PEDRO CHAVERO

Petitioner

v.

FEDERAL REPUBLIC OF VADALUZ

Respondent

MEMORIAL FOR THE STATE

3. Emergency Decree 75/20 is valid under domestic law.

4. The restrictions enacted by Emergency Decree 75/20 were entirely permissible.

a. The State met its obligations to respect rights without discrimination under Article 1 of the Convention.

b. The State met its obligations to restrict its action to a temporary response as necessitated by the situation.

c. The State met its obligations under Article 13 (Freedom of Thought and Expression).

d. The State restrictions on Article 15 (Right of Assembly) and Article 16 (Freedom of Association) were permissible.

e. The State met its obligations under Article 9 (Freedom from Ex Post Facto Laws) and Article 7 (Right to Personal Liberty).

f. The State met its obligations under Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection).

V. REQUEST FOR RELIEF

2. Judgement

b. European Court of Human Rights

III. STATEMENT OF FACTS

The Federal Republic of Vadaluz is a democracy governing and protecting its 60 million residents.[1] Over the past 20 years, the South American country has steadily worked towards the fullest expression of human rights protection sought, for instance, through a new Constitution.[2] Given the inherited disparity, the nation faces an uphill battle to achieve equality for all which made more difficult by a lack of resources to provide services.[3]

On February 1, 2020, the World Health Organization declared a global pandemic caused by the swine virus.[4] The WHO warned it was highly contagious and pressed for urgent social distancing measures as scientists around the world conducted more research on the outbreak.[5]

The President of Vadaluz immediately took action to minimize the impacts of the virus on poorer citizens.[6] In an executive decree published on February 2, 2020, the President reiterated the warnings and guidance issued by the WHO.[7] Protection of vulnerable communities was the concern.[8] Key provisions of Emergency Decree

through various media organizations and directly to the General Secretariats of the Organization respectively.[12]

One month following the issuance of Emergency Decree 75/20, several student groups- including More Students, Fewer Soldiers, the Association of Students for a Secular State, and the Association of Public and Private University Law and Political Science Students- decided to plan a protest for the right to health.[13] These students marched on San Martin Avenue on March 3, 2020.[14] Upon reaching officers, the protestors were reminded by officers of Emergency Decree 75/20

IV. LEGAL ANALYSIS

A. Preliminary objections

As an initial matter, Vadaluz contests violations of a number of procedural matters preceding the instant petition. There was no prior exhaustion of domestic remedies. The Commission violated their procedural guidelines. The Commission explicitly wrote their wish for an advisory opinion in the petition before this Court. Any of these constitute a significant violation requiring the Court to deny jurisdiction.

1. The initial petition violated the requirement of prior exhaustion of domestic remedies rendering it inadmissible.

At the time Kelsen submitted the individual petition on March 5, 2020, she had not pursued any formal domestic remedies.[39] Domestic courts did not have the opportunity to resolve her concerns. Her initiation and participation with further domestic proceedings indicates both existence of and knowledge of unexhausted remedies.[40] Vadaluz submits the exceptions to this requirement are inapplicable in this situation. In cases where domestic remedies are not exhausted, petitions are deemed spoiled and must be refiled reflecting recent considerations.[41]

Article 46(1)(a) of the American

stipulates to determine the admissibility of a petition before the Commission, in accordance with Articles 44 or 45 the Convention, it is necessary the remedies available under domestic law have been *pursued and exhausted in accordance with generally recognized principles of*

[39] Hypothetical, p.8, §36.
[40] *Id.*
[41] *Case of Brewer Carías v. the Bolivarian Republic of Venezuela* (Preliminary objections). Judgment of May 26, 2014. Series C No. 278.

international law. [42]. The petitioner must have previously utilized all adequate and effective remedies.[43] When arguing for a lack of exhaustion of domestic remedies, the state must raise the issue *in limine litis*, as Vadaluz does now.[44]

Pursuant to consistent precedent from this Court[45] and to international jurisprudence[46], time describe the remedies that should be exhausted and their effectiveness. [47] As for requirements of *not only exist formally, but they must also be adequate and effective owing to the exceptions established in Article 46(2) of the Convention* [48] The remedies must be [49] and capable of producing a just result.[50]

[42] *Case of Velásquez Rodríguez v. Honduras*

Article 46(2) of the Convention provides a series of exceptions to the exhaustion requirement:[51] lack of due process available, procedural bars from due process,[52] and unreasonable delay. [53] The delay must be significant and disproportionate to the complexity of considerations.[54] These exceptions are found in unique cases of double jeopardy or excessive procedural delays.[55]

a. In filing with the Commission and domestic courts simultaneously, counsel violated the basic requirement of exhaustion of remedies.

