

PEDRO CHAVERO

**Victim**

v.

STATE OF VADALUZ

**State**

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**MEMORIAL FOR THE VICTIM**

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## STATEMENT OF FACTS

The Republic of Vadaluz (“State”) is home to about 60 million people.<sup>1</sup> Although the State is a democracy, it was subject to decades of political corruption, as well as institutional and social problems.<sup>2</sup> Tired of the political gridlock between the executive and legislative branches, which prevented the State from addressing its internal and social issues, the populace of the State began a directed effort for the adoption of a new constitution.<sup>3</sup> The State adopted a new constitution in 2000, adopting a federalist and secular model of governance, as well as all of the instruments of the Inter-American human rights system, save the Protocol of San Salvador.<sup>4</sup> The State also enshrined in the constitution the rights guaranteed by the Inter-American system, and expressly recognized the contentious jurisdiction of the Inter-American Court of Human Rights (“Inter-American Court”).<sup>5</sup> Moreover, the new constitution limited the previously unlimited power of the executive branch to declare a state of emergency, subjecting it to checks and balances.<sup>6</sup>

Recently, the citizens of the State have become increasingly unhappy with its governance, particularly with the lack of access to healthcare.<sup>7</sup> Protests began raging throughout the State on January 15, 2020, after a video circulated of a woman, Maria Rodriguez, waiting in to receive medical services.<sup>8</sup> The video showed Maria faint in line; she died of an appendicitis infection after waiting an additional eight hours from the time she fainted to receive medical

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<sup>1</sup> Hypothetical Case (hereinafter “H.C.”) ¶ 1.

<sup>2</sup> H.C. ¶¶ 2, 3.

<sup>3</sup> H.C. ¶¶ 4, 6.

<sup>4</sup> H.C. ¶ 6.

<sup>5</sup> *Id.*

<sup>6</sup> H.C. ¶ 7.

<sup>7</sup> H.C. ¶¶ 9-14.

<sup>8</sup> H.C. ¶¶ 11-12, 15.

treatment.<sup>9</sup> The public was enraged, and rightly so, a feeling which was only compounded by the pithy response of the President of the state.<sup>10</sup> According to his press release, this was simply a “regrettable” but “isolated” incident.<sup>11</sup>

Protests ensued.<sup>12</sup> It is at one such protest that Mr. Pedro Chavero (“Chavero”) was arrested.<sup>13</sup> Around the same time the protests began, so too did rumors (later substantiated) of a pandemic.<sup>14</sup> Within a matter of weeks, the protests caused economic standstill in the State, as the people demanded universal health coverage as promised by the 2000 Constitution.<sup>15</sup> At the same time, the World Health Organization confirmed the existence of a dangerous pandemic with an unknown mortality rate, and recommended that individuals undertake social distancing measures while the virus was researched.<sup>16</sup>

The State’s response was likely considered under a dual analysis: steps should be taken, as the World Health Organization suggested, to limit the effect and spread of the virus; and, this is an opportunity to stop the protests, minimizing their economic effect. The result was Executive Decree No. 75/20 (“Executive Decree 75/20” or “decree”).<sup>17</sup> This decree placed harsh restrictions upon most of the populace and almost all public and social activities.<sup>18</sup> It also placed no time limit upon itself, nor any consideration for amendments or alterations in light of future scientific information or research. Notably, the decree prohibited: the ability of the people to

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<sup>9</sup> H.C. ¶ 11.

<sup>10</sup> H.C. ¶¶ 12, 13.

<sup>11</sup> H.C. ¶ 12.

<sup>12</sup> H.C. ¶ 14.

<sup>13</sup> H.C. ¶ 21.

<sup>14</sup> H.C. ¶ 14.

<sup>15</sup> H.C. ¶ 15.

<sup>16</sup> H.C. ¶ 16.

<sup>17</sup> H.C. ¶ 17.

<sup>18</sup> *Id.*

move outside of authorized times and places, effectively placing a curfew; meetings and protests (entitled “demonstrations” likely to avoid direct association with the affect this would have on the protests, although it is clear) of more than three people; “large-scale” entertainment events; and prison visits.<sup>19</sup> Anyone who violated these provisions, and arrested while so violating, were subject to a four day administrative detention and prosecution with a criminal public health violation.<sup>20</sup> The decree exempted religious services and activities from these stated restrictions.<sup>21</sup> The provision with perhaps the most grave implications, and thankfully not overtly and directly involved with the violations of Chavero’s rights: the decree authorized the activation of the State’s military against its citizens.<sup>22</sup>

After the State issued Decree 75/20, some associations postponed their involvement with the protests, while others were re-invigorated in their cause, seeing the pandemic as the time demands for universal health coverage were most required, and yet others joined the protests for new reasons: particularly challenging the restrictions imposed by Decree 75/20.<sup>23</sup> The student associations which primarily organized the protests arranged one on March 3, 2020.<sup>24</sup> The associations organized a social distanced march through public areas to the locations of the seats of each branch of government.<sup>25</sup> Chavero was a member of this march, which totaled 42 participants.<sup>26</sup>

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<sup>19</sup> H.C. ¶ 17 (Executive Decree 75/20 art. 2(3)).

<sup>20</sup> H.C. ¶ 17 (Executive Decree 75/20 art. 3).

<sup>21</sup> H.C. ¶ 17 (Executive Decree 75/20 art. 2(4)).

<sup>22</sup> H.C. ¶ 17 (Executive Decree 75/20 art. 2(8)).

<sup>23</sup> H.C. ¶¶ 18, 19.

<sup>24</sup> H.C. ¶ 20.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

Part way along their route, the student associations encountered police officers who requested the dispersal of the protest.<sup>27</sup> The officers notified the members of the student association that “public demonstrations of more than three people” were banned by the decree.<sup>28</sup> The student associations continued their peaceful protest, and would not disperse until reaching their destination.<sup>29</sup> The officers then threatened that they would make arrests if the protests were not broken up.<sup>30</sup> As the protests continued, some members of the student associations heard the officers state that they intended to break up the protest by arresting “one or two students.”<sup>31</sup> Shortly thereafter, Chavero was ripped from the crowd, taken to a patrol car, and brought to Police Headquarters No. 3.<sup>32</sup> Immediately, the protest erupted into unrest, with each side using force against the other.<sup>33</sup>

Chavero was charged with an administrative offense under Decree 75/20, and given 24 hours to answer and defend.<sup>34</sup> A friend of Chavero and Chavero’s mother brought an attorney, Claudia Kelsen (“Kelsen”) to the station, and while they were all informed that Chavero was in good health, they likewise informed them that he would not be released for four days, and that the police intended to “send a message” by detaining Chavero.<sup>35</sup> Chavero was not allowed to see Kelsen, his attorney, to prepare a defense or otherwise communicate until the next day, March 4, 15 minutes before Chavero’s hearing before the chief of Police Headquarters No. 3.<sup>36</sup> After the

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> H.C. ¶ 21.

<sup>32</sup> H.C. ¶¶ 21, 22.

