

8. There is no doubt that the consolidation of democracy and the 2000 Constitution have led to progress in the recognition of human rights. But after nearly twenty years, the new Constitution has not brought the desired social transformations. Vadaluz, like many countries in Latin America and the Caribbean, still faces enormous social inequalities and high rates of poverty, corruption, and violence. The presidential system of government at times threatens the separation of powers and the system of checks and balances. Universal access to healthcare has yet to be achieved. Indeed, only people with sufficient financial means can promptly access quality health services. Most city dwellers face barriers to access such as excessive delays and cumbersome administrative procedures. For people living in rural areas of the country, access to health services is extremely difficult.

9. According to the National Institute of Statistics, in recent years, citizens have developed a deep mistrust of the State. Most feel that the country's main public institutions do not work in society's interest. All this has eroded the credibility of the political system in the eyes of the people of Vadaluz. The legislative and executive branches are extremely unpopular.

10. For its part, the judiciary has been mired in corruption scandals, as well as allegations about its tolerance of structural racism and sexual and workplace harassment. This has led to intense criticism of this branch from various sectors. For example, civil society organizations accuse the judiciary of replicating gender and racial stereotypes in both its internal governance and its decisions and have called for gender parity and ethnic quotas in all the courts of appeals. At the same time, conservative and religious groups accuse the judiciary of serving particular political interests, regularly exceeding its authority, and even increasingly restricting religious freedom through its decisions on sexual and reproductive rights and marriage equality. In addition to these demands, the powerful judicial union is demanding better working conditions (especially in rural areas), effective protocols against workplace harassment, a transparent judicial career service, and respect for the guarantees of irremovability and the right of association of judges.

11. On January 10, 2020, during a live broadcast of the top-rated news show, as part of a report on the long lines that patients have to wait in to receive medical services, the country saw a woman faint while waiting to be seen. Two days later it was learned that the woman's name was Maria Rodriguez; she died from an appendicitis infection, after spending more than 8 hours in the hospital's emergency room waiting to be treated. She was the head of a household with two children aged 11 and 8 and worked in the general services department of a cultural center for minimum wage.

12. The images were seen around the country and sparked a deep sense of outrage. Maria's death made headlines in the country's leading newspapers. The story trended on social media for two

straight days. In response, the Office of the President of the Federal Republic of Vadaluz issued a press release calling for the appropriate investigations to be conducted and expressing regret for what it called “an isolated event that does not reflect the integrity of health services at the national level.” It added that “This incident, although regrettable, should not be politicized or used to further polarize the country.”

13. Many people found the President’s statement to be uncharitable; they could not help but think that Maria’s death was preventable and that her fate would have been different if she had had more resources to obtain timely health care. There was a widespread public perception that, behind the call not to make these types of tragedies more political and polarizing, there was an unwillingness to remedy injustices that would not likely befall the country’s most privileged people. As a matter of fact, the press release prompted even more public outrage. Several civil society organizations called for nationwide protests to demand universal health coverage.

14. Amidst rumors of severe flu caused by a swine virus, nationwide protests began on January 15. In the country’s major cities, the protests received massive support from university students, who, in addition to calling for universal health coverage, also began to demand the elimination of compulsory military service for men over 18 years-old under the slogan “more students, fewer soldiers.” A few days later, the indigenous peoples’ alliance joined the protests in defense of their ancestral territories. And so, one after another, they were joined by truckers demanding lower gasoline prices, farmers demanding better infrastructure for the transportation of food and supplies, and animal rights advocates demanding a ban on household pets and any type of animal confinement. In a matter of two weeks, almost all the trade associations and unions had joined.

## **II. Facts**

15. On February 1, 2020, economic activities in Vadaluz came to a near standstill because of nationwide protests. Tens of thousands of people took to the streets demanding that the promises introduced by the 2000 Constitution be kept, especially universal health coverage. Maria’s death on live television had triggered something not seen before in Vadaluz.

16. That same day, the World Health Organization (WHO) confirmed what until then had seemed to be fake news and social media rumors: the world was experiencing a pandemic. It was a virus that apparently came from pigs, which was previously unknown to health authorities and was causing highly dangerous acute respiratory infections. The WHO announced that the virus’s mortality rate was unknown but warned that it was highly contagious and that urgent social distancing measures should be taken while more research was done on the virus, the treatment of the disease it caused, and a potential vaccine.