<sup>33</sup> H.C. ¶ 21.

<sup>34</sup> H.C. ¶ 22.

<sup>35</sup> *Id.*

<sup>36</sup> H.C. ¶ 23.

hearing, Chavero was given an order stating that he had violated Decree 75/20 because he did not *deny* that he had violated the decree.<sup>37</sup> Chavero was informed that he was to serve the remainder of his administrative detention in jail.<sup>38</sup>

The same day, March 4, Kelsen attempted to file both a writ of *habeas corpus* at the trial court level, and a constitutional action to declare Decree 75/20 invalid at the Federal Supreme Court level.<sup>39</sup> When Kelsen arrived at the Palace of Justice (the headquarters of the federal judiciary) to file both actions, the building was closed.<sup>40</sup> Other courts in the city were likewise closed.<sup>41</sup> Kelsen found a sign stating that court documents must be filed and processed through a new digital portal of the judiciary.<sup>42</sup>

Kelsen attempted to file the *habeas corpus* action through the judicial portal on March 5, to no avail.<sup>43</sup> The website would not process her request, and kept displaying an error message.<sup>44</sup> Kelsen was successfully able to file the writ on March 6, and also requested a precautionary measure to be adopted from the threshold of the litigation.<sup>45</sup> Kelsen was also able to file the constitutionality action the same day.<sup>46</sup>

On March 7, the trial court denied the precautionary measure for Chavero's preliminary release on the theory that such a measure was soon to be moot.<sup>47</sup> Chavero was released later that

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> H.C. ¶ 25.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> H.C. ¶ 29.

<sup>44</sup> *Id.*

<sup>45</sup> H.C. ¶ 30.

<sup>46</sup> *Id.*

<sup>47</sup> H.C. ¶ 31.

day, and a week later the trial court dismissed the *habeas* action as a whole as moot.<sup>48</sup> The constitutionality action was dismissed at the end of May, the Federal Supreme Court holding that, while Congress had not determined the validity or invalidity of the state of emergency as required by the 2000 Constitution, the state of emergency is nonetheless required given the circumstances of the pandemic and that the executive branch's actions were valid under the State's constitution.<sup>49</sup>

Kelsen also filed requests for precautionary measures with the Inter-American Commission on Human Rights ("Commission"), which were denied.<sup>50</sup> The Commission nonetheless filed a request for provisional measures with the Inter-American Court, which were later denied under Article 63(2) of the American Convention on Human Rights ("Convention").<sup>51</sup>

Kelsen filed an individual petition with the Commission on behalf of Chavero on March 5.<sup>52</sup> The Commission issued an admissibility report and report on the merits six months after receiving Kelsen's petition.<sup>53</sup> The *habeas* and constitutionality actions had both been dismissed before the Commission's reports were issued.<sup>54</sup> The Commission concluded that the State had violated several of Chavero's rights, and recommended amendments to the decree.<sup>55</sup>

The Commission has submitted this case to the Inter-American Court, and reports in its opinion that the State violated Chavero's rights to: suspension of guarantees; freedom from *ex*

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<sup>48</sup> H.C. ¶ 32.

<sup>49</sup> H.C. ¶ 32; Clarifying Questions (hereinafter "C.Q.") ¶¶ 9, 11.

<sup>50</sup> H.C. ¶¶ 33-34.

<sup>51</sup> H.C. ¶ 35.

<sup>52</sup> H.C. ¶ 36.

<sup>53</sup> *Id.*

<sup>54</sup> *C.f.* H.C. ¶¶ 32, 36.

<sup>55</sup> H.C. ¶ 36.

*post facto* laws; personal liberty; a fair trial; judicial protection; freedom of thought and expression; assembly; and association.<sup>56</sup>

## LEGAL ANALYSIS

### I. ADMISSIBILITY

On March 5, 2021, Kelsen lodged a valid petition with the Commission for the violation of Chavero’s rights,<sup>57</sup> which the Commission submitted to the Inter-American Court for review pursuant to Article 61 of the Convention.<sup>58</sup> The State of Vadaluz recognized the jurisdiction of the Inter-American Court when it ratified the Inter-American system of human rights.<sup>59</sup> Thus, the Inter-American Court has the authority to make binding judgments against the Vadaluz “on all matters relating to the interpretation or application of [the] Convention.”<sup>60</sup>

Where urgency so requires, the Commission may forego some notice and information gathering requirements of Article 48(1) if a petition meets the admissibility requirements of the Convention.<sup>61</sup> Additionally, the Commission shall issue a report of the facts and its conclusions if the parties are not able to meet a friendly settlement under Articles 48(1)(f) and 49 of the Convention.<sup>62</sup> The Commission is required to issue its report within at least 180 days, with no “waiting period” before it may issue a report.<sup>63</sup> There is no “waiting period” within which the Commission may not send a case to the Inter-American Court; however, for the Commission to issue an opinion following its report, where there has been neither a friendly settlement nor a

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<sup>56</sup> H.C. ¶ 38.

<sup>57</sup> H.C. ¶ 36.

<sup>58</sup> H.C. ¶ 38.

<sup>59</sup> H.C. ¶ 6.

<sup>60</sup> American Convention on Human Rights, Nov. 22, 1969 art. 62(1) (hereinafter “Convention”).

<sup>61</sup> Convention art. 48(2).

<sup>62</sup> Convention art. 50.

<sup>63</sup> Statute of the Inter-American Commission on Human Rights, art. 23(2).

submission of the case to the Inter-American Court (by the Commission or by the State) within the first three months after the issuance of a report, the Commission must have a majority vote of its members to set forth its opinion.<sup>64</sup>

The Commission has the right to submit cases to the Inter-American Court for review.<sup>65</sup> Where the Commission submits a case for review in relation to a petition it has received alleging violations of rights protected under the Convention, the requirements of the petition to the Commission must be satisfied nonetheless.<sup>66</sup> Notably, a petitioner must have exhausted the remedies available under domestic law for the matter to be admissible to the Commission or the Inter-American Court,<sup>67</sup> so that the state has “the opportunity to resolve disputes within its own legal framework.”<sup>68</sup> Only remedies that would be effective must be exhausted.<sup>69</sup> Accordingly, the exhaustion of remedies is not meant to be a formalistic requirement, but must have a “reasonable prospect of success,” i.e. of resulting in a different outcome.<sup>70</sup> A state alleging that the petitioner failed to exhaust all available remedies must show what remedies were available and how they would have been effective.<sup>71</sup> Not only must these remedies have had the prospect of success, the remedy must have had the function of protecting the right that had been violated.<sup>72</sup> Additionally, a petitioner who has been denied access to the remedies available under

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<sup>64</sup> Convention art. 51.

<sup>65</sup> Convention art. 61(1); Rules of Procedure of the Inter-American Court of Human Rights, art. 35.

<sup>66</sup> See Convention art. 61(2); Art. 46.

<sup>67</sup> Convention art. 46(1)(a).

<sup>68</sup> *Argüelles v. Argentina*, Petition No. 12.167, Inter-Am. Comm’n H.R., Report No. 40/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 ¶ 47 (2002).