17. Faced with this situation, and in the midst of the political crisis unleashed by Maria’s televised death, the executive branch published Executive Decree No.75/20 on February 2, 2020, which states as follows:

### **Executive Decree 75/20**

Whereas the World Health Organization (WHO) announced on February 1, 2020, the existence of a pandemic caused by a virus that originated in pigs;  
Whereas all the consequences for human health are unknown;  
Whereas the virus is highly contagious and measures such as social distancing are urgently needed;  
Recognizing that health is a constitutional right;

Recognizing the importance of protecting health and care workers;  
Reiterating the constitutional duty of the State to safeguard the just demands of the common good;  
Heeding the call made by churches and religious groups, states, ministries, and civil servants' associations including the Judicial Union and the Teachers Union;  
Recognizing that gender-based violence may increase under conditions of confinement,  
Recognizing the need to protect vulnerable groups and those subject to historical discrimination, such as persons with disabilities, persons deprived of their liberty, women, and indigenous peoples; and  
Recognizing the importance of being united as a country.

It is decreed:

Article 1. A constitutional state of emergency is imposed for the duration of the swine pandemic.

Article 2. For the duration of the constitutional state of emergency, the following exceptional measures are issued:

1. Service to the public and the face-to-face operation of all public entities is suspended, except for essential services such as health and public safety.
2. Academic and school activities are suspended at the middle, secondary, and higher education levels.
3. The movement of persons outside authorized times and places; public meetings and demonstrations of more than three people; large-scale public events such as concerts, cinemas, and entertainment; social gatherings in commercial establishments such as bars, restaurants, and cafes; and prison visits are strictly prohibited.
4. Churches and temples of any religious denomination and services where religious activities and funeral rites are held are excluded from the above provision.
5. National and international air traffic is suspended until further notice.
6. Land border crossings are suspended until further notice.
7. The sale of alcoholic beverages and pork is prohibited until further notice.
8. The country's military units, including men performing compulsory military service, will be activated, if necessary, to deal with serious breaches of public order.
9. The free movement of persons in private vehicles is prohibited, except for duly authorized persons who work in health and care services or are traveling to health facilities to receive medical care.
10. Prior consultation processes currently underway in the country and the awarding of extractive projects in ancestral territories are suspended until further notice.

Article 3. Any person who fails to comply with Article 2(3) of this Decree may be arrested *in flagrante delicto* by the police and detained in police stations and temporary detention centers for up to four days and prosecuted under the Criminal Code for noncompliance with public health measures. All judicial remedies provided for in the legal system shall be available to challenge administrative detention for the violation of paragraph 3 of this Decree.

Article 4. This Decree shall be published in the official gazette and disseminated in the media and in the most widely circulated newspapers.

Article 5. Notice of this Decree shall be given to the General Secretariats of the Organization of American States and the United Nations.

18. The announcement of the WHO and the presidential decree led to considerable uncertainty among the country's citizens and authorities. Pandemic infection numbers began to rise dramatically across the country and hospitals and other health care facilities began to collapse. The death toll from the swine pandemic began to escalate daily. The protests diminished considerably. Almost all the unions decided to postpone in-person protests. The same happened with the student groups, with the exception of the student association for a country with "more students, fewer soldiers" and the association of public and private university law and political science students. Despite the risks, these student groups felt that a public health crisis was the best time to demand universal health coverage so that the country would understand the importance of access to the right to health for all.

19. After Decree 75/20 was issued, the "Association of Students for a Secular State" joined the protest. In their view, the requirement for bars to close while churches and places of worship could remain open was discriminatory; the association also challenged the ban on the sale of alcoholic beverages. In response, the government contended that parties and gatherings of young people consuming alcohol had been one of the proven causes of the surge in the pandemic in several parts of the country.

20. On March 3, these student associations arranged through social media to meet on San Martin Avenue for a peaceful protest for the right to health. Their goal was to walk—socially distanced from one another—to the downtown area, where Congress, the Federal Supreme Court, and the Presidential Palace are located. That day, Estela Martínez and her classmate Pedro Chavero, along with 40 other members of the student associations, decided to go out and protest. After walking for 30 minutes along San Martin Avenue, they reached the intersection with Bolivar Avenue. There, the demonstrators encountered a group of police officers who kindly asked them to go home, since public demonstrations of more than three people were banned by Decree 75/20. The students countered that they had the right to protest peacefully while maintaining social distance and that they would not stop until they got downtown. The officers warned that if the protest continued, they would make arrests under Decree 75/20.