<sup>69</sup> *Hul’Qumi’Num Peoples v. Canada*, Petition No. 592-07, Inter-Am. Comm’n H.R., Report No. 105/09, OEA/Ser.L/V/II., doc. 51, corr. 1 ¶ 31 (2009).

<sup>70</sup> *Mossville Entertainment Action Now v. United States*, Petition No. 242-05, Inter-Am. Comm’n H.R., Report No. 43/10 ¶ 32 (2012).

<sup>71</sup> *Velásquez-Rodríguez v. Honduras*, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 88 (June 26, 1987).

<sup>72</sup> *Carias v. Venezuela*, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 115 ¶ 86 (May 26, 2014) (citing *Velásquez-Rodríguez*, Merits, ¶ 64).

domestic law, or who has been prevented from exhausting them, need not have pursued and exhausted all remedies as in Article 46(1)(a) of the Convention.<sup>73</sup> Once a petitioner has received a final judgment on their pursued domestic remedy, the petitioner has six months to submit the petition to the Commission.<sup>74</sup>

The Commission followed the proper procedure and timing in filing its report. The Commission sought to establish precedent on the restriction of rights in the urgent situation of the swine pandemic.<sup>75</sup> The State argues that the Commission should have considered the seriousness of the pandemic and the importance of certain measures to ensure the health of the populace, and indeed the Commission did by expediting its investigation into the alleged violations of the State,<sup>76</sup> and by either foregoing procedural formalities where and as allowed by Article 48(2) of the Convention or by requiring that the State respond to the Commission's inquiries with "the promptest reply."<sup>77</sup> The State cannot implore that the Commission respond to the pandemic with all seriousness and in the same breath bemoan the Commission's actions for doing the same. This is particularly so when the State has neither sought nor displayed interest in the functions from which the Commission has abstained.<sup>78</sup>

When it produced both its report and opinion, the Commission had jurisdiction *in ratione temporis*. The Commission, by the Convention, and by its own statute and rules of procedure, is not limited by a lower bound of time—a waiting period—before which a report must be issued, but rather is limited at the upper bound. If the Commission is able to expedite a petition and issue

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<sup>73</sup> Convention art. 46(2)(b).

<sup>74</sup> Convention art. 46(1)(b).

<sup>75</sup> H.C. ¶ 36.

<sup>76</sup> *Id.*

<sup>77</sup> Rules of Procedure of the Inter-American Commission on Human Rights, art. 30.

<sup>78</sup> H.C. ¶ 37 (“[The State] showed no interest in reaching a friendly settlement agreement.”).

a report well before its time limit runs out, the Commission should be lauded for its efficiency rather than punished for lack of procrastination. The one time the Commission must either delay or take extra steps is if it wishes to issue an opinion of its recommendation of remedy within three months after the issuance of its report, if no other action has occurred.<sup>79</sup> There is no indication of the time between which the Commission issued its report and the time it issued its opinion,<sup>80</sup> however it was likely within three months. Regardless, there were no dissenting opinions to the Commission's report as allowed by Article 50 of the Convention, nor was there any indication that the Commission was acting without unanimity or broad majority of its members. The Commission desired to establish precedent for other states in the same urgent circumstances as Vadaluz, and the Commission has the authority to do so under Article 51 of the Convention.

To the final end of admissibility, Chavero exhausted all available domestic remedies. The Commission determined that Chavero had two available domestic remedies, the *habeas corpus* action for his release and the constitutionality action to determine the validity of Executive Decree 75/20, both of which were exhausted by adjudication in the domestic courts.<sup>81</sup> Chavero's constitutionality action requires no further inquiry: the case was brought before the highest court and dismissed by that court on the flawed assumption that Decree 75/20 was a proper suspension of guarantees. Chavero's *habeas corpus* action, however, was dismissed at the trial court level and could have been appealed. Regardless, Chavero constructively exhausted this domestic remedy, even for lack of appeal. The *habeas* action was dismissed at the trial court level as moot

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<sup>79</sup> Convention arts. 51(1), 51(2).

<sup>80</sup> H.C. ¶ 36.

<sup>81</sup> C.Q. ¶ 32.

as Chavero had already been released,<sup>82</sup> and there is no reasonable likelihood that the federal court of appeals would decide to adjudicate a case which truly had become moot. Furthermore, filing an appeal from the trial court decision that the *habeas* action was moot would have been a mere procedural formality, the kind of which the Commission and the Inter-American Court do not require.<sup>83</sup> The Court has roundly held that a failed petition for *habeas corpus* satisfies the exhaustion of domestic remedies.<sup>84</sup> Chavero would have failed in the appeal due to an almost certain dismissal for mootness and, more importantly, the appeal would not have affected had the function of protecting his violated right. Chavero was already released—his rights guaranteeing personal liberty and a fair trial violated to completion—and whatever opinion the appeal may have resulted would not have changed that.

## II. ARGUMENTS ON THE MERITS

### A. Suspension of Guarantees

Whether the State validly suspended the rights of its citizens under the Convention through the issuance of Executive Decree 75/20 is dispositive to the remainder of the case, save the violation of Chavero's freedom from *ex post facto* laws which is non-derogable.<sup>85</sup> Decree 75/20 is not a valid suspension of guarantees under the Convention because it (i) did not sufficiently provide notice of the suspension to the other State Parties of the Convention;<sup>86</sup> and (ii) was not tailored to the exigencies of the situation where it imposed overbroad restrictions following no particular data, and was inconsistent in the application of those restrictions—

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<sup>82</sup> H.C. ¶ 32.

<sup>83</sup> JO M. PASQUALUCCI, *THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS* 133 (Cambridge Univ. Press 2003).

<sup>84</sup> *Id.*

<sup>85</sup> Convention art. 27(2).

<sup>86</sup> Convention art. 27(3).

discriminatory on its face on the ground of religion—where it provided separate, vastly disparate restrictions upon secular and religious activities.<sup>87</sup>

i. Failure of Notice

The Convention requires notice to other State Parties of the Convention to be given by a specific method, outlined in Article 27(3) of the Convention, and all State Parties to the Convention have a duty to be conscious of these notice requirements.<sup>88</sup> In order to suspend rights under the Convention, a State must notify the Secretary General of the Organization of American States, and must include in that contact: the provisions of the Convention the State is suspending; the reason for the suspensions; and the date the suspensions will terminate.<sup>89</sup> A failure to properly inform the Secretary General of suspensions, while acting as though those rights have been duly suspended, is a *per se* breach of the Convention, and the State is thereafter required nonetheless to provide sufficient justification to the Secretary General of their actions.<sup>90</sup> This is because even the suspensions allowed in Article 27(1) of the Convention are limited, both by the non-derogable rights articulated in Article 27(2) and the requirement that appropriate means are employed to ensure the suspension is not over-expansive or abused, regardless of state of emergency, to ensure that the Convention is not violated.<sup>91</sup>

The issuance of a state of emergency, alone, does not satisfy the notice requirements of the Convention<sup>92</sup> Particularly, a state of emergency “must meet the requirements of

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<sup>87</sup> Convention art. 27(1).

<sup>88</sup> *See, e.g., Velez v. Ecuador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 11.579 ¶ 69 (July 4, 2007).*

<sup>89</sup> Convention art. 27(3).

<sup>90</sup> *Velez, Judgment, at ¶ 70.*

<sup>91</sup> *Durand v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 68 ¶ 99 (Aug. 16, 2000) (quoting Judicial Guarantees in States of Emergency, Advisory Opinion OC-9/87 (Inter-Am. Ct. H.R. (ser. A) No. 9 ¶ 21 (Oct. 6, 1987)).*

<sup>92</sup> *Velez, Merits, Reparations, and Costs, at ¶ 47.*

[establishing:] duration, geographical coverage and material scope.”<sup>93</sup> A decree which fails to include a fixed date of termination necessarily fails establishment of duration.<sup>94</sup> Even where an emergency decree states that the issue giving rise to the order is occurring “[t]hroughout the national territory[,]” and particularly in its major cities, the decree fails the establishment of geographical coverage where it does not define the territory covered by the restrictions.<sup>95</sup> Mere mention of the actions to be taken by the government, or the restrictions to be enforced, without direct reference to the rights suspended, fails establishment of material scope.<sup>96</sup>

After Executive Decree 75/20 declaring a state of emergency was issued, the State sent a copy of the decree to the Secretary General of the Organization of American States.<sup>97</sup> A copy of the decree, alone, is not enough to affect a valid suspension of rights under the Convention. A state of emergency is necessarily a precondition to suspension of guarantees under the Convention,<sup>98</sup> not a suspension in itself. The Inter-American Court has indeed looked favorably upon states for recognizing (after being brought into the Court for invalid suspension of rights) that the State must inform the Secretary General of the suspended provisions, the reason for the suspension, and the date of expiration of those suspensions.<sup>99</sup> The State failed to follow the notice requirements of Article 27(3) of the Convention when it sent only a copy of Executive Decree 75/20.

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<sup>93</sup> Velez, Merits, Reparations, and Costs, at ¶ 48 (quoting U.N. Human Rights Committee, General Comment No. 29, ¶ 4 CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001)) (internal quotations omitted).

<sup>94</sup> *Id.* at 48 (stating that, to meet this requirement, the decree must allow some way of knowing the time limit of the restrictions).

<sup>95</sup> *Id.* at ¶ 48.

<sup>96</sup> *Id.* (allowing for “military intervention” as a means “to safeguard the security of persons and . . . property” did not provide reference to the rights affected, thus preventing a suspension).

<sup>97</sup> H.C. ¶ 17; C.Q. ¶¶ 19, 39, 55.

<sup>98</sup> *See Ricardo v. Panama, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 72 ¶ 91-94 (Feb. 2, 2001).*

<sup>99</sup> Velez, Merits, Reparations, and Costs, at ¶¶ 69-70.

While the Constitution of Vadaluz establishes a maximum time limit for the duration of states of emergency,<sup>100</sup> notice of the duration must nonetheless be sent to the Secretary General. Moreover, one can only assume what rights are restricted by the decree: clearly it aims to restrict freedom of assembly (except for religious assembly) and freedom of movement, but what of the judicial guarantees that were also affected by the pandemic and this order which are given not even implicit reference? The State arguably provided sufficient notice of the reason for the state of emergency, but that alone is not enough to prevent insufficiency of the notice as a whole.

The Decree also failed the additional requirements, adopted by the Inter-American Court from the U.N. Human Rights Committee,<sup>101</sup> of establishing duration, geographical coverage, and material scope. The State fails the duration requirement for the same reason as above: there is no way of knowing, from the language of Executive Decree 75/20, when the restrictions might end. This is an issue not only for the State Parties, but also for the population; for how long will all of life be shut down, without any inference that the government might reevaluate the restrictions it has imposed based on new scientific data? By the language of the decree, and the allowance of the Vadaluz Constitution, these harsh restrictions could last the entirety of a pandemic with an indefinite time period even if later scientific data showed that the implications to human health are far less grave than originally assumed, *as has already happened*.<sup>102</sup> There is no time period—nor any provision whatsoever—for reevaluation of the situation, and for the reimposition of restrictions according to the context of that situation. These measures could last the entirety of the pandemic, even if mortality dropped to zero yet cases continued to spread. Restrictions of this kind and this severity should have been temporally limited to the State’s ignorance of the

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<sup>100</sup> C.Q. ¶ 51.

<sup>101</sup> See Velez, *supra* note 93 and accompanying text.

<sup>102</sup> C.Q. ¶¶ 1, 49.

situation: they should have allowed for a termination of these restriction, or amendment to restrictions befitting the situation, once further information was available. We are now more than a year out from the start of the pandemic, and yet this whole time the same harsh restrictions have remained for the citizens of Vadaluz.

The State likewise failed to establish the geographical coverage and material scope of the decree. While it may be inferred that the decree restricts the entirety of the country, there is no provision expressly or implicitly stating so. The decree in *Velez v. Peru* failed even where it stated, as the rationale for the decree, that there were issues of vandalism, assault, and property damage throughout the nation and in particular major cities, yet failed to specify the geographic areas the decree covered. Decree 75/20 further failed to “lay down the rights which would be suspended.”<sup>103</sup>

Because the State did not provide the State Parties with notice that they sought to suspend certain rights under the Convention, any suspension of rights was ineffective. Accordingly, any potential violation must be addressed and analyzed, notwithstanding the state of emergency.

- ii. Executive Decree 75/20 was not Limited to the Extent Required by the Exigencies of the Situation.

Measures taken to suspend rights under the Convention must be “tailored to the exigencies of the situation.”<sup>104</sup> The propriety of emergency measures is dependent upon the “character, intensity, pervasiveness, and particular context” of that emergency, as well as the “proportionality and reasonableness of the measures.”<sup>105</sup> No emergency measures taken which

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<sup>103</sup> *Velez*, Merits Reparations and Costs, ¶ 48.

<sup>104</sup> *Id.* at ¶ 45.

<sup>105</sup> *Id.*

suspend the rights protected under the Convention may involve discrimination on the ground of religion.<sup>106</sup>

Similar to the analysis on the lack of durational definition of Executive Decree 75/20, a particularly pertinent consideration to these measures is the influx of new and changing information. The decree may have been valid as an extraordinary, temporary measure before there was any knowledge about the extent of the pandemic, but we are more than a year from both the start of the pandemic and the issuance of the decree. With the change in information regarding the pandemic,<sup>107</sup> yet no corresponding change in the decree or its restrictions, it cannot be said that the restrictions are “tailored to the exigencies of the situation.” The pandemic is serious, assuredly, but I implore this Court to take judicial notice of the restrictions imposed by similarly situated states: there are restrictions on the operations of certain businesses, sizes of social gatherings, changes in school schedules and curricula, and limitations on international travel, but there are none this severe. The world has altered its restrictions in relation to new scientific data; so too must Vadaluz. The restrictions were harsh, but arguably necessarily so, for the first few weeks; they were unreasonable for the next few weeks, especially once information about the pandemic would have been more widely disseminated; for the last several months, now at over a year in full of the citizens enduring these restrictions, they are nothing short of inane, overbroad, and overly harsh. It is also paramount to the consideration that the World Health Organization recommended only social distancing measures, and only for a short period, “while more research was done on the virus.”<sup>108</sup>

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<sup>106</sup> Convention art. 27(1).