21. Estela and Pedro decided to ignore the police and keep walking. Estela, who was livestreaming the encounter with the police from her cell phone, heard one of the officers say that they could break up the protest by arresting one or two students. A couple of minutes later, two police officers grabbed Pedro by the arms and pulled him into a patrol car. Estela shouted for help while livestreaming the images on Facebook with her cell phone. The other students started screaming and throwing objects at the police officers. A few seconds later, in the midst of the confusion, the police threw tear gas grenades at them, dispersing the demonstrators.

22. Pedro was taken straight to Police Headquarters No. 3. There he was immediately charged with the administrative offense provided for in Articles 2.3 and 3 of Decree 75/20 and given 24 hours to answer the charge and present the case for the defense. Estela went there with Pedro's mother and father and a trusted family lawyer named Claudia Kelsen. The police officers informed them that Pedro was in good health and that his right to be treated with dignity was being respected, but that they would not release him for another four days pursuant to Decree 75/20. They said that

the students were being careless by continuing to protest and that Pedro's detention was meant to send a message.

23. On March 4, 24 hours after his arrest, Pedro was brought before the chief of Police Headquarters No. 3. Pedro was accompanied by his lawyer Claudia, who was only able to see him 15 minutes earlier, and then had to prepare his defense based on the lawful exercise of the right to protest and the police officer's lack of authority to arrest him, much less to punish him with up to four days' detention. However, within an hour after the proceedings were over, Pedro was served with a police order establishing: (i) that Pedro admitted to the acts committed, since he never denied that he was protesting in a public thoroughfare; (ii) that this violated Article 2, paragraph 3 of Decree 75/20; and (iii) that, therefore, under Article 3 of the decree, he was subject to the penalty of four days in jail. In the same administrative act, Pedro was informed that he could file the legal actions provided for under the laws of Vadaluz.

24. Pedro's arrest was soon trending on social media. Most people and influencers shared messages saying that Pedro's detention was acceptable in the midst of the pandemic and that students were irresponsible and should refrain from protesting so as not to put law enforcement and health care workers at risk.

25. Also on March 4, after leaving the police headquarters, Claudia decided to file a writ of *habeas corpus* with a trial court alleging the violation of Pedro's fundamental rights and guarantees, including his personal liberty and his right to demonstrate, due to his detention under Decree 75/20. She also decided to file a legal action with the Federal Supreme Court challenging the constitutionality of Decree 75/20. However, when she went to the Palace of Justice to file the two legal actions, she found that the building was closed. The lawyer went to other courts in the city and again found the doors locked and the lights off. There was a sign on the doors of the Palace of Justice announcing that lawsuits and pleadings would be received and processed virtually through the judiciary's digital portal.

26. To her surprise, that same day, in the morning, the judicial union had published Directive No. 1 of 2020, announcing that it had expressly agreed with the President of the Republic that, in order to protect justice authorities, the judicial branch would not be included in Decree 75/20 as an essential activity, except for the family judicial police stations, which only have jurisdiction to hear complaints of gender-based violence.

27. Claudia also learned on social media that the association of women justice authorities had protested this decision. The association noted that 90% of the staff at the family judicial police stations are women. Considering that the vast majority of them have school-age children, and in light of the persistent gender inequality in care work, they argued that Directive No. 1 of 2020 affected them disproportionately. However, the governing body of the judicial union—composed mainly of men—stated in response to this complaint that it could not assign judges from other jurisdictions to the family judicial police stations because that would violate the principle of the irremovability and independence of judges.

28. On the afternoon of March 4, the Superior Council for the Administration of Justice, an independent public entity tasked with overseeing the judiciary, issued a statement indicating that it did not agree with the President's decision or the position of the judicial union. It contended that the government should not suspend in-person services, given the country's digital divide, and that it would work tirelessly to design virtual and in-person service protocols. It further added that both writs of *habeas corpus* and constitutional actions to review the legality of the state of emergency could be filed virtually through the official website of the judicial branch of Vadaluz.

29. On March 5, Claudia tried to file a *habeas corpus* through the official website of the judicial branch of Vadaluz. However, when she tried to do so she got an error message saying, “the server is down, please try again later.”

30. Early in the morning on March 6, Claudia managed to file the writ of *habeas corpus* and the unconstitutionality action through the official website of the judicial branch of Vadaluz. In the writ of *habeas corpus* Claudia requested the adoption of a precautionary measure *in limine litis*.