<sup>107</sup> C.Q. ¶¶ 1, 49.

<sup>108</sup> H.C. ¶ 16.

For over a year, the State has halted all education middle school and above.<sup>109</sup> For over a year, the State has restricted social gatherings to less than three people.<sup>110</sup> For over a year, the State has effectively imposed a curfew, limiting the “movement of persons outside authorized times and places[,]”<sup>111</sup> and limiting “the free movement of persons” in their own cars.<sup>112</sup> For over a year, men have been compelled into military service for the purpose of activation against their fellow citizens.<sup>113</sup> These continued restrictions fail to take into consideration any “particular context” of the pandemic, save perhaps recognition that restrictions are needed in the first place, and they are wholly unreasonable under the current circumstances. This is especially so in the case of the State holding its military on standby for activation against its own citizens, which the Inter-American Court has cautioned against and requires extreme care to do.<sup>114</sup>

Additionally, the restrictions in Executive Decree 75/20 are not imposed evenly. The State allows for some services and activities—most notably religious activities—to self-regulate their gatherings.<sup>115</sup> This leads to an unproportioned application of the emergency measures, which is based on discrimination on ground of religion. While there are no cases from the Inter-American Court or the Commission recognizing as much, discrimination on the basis of secularism or non-religion is discrimination on the ground of religion regardless. This must be particularly considered so where only 8% of Latin Americans as a whole consider themselves unaffiliated with any religion.<sup>116</sup> Some of the citizens protesting the actions of the government

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<sup>109</sup> H.C. ¶ 17 (Decree 75/20 art. 2(2)).

<sup>110</sup> *Id.* at Art. 2(3).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at Art. 2(9).

<sup>113</sup> *Id.* at Art. 2(8).

<sup>114</sup> *Velez v. Ecuador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 11.579 ¶ 51 (July 4, 2007).*

<sup>115</sup> H.C. ¶ 17 (Executive Order 75/20 art. 2(4)); C.Q. ¶ 36.

<sup>116</sup> *Religious Composition by Country*, PEW RESEARCH CENTER (APR. 2, 2015), [https://www.pewforum.org/2015/04/02/religious-projection-table/2020/percent/Latin\\_America-Caribbean/](https://www.pewforum.org/2015/04/02/religious-projection-table/2020/percent/Latin_America-Caribbean/).

are non-religious, noted by the involvement of the Association of Students for a Secular State.<sup>117</sup> Certainly if the roles were reversed—if the State allowed for all secular social gatherings and events to self-regulate, but restricted religious gatherings to three or less people—there would be discrimination on the ground of religion. Citizens of Vadaluz are treated differently under Executive Decree 75/20 dependent upon whether they practice a religion. The State is treating its citizens differently on the ground of religion.

Executive Decree 75/20 is not “tailored to the exigencies of the situation” where the State has failed to allow for adaptation of restrictions based on new scientific information. The restrictions imposed by the decree do not consider the “particular context” of the pandemic, nor are they “proportional[] and reasonable[,]” especially more than a year after their imposition where they remain unchanged. Executive Decree 75/20 fails to suspend the guarantees provided by the Convention at several junctures.

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<sup>117</sup> H.C. ¶ 19.

## B. Freedom from *Ex Post Facto* Laws

Chavero's freedom from *ex post facto* laws, guaranteed by Article 9 of the Convention, has been violated because Executive Decree 75/20 imposes a penalty without codification in the legal code of the State, and without establishing the elements giving rise to liability. Chavero's freedom was likewise violated when he was prosecuted for the offense

In determining whether a petitioner's freedom from *ex post facto* laws has been violated, the Inter-American Court analyzes both the principles of legality in the definition and codification of the offense, and the "actual possibility of prosecution" for that offense.<sup>118</sup> Under the principles of legality, an individual cannot be punished for their conduct where a law imposing liability was not in effect and codified at that person's actions.<sup>119</sup> More than just codification, this also requires a "clear definition" of the act giving rise to liability, which "establishes the elements" of the offense and allows for distinction between that offense and non-criminal matters.<sup>120</sup> Additionally, if there is no likely probability that an individual will be prosecuted for an offence because others committing similar acts have not been prosecuted, then a conviction under that same law will be a violation of the freedom from *ex post facto* laws.<sup>121</sup> This is the case even when it should have been "more than sufficiently clear to [the petitioner] that he could be prosecuted."<sup>122</sup>

Article 2(3) of Executive Decree 75/20, which gives rise to both administrative and criminal liability is unclear in several respects. It restricts the movements of people "outside of

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<sup>118</sup> *Alibux v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 276 ¶ 53 (Jan. 30, 2014).

<sup>119</sup> *See* Convention art. 9; *Catrimán v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 279 ¶¶ 161-62 (May 29, 2014).

<sup>120</sup> *Catrimán*, Merits, Reparations, and Costs, at ¶ 162.

<sup>121</sup> *Alibux*, Preliminary Objections, Merits, Reparations, and Costs, at ¶ 54.

<sup>122</sup> *Id.* at ¶ 56.

authorized times and places” without stating what times and places are authorized.<sup>123</sup> It restricts “large-scale events” without definition of what is considered “large scale,” and only limited clarification that “events” are generally entertainment based in nature.<sup>124</sup> This is in opposition to the restriction placed on public “demonstrations” (read: protests) which state with the utmost clarity that those cannot include larger than three individuals.<sup>125</sup> Accordingly, the violation of a list of several unclear restrictions is an element of the administrative offense, the other being an arrest *in flagrante delicto* by the police. The violation of Article 2(3) of Executive Decree 75/20 also gives rise to *per se* liability under the criminal code for noncompliance with public health measures, the definition and elements of which are not provided in the decree.<sup>126</sup>

Chavero’s arrest was also improbable, and subsequent arrests under the decree are likewise improbable. Protests continued unabated in Vadaluz from January 15 to even after Chavero’s arrest.<sup>127</sup> While some associations within the protest decided to delay their involvement, many others were galvanized in their desire to seek better access to health in the wake of the pandemic, while yet others were shocked into action by the restrictions the State sought to impose.<sup>128</sup> During the time of the protests after the imposition of Executive Decree 75/20, and to date, Chavero is the sole arrestee.<sup>129</sup> Chavero’s arrest was not due to his violation of the law, but to break up the protests, and to “send a message” to anyone who might wish to protest in the future.<sup>130</sup> Where no other members of the protest groups had been arrested, before

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<sup>123</sup> H.C. ¶ 17 (Executive Decree 75/20 art. 2(3)).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> H.C. at ¶ 17 (Executive Decree 75/20 art. 3).

<sup>127</sup> H.C. ¶¶ 14, 24.

<sup>128</sup> H.C. ¶¶ 18, 19.

<sup>129</sup> H.C. ¶¶ 21, 22.

<sup>130</sup> *Id.*

or since Chavero's detention, there was no clear possibility that he would be arrested due to the failure of the State to enforce the law evenly. Accordingly, even if it should have been "more than sufficiently clear to [Chavero] that he could be prosecuted" for protesting, it is a violation of his freedom from *ex post facto* laws to subject him to criminal liability where no other protester has been prosecuted.<sup>131</sup>

### C. Judicial Protection Under the Convention

#### i. Right to Personal Liberty

As a member of the American Convention, Vadaluz is responsible for the violation of rights enshrined in the Articles of the American Convention.<sup>132</sup> Executive Decree 75/20 in itself is incompatible with the personal liberty and personal autonomy of the citizens of Vadaluz, and thereby violates Article 7 of the Convention.

Article 7 states that every person has the right to personal liberty and security.<sup>133</sup> It also states that no one shall be subject to arbitrary arrest or imprisonment.<sup>134</sup> Citizens of party states also have the right to be promptly brought before a judge and the right to a trial within a reasonable time.<sup>135</sup> Anyone who is deprived of their liberty should be entitled to recourse to a competent court for the court to decide without delay on the lawfulness of their arrest.<sup>136</sup>

The Inter-American Court has found a state to have State violated a victims right to personal liberty when he was not promptly brought before a judge, thus causing his detention to

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<sup>131</sup> *Alibux v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 276 ¶ 56 (Jan. 30, 2014).

<sup>132</sup> Convention art 7(5).

<sup>133</sup> Convention art 7(1).

<sup>134</sup> Convention art 7(3).

<sup>135</sup> Convention art 7(5).

<sup>136</sup> Convention art 7(6).

become arbitrary and violatory.<sup>137</sup> The Court has also found that failure to bring victims before a competent judge, or a competent authority, that could determine their status is a violation of Article 7(5) and (6) of the Convention (the right to be promptly brought before a judge and right to a trial within a reasonable recourse before a competent court).<sup>138</sup>

Additionally, this Court has ruled that the continued detention of a victim, without giving them the opportunity to be heard before an impartial judge, was a violation of Articles 7(1) (right to personal liberty and security) and 7(3) (prohibition of arbitrary arrest and imprisonment) of the Convention.<sup>139</sup> Bringing a victim only before a military judge, rather than to an impartial member of the state's traditional judiciary, constituted a violation nonetheless, as the actions did not meet the requirements of Article 7(5) of the Convention, and because a military judge is necessarily impartial.<sup>140</sup> That right could not be satisfied until the victim was brought before an impartial judge in the regular jurisdiction of the state.<sup>141</sup> This Court further emphasized that the right to recourse in a competent court for protection against acts that violate fundamental rights is not only set out in Articles 7 but is also a basic principle of the American Convention that needed to be complied with at all times.<sup>142</sup>

Similarly, Chavero in this case was not given the opportunity to be heard by an impartial judge. Like the victim in *Cantoral Benavides*, Chavero was only heard by the chief of police for an hour and not an impartial judge from the judiciary. The arrest of Chavero during a peaceful protest, while he maintained a social distance from other protestors, was a violation of his right

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<sup>137</sup> *Espinoza v. Ecuador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. L) No. 316 ¶ 164 (Sept. 1, 2016).

<sup>138</sup> *Expelled Dominicans and Haitians v. Dominican Republic*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282 ¶ 346, 512(5) (Aug. 28, 2014).

<sup>139</sup> *Benavides v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 69 ¶ 74 (Aug. 18, 2000).

<sup>140</sup> *Id.* at ¶ 75.

<sup>141</sup> *Id.*

<sup>142</sup> H.C. ¶ 23.

to personal liberty under the American Convention of Human Rights. His arrest in itself was unlawful and arbitrary. The police only arrested him to break up the protest and send a message to other protestors but claimed to charge him under the violation of Article 2, paragraph 3 of Decree 75/20. Although the Decree is inconsistent with many rights of the people of Vadaluz, if it was indeed being complied with, then the police was required to prosecute him under the Criminal Code for noncompliance with public health measures. It is obvious that they would not have been successful with that claim because Chavero as well as the other protestors were adhering to safety protocols by social distancing as they fought for universal health coverage.

Chavero had his right to be promptly brought before a judge violated as well. Neither a judge nor an officer authorized by law to exercise judicial power heard his case to determine the constitutionality of his detention. Article 7 of the Convention expressly provides that once a person is detained they are to be promptly brought before a judge and should be entitled to a trial within a reasonable time. Since the detention was for the duration of four days a reasonable time in this instance would be hours after his detention and nothing more than 24 hours after his arrest. The arrest was held on only the administrative or executive level and not the judicial level per the requirements of Article 7(5) of the Convention, as the only person Chavero was brought before was the chief of Police Headquarters No.3.

Finally, Chavero was not given an opportunity of recourse. He was never brought before a court to determine the constitutionality of his detention. He was only informed that he could file the legal actions provided for under the laws of Vadaluz when in reality all those avenues were unavailable at that time. Chavero was not allowed prison visits, constructively suspending *habeas corpus*. Also, the judges were unable to go to court thereby suspending *habeas* petitions, if *habeas corpus* was unavailable at the time, then the arrest couldn't have been constitutional.

Chavero was arrested and detained for four days without being heard by a judge or any other officer authorized by law to exercise judicial power. He was not allowed to see or speak to his family during this detention. After being deprived of his liberty he was also unable to seek recourse from a competent court to determine the unconstitutionality of his detention thereby contravening Article 7 of the American Convention rules. His arrest thus violated the requirements of the American Convention.

ii. Right to a Fair Trial

Chavero was detained for four days without a proper hearing, and was further subject to a presumption of guilt and punishment for refusing to bear witness against himself, thereby violating his right to fair trial.

Article 8 of the rules governing the American Convention state that every person has the right to a hearing with due guarantees and within a reasonable time by an impartial tribunal for the determination of the person's rights.<sup>143</sup> Article 8(2) states that every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven.<sup>144</sup> Article 8(2)(c) also states that adequate time and means for the preparation of his defense should be given to the detained.<sup>145</sup> Not only that but also the right of the accused to communicate freely and privately with his counsel.<sup>146</sup> The criminal proceedings according to Article 8(5) are also to be public except when it is in the interest of maintaining justice.<sup>147</sup> The right to not be compelled to plead guilty is also provided in Article 8 of the Convention.<sup>148</sup>

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<sup>143</sup> Convention art 8(1).

<sup>144</sup> Convention art 8(2).

<sup>145</sup> Convention art 8(2)(c).

<sup>146</sup> Convention art 8(2)(d).

<sup>147</sup> Convention art 8(5).