31. On March 7, the urgent precautionary measure that Claudia requested in the *habeas corpus* was dismissed as unnecessary since Pedro would be released that day. Indeed, he left the police headquarters a few hours later. The first thing he did when he got out was to send a tweet saying that an injustice had been committed and that although he had not been subjected to cruel, or inhumane treatment or torture, he should never have been deprived of his liberty for defending the right to health.

32. The writ of *habeas corpus* was adjudicated on March 15. It was dismissed as moot since Pedro had already been released. On May 30, the Federal Supreme Court dismissed the unconstitutionality action, finding no constitutional violation. For its part, Congress made no decision regarding Decree 75/20, because the members of Congress had decided to adjourn to protect themselves from the pandemic until the minimum necessary conditions were objectively met.

### **III. Proceedings in the Inter-American Human Rights System**

33. On March 3, 2020, after Pedro’s arrest, Claudia decided to file a request for precautionary measures seeking an order for his immediate release before the Inter-American Commission on Human Rights (IACHR). In her opinion, Decree 75/20 was incompatible with the right to freedom of expression, the right of assembly, and the right to personal liberty enshrined in the American Convention on Human Rights (American Convention) and, therefore, his deprivation of liberty was arbitrary. With respect to the precautionary measure, Claudia argued that it was a grave and urgent situation, due to the imminent and irreparable harm to Pedro’s rights to personal liberty, fair trial, and an effective remedy.

34. The day after the request for precautionary measures was submitted, that is, on March 4, 2020, the IACHR responded:

“Dear Applicant,

I regret to inform you that, after examining the information provided thus far, the Inter-American Commission on Human Rights has concluded that your request for measures does not meet the requirements set forth in Article 25 of its Rules of Procedure.”

35. Despite not having granted the precautionary measure, the IACHR agreed, that same day, March 4, to file a request for a provisional measure to the Inter-American Court based on the same facts. Within 24 hours of the request, that is, on March 5, the Court published a resolution adopted by its President in consultation with the plenary, stating that “In examining the urgent measures requested by the Honorable IACHR, the Court was unable to verify, as required under the American Convention (Article 63(2)), a situation of extreme gravity and urgency that could lead to irreparable harm to Mr. Pedro Chavero.”

36. On March 5, 2020, Claudia decided to file an individual petition with the IACHR. The IACHR expedited the individual petition, considering it an opportunity to establish a precedent with respect to the measures that States could take in relation to the swine pandemic, which by that time had already reached all the countries of the region. In a matter of 6 months, it approved an admissibility report and a report on the merits, concluding that several articles of the American Convention had been violated. It also made several recommendations to the State concerning the reparation of the harm caused to Pedro and the adaptation of the Decree and other State measures to the standards of the American Convention. Moreover, it found that the State had failed to ensure that the judiciary was able, within a reasonable period of time, to effectively protect and guarantee the rights of persons detained during the health emergency; or that it could timely review the legality, constitutionality, and conventionality of the measures adopted by the executive branch.

37. The State responded by protesting the speed with which the report was approved. It pointed out that the inter-American system was subsidiary in nature and that it had not had the opportunity to hear the complaint or to make reparations to the possible victims at the domestic level. It accused the IACHR of being irresponsible for disregarding the context of the serious pandemic and the importance of protecting justice authorities and showed no interest in reaching a friendly settlement agreement.

38. On November 8, 2020, the IACHR submitted the case to the Inter-American Court. In its opinion, the State had violated Pedro Chavero's rights, recognized in the American Convention, to personal liberty (Article 7); a fair trial (Article 8); freedom from *ex post facto* laws (Article 9); freedom of thought and expression (Article 13); assembly (Article 15); freedom of association (Article 16); judicial protection (Article 25); and suspension of guarantees (Article 27).

39. In its report on the merits, the IACHR noted that this case provided a valuable opportunity for the Court to develop standards on access to justice during states of emergency, and in particular to reiterate the applicable standards on which rights can be restricted—and under what criteria—during states of emergency, under Article 27 of the American Convention. The IACHR added that Vadaluz should not use a state of emergency to issue a blanket prohibition on the right to protest; nor could it impose a penalty without a statutorily defined offense or seek to militarize domestic security.

40. The Inter-American Court will hear the case on May 24, 2021.