<sup>148</sup> Convention art 8(2)(g).

In the case of *Bulacio v. Argentina*, it was found that the State violated Article 8 of the Convention when the State did not afford the victim the opportunity to be brought before a judicial body in a timely manner and did not provide the victim judicial remedies during his detention.<sup>149</sup>

In addition, this Court in *Chocrón Chocrón v. Venezuela* found that Article 8 of the Convention sets the rules for due process and they had been breached in that case.<sup>150</sup> The violation of the Convention occurred when the victim's human rights were overlooked. The victim's appointment was terminated without being afforded the opportunity to be given a fair trial in determination of the dismissal.<sup>151</sup> The Court found that the dismissal was arbitrary as the constitutionality and reasons were not determined at trial.<sup>152</sup>

Likewise, in this case, Chavero was not afforded the opportunity to have a fair trial to determine the constitutionality of his arrest. Chavero was only able to meet with his lawyer Kelsen, for 15 minutes exactly a day after he was arrested. She prepared a defense for him with the information she obtained in those minutes as they went before the chief of Police Headquarters No. 3. In less than an hour Pedro was served with an order establishing that since he did not deny that he was protesting he was assumed to be guilty and for that reason had violated Article 2 paragraph 3 of Decree 75/20. Article 8(2) was violated during the meeting when Chavero was presumed guilty just by not denying that he was protesting. The American Convention grants that a person should be presumed innocent till he is proven guilty. Just by not admitting to protesting Chavero was deemed guilty without any further proof, adding to the

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<sup>149</sup> *Bulacio v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 100 ¶ 38, 81 (Sept. 18, 2003).

<sup>150</sup> *Id.* at ¶ 81.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

inadequacy of the hearing before the chief of Police. Also, if this meeting with the chief of Police can be considered a hearing, it was done on the administrative level instead of the judicial. The chief of Police cannot be determined to be impartial because it was in the interest of the police to break up the protest and the chief of Police clearly supported the Police's stance in this issue. Further, meeting up with Kelsen for only 15 minutes was unquestionably inadequate time to be given an attorney and her client in preparation of his defense thereby violating Article 8(2)(c). This in turn proves that Kelsen and Chavero were not able to communicate freely, also violating Article 8(2)(d). Finally, the only evidence used in this case was the fact that Chavero did not deny the accusations. His right not to be compelled to be a witness against himself and to plead guilty were violated when this assumption was made by the chief of Police.

Especially as a person detained by an unjust and unreasonable law, Chavero deserved an opportunity to be heard in front of an impartial and competent tribunal to determine his rights. This right was unfairly withheld from him.

### iii. Right to Judicial Protection

Chavero's right to judicial protection was not provided to him when he had no means of recourse after being arrested for exercising his right to freedom of association and assembly.

All citizens of states party to the Convention, including Chavero, have the right to simple, prompt, and effective recourse.<sup>153</sup> This right is enumerated in Article 25 of the American Convention, which states that everyone has the right to simple and prompt recourse, or any other effective recourse to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by laws of the state concerned or by this convention, even though such violation may have been committed by persons acting in the course of their official

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<sup>153</sup> Convention art 25(1).

duties.<sup>154</sup> It also states that a party to the Convention undertakes to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; to develop the possibilities of judicial remedy and to ensure that the competent authorities shall enforce such remedies when granted.

In *Cantoral Benavides v. Peru*, this Court contended that not only must the opportunity for protection against violations of fundamental rights exist, but also the recourse must be actually effective in identifying and remedying the violations.<sup>155</sup> This Court emphasized on the importance of the recourse to be available in all situations, ordinary or extraordinary.<sup>156</sup>

No actual form of recourse was made available to Chavero during his unlawful detention. The unavailability of this important provision should have cancelled the unnecessary detention in the first place.

Chavero was stripped of any form of protection he should have had after being unlawfully arrested. His fundamental right to personal liberty, freedom of assembly, association, thought and expression amongst other rights had been unlawfully violated. Chavero under Article 25 of the American Convention was to attain the right to simple, effective and prompt recourse to a competent court or tribunal for protection against being detained as a way to send a message to other protestors. His rights were supposed to have been determined by a competent court, as a person who has been detained must also have an effective way to appeal the legality of his detention. A judicial remedy in the form of a declaratory judgment would have been enough to outline and determine the rights of Chavero and the other protestors. The declaratory

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<sup>154</sup> Convention art 25(2)(a)(b).

<sup>155</sup> *Benavides v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 69 ¶ 74 (Aug. 18, 2000).

<sup>156</sup> *Id.*

judgment would ultimately put a stop to the practices of the police instilling fear in the citizenry by violating their rights.

In conclusion, Chavero must have been given the opportunity to be heard, immediately after he was arrested, by a competent court that would have outlined his rights and prevented them from being further violated. For this reason Article 25 of the Convention was violated.

#### D. Freedom of Thought and Expression

All persons must have a fundamental right to freedom of thought and expression however, Mr. Chavero as well as the other protestors' right to express themselves were curtailed by the imposition of Decree 75/20 and the police.

Article 13 of the American Convention expressly provides that a person has the right to freedom of thought and expression.<sup>157</sup> This right includes freedom to impart information and ideas in any medium of the person's choice.<sup>158</sup> The exercise of these rights according to the Convention should not be subject to prior censorship but should be subject to subsequent imposition of liability which should be established by law to the extent necessary to ensure the protection of public order or health.<sup>159</sup> Article 13 further states that the right of expression may not be restricted by indirect methods or means such as the abuse of government.

This Court in *Eduardo Kimel v. Argentina*, found that Article 13 of the Convention had been violated when the State imprisoned the writer or victim for his book.<sup>160</sup> The Court expressed that Article 13(2) places possible restrictions on the freedom of expression and

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<sup>157</sup> Convention art 13.

<sup>158</sup> *Id.*

<sup>159</sup> Convention art 13(2).

<sup>160</sup> *Kimel v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 177 ¶ 55 (May 2, 2008).

thought but then the restrictions should not restrict the full exercise of this right beyond strict necessity nor become a mechanism for prior censorship.<sup>161</sup>

Also, in *Garnier v Venezuela*, this Court stated that “a State radically violates Article 13 (freedom of thought and expression) when it uses its authority to ‘prevent the free circulation of information, ideas, opinions, or news.’”<sup>162</sup>

In this case, the protestors including Mr. Chavero had the right to express their thoughts and ideas in the form of peaceful protesting. History has proven that the people of Vaduluz have only been able to get things done through protests. Universal health is essential and the people needed the government to do something about it. Since the only avenue available to them was through protests, the protestors used this means to express their ideas and impart information to people who were not aware of the issue. Prior censorship is not allowed under the Articles of the American Convention, however, the executive branch being fully aware of the treaty they signed to be a member of the American Convention and understanding that the State of Vadaluz is subject to the laws of the Convention, went ahead to censor the protestors ability to express themselves. The government put a strain on the number of people that could protest. Should the executive branch have gone through the right steps in imposing liability to ensure that public health was respected the courts would have determined that there was no actual need for it as the student protestors were maintaining a social distance and not being a threat to public health.

Decree 75/20 was an indirect method the government took to take away the protestors’ rights to freedom of expression. The ban on gatherings was an indirect way out of the political crisis the government found itself in. If they were really concerned about the health of the people

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<sup>161</sup> *Id* at 54.

<sup>162</sup> *Granier v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 293 ¶ 137 (June 22, 2015).

they would have adhered to the reason for Pedro's protest in the first place. The provision in the decree that allows demonstrations of only three people exhibits how the executive branch did not implement the articles in the executive order from the sole perspective of healthcare but rather to diminish the protests around the country. If it was truly to preserve the health of the people, the government would have been satisfied with protestors maintaining a social distance between one another. Knowing well that three voices are not enough to effect a change in a country of 60 million people, that was the only number of people allowed to protest at a time in the Vadaluz. The Decree was also an abuse of power of the Executive branch as it did not conform with the 2000 Constitution.

Because of this indirect method employed by the government through the abuse of their power, they violated Article 13 of the American Convention.

#### E. Right of Assembly

The Protestors and the people of Vadaluz have the right to freely assemble without arms as provided by Article 15 of the American Convention.

Article 15 of the Convention states that no restrictions may be placed on the exercise of the right to assemble other than those imposed in conformity with the law and necessary in a democratic society in the interest of public health.<sup>163</sup>

In *López Lone et al. v. Honduras*, this Court expressed that the freedom to assemble is the cornerstone to exercising one's right of freedom of expression.<sup>164</sup> It stated the arrest of one of the victims for his participation in the protest of the coup d'état was a violation of his right to assembly in Article 15 of the Convention.<sup>165</sup>

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<sup>163</sup> Convention art 15.

<sup>164</sup> *Lone v. Honduras*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 302 ¶¶ 154-69 (Oct. 5, 2015).

<sup>165</sup> *Id.*

Similarly, Mr. Chavero was arrested and deprived of his right to assembly thereby violating Article 15 of the Convention. Although public health is a compelling argument, the government may not exclude protesters from assembling based on this argument when it has not imposed any restrictions on religious gatherings and activities. By excluding religious activities from Decree 75/20, the government is essentially putting a stop to gatherings that may be adverse to their objectives rather than making the health of the people of Vadaluz paramount. Further, 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. With this knowledge the government was without reason to demand that protesting be done with only three people, when peaceful protestors were ensuring that they were not putting the health of the people at risk, especially when they were protesting for universal health coverage. Just like the government presumed the religious groups were following health protocols, it is only right that the government extend the same courtesy to the student protesters who only wanted a change in the public health system. In other words, the government stated that the reason behind the surge of cases of the pandemic across the country were the parties and gatherings of young people consuming alcohol and would have a basis for disallowing such groups from assembling for the safety of the State, however, protests have not been the cause of the surge in cases and their dissolution from assembling is unfounded.

The government of Vadaluz may also not argue that the restriction on the right to assembly is in conformity with a law, when the law was not in conformity with the public health and was an abuse of their power. The Decree was overly inclusive and not properly detailed. It should not have outrightly taken the right to assemble from a selected group of people and

leaving other groups without any form of restrictions. By doing so they created a decree that is discriminatory on its face.

Peaceful protestors like Mr. Chavero should be allowed to assemble like religious groups are permitted to without any restrictions placed on them.

#### F. Freedom of Association

The peaceful protestors were entitled to their right to freedom of association. This right was violated when the police arrested Mr. Chavero in order to disperse the group.

Article 16 states that everyone has the right to associate freely for ideological, social, religious, political purposes.<sup>166</sup> The exercise of this right should be subject to only restrictions established by law as may be necessary in a democratic society in the interest of public health.<sup>167</sup>

In *Garcia and Family Members v. Guatemala* (2012), this Court found that the purpose for the detention of the victim was to stifle his right to associate with the leaders of the group that opposed the State.<sup>168</sup> It found that this was a violation of his right to freedom of association afforded him by Article 16 of the Convention.<sup>169</sup>

Similar to the victim in *Garcia*, Chavero was only arrested for the reason of dispersing the protestors. His right to freedom of association with a group that the government found unfavorable was violated when he was arrested while protesting for change.

Decree 75/20 was written up with the intention of protecting the public health of the people of Vadaluz. However, religious activities and gatherings were permitted to continue with no restrictions imposed on them. Peaceful protestors including Mr. Chavero were prohibited

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<sup>166</sup> Convention art 16(1).

<sup>167</sup> Convention art 16(2).

<sup>168</sup> *García v. Guatemala, Mertis, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 258 ¶ 115 (Nov. 29, 2012).*

<sup>169</sup> *Id.*

from congregating even if they were maintaining a distance between themselves so as to keep safety protocols as they protested about what mattered to them. Violating a group's freedom of association while allowing another group to, alludes that there may be another reason behind the imposition of Decree 75/20. If protecting the health of the people of Vadaluz was paramount then the police would not have dispersed the group of 40 protestors who were adhering to safety protocols. Before the WHO declared that there was a pandemic, protests around the country had caused economic activities in Vadaluz to come to a standstill, it was in the interest of the government to stop the protests at all costs.

In sum, the people of Vadaluz should be allowed to associate freely for whatever reason as long as it is not to the detriment of the public health of the people.

#### REQUEST FOR RELIEF

The Representatives for the Victim hereby request this Honorable Court to declare the present case admissible, and to rule that the Republic of Vadaluz violated its obligations under Articles 7, 8, 9, 13, 15, 16, 25, and 27 in conjunction with Articles 1 and 2 of the Convention, and:

- a) **DECLARE** that the Republic of Vadaluz rescind Executive Decree 75/20, and adopt new public health measures which take into account the current and best scientific information regarding the pandemic;
- b) **DECLARE** that the decree which replaces Executive Decree 75/20 shall be expressly rejected or denied by the Congress of the Republic of Vadaluz within two-weeks' time;
- c) **DECLARE** that the decree which replaces Executive Decree 75/20 shall provide a reasonable time period after which it shall be amended by the executive branch based on the new and best scientific research and data available;

- d) **DECLARE** that if the decree which replaces Executive Decree 75/20 is not amended within this time period, it shall be reviewed again by the Congress of the Republic of Vadaluz for its validity;
- e) **DECLARE** that the decree which replaces Executive Decree 75/20 shall allow for self-regulation of social distancing for social gatherings, demonstrations, and activities, regardless of religious or secular status, which may include a provision that the failure to self-regulate social distancing can give rise to a reasonable fine as a civil penalty;
- f) **DECLARE** that any future criminal or administrative proceedings against Chavero in relation to Executive Decree 75/20 be dismissed, with prejudice;
- g) **DECLARE** that any arrests, charges, or convictions, criminal or administrative, related to Executive Decree 75/20 be expunged from Chavero's record; and
- h) **DECLARE** that the Republic of Vadaluz must compensate Chavero for any attorney's fees, lost wages, emotional distress, or damage to his reputation.