Chavero failed to exhaust his remedies prior to filing before the international courts. In simultaneous claims at the domestic and international level and his current lack of exhaustion, his claims are inadmissible before the Court. [56] To find to the contrary of this would set a precedent of intervention in domestic court proceedings.

The requirement of prior exhaustion of remedies was violated by the petitioner in her series of filings with the Inter-American System of from March 3 to March 5, 2020.[57] Beyond just abandoning domestic remedies before reaching the court of last resort, the petitioner actively sought relief in a writ of *habeas corpus* and Vadaluzian courts after filing an individual petition before this Court. She filed for domestic relief on x and x and x. [58] At the same time, she filed for international relief on x and x and x. [59] This parallel processing of claims is contrary to all notions of international law referenced above.[60] In *Allan r. Brewer*

[51] American Convention on Human Rights, art. 46(2).
[52] *See* Admissibility Report No. 134/11, Petition 1190-06, *Undocumented Workers* (United States), 20 October 2011, para. 30; Admissibility Report No. 51/03, Petition 11.819, *Christian Daniel Domínguez Domenichetti* (Argentina), 24 October 2003, paras. 42, 68.
[53] *Case of Suárez Rosero*, Judgment of November 12, 1997, Series C No. 35.
[54] *Id.*
[55]Admissibility Report No. 36/14, Petition 913-06, *Slaughter in Albania* (Colombia), 8 May 2014, para. 55.
[56] Hypothetical, p.7-8 §31-33,36.
[57] *Id.*
[58] Hypothetical, p.7 §31.
[59] Hypothetical, p.7-8 §31-33,36.
[60] *Supra* section IV.A.1.

2. *The Commission violated the agreed-upon procedural structure for complaints and resolutions within the IASHR.*

Once the individual petition came before the Commission, several procedural rules and norms were avoided. Minimization of Vadaluzian involvement and a deviation from agreed-upon procedure for member-states of the OAS signify a divergence from the consent-based jurisdiction. The instant petition is not compliant with procedural requirements before the Commission rendering it inadmissible before the Court.

Whether by the request of an individual or of its own accord, the IACHR may issue precautionary measure

[65] Such precautionary measures are subject to limits regarding seriousness of an offense warranting intervention on this level with limited findings.[66] The Commission may look to this Court to issue a provisional measure only in four circumstances: when the state has not complied with precautionary measures, the existing measures have not been effective, there is a precautionary measure connected to a case submitted to the Court, or the Commission considers it pertinent for the efficacy of the requested measures.[67]

Upon submission of an individual petition, the secretariat conducts an initial processing of the petition by checking for completeness,[68r the

[82] The Commission may deviate from standard practice and expedite processing of petitions for the following reasons: (1) when time would deprive the petition of its effectiveness because the alleged victim is older or a child, terminally ill, subject to the death penalty or connected to a precautionary or provisional measure in effect; (2) when the alleged victims are persons deprived of liberty; (3) when the State formally expresses its intention to enter into friendly settlement negotiations; or (4) when the resolution of the petition could address serious structural situations impacting the enjoyment of human rights or promoting legislation or state

[83]

observance and defense o [84]

The expedient request for two immediate resolutions divorced from an individual petition, ignorance of procedural mandates for timelines, and essential exclusion of Vadaluzian officials from the proceedings represent serious derogations from the procedural rules to which all signatories are bound.

a. The inappropriate processing of precautionary measures and provisional measures place the petitioner and the C management of the petition in question.

submitted on March 3, 2020.[85] Despite finding no basis for precautionary measures under Article 25, the Commission filed for provisional measures with the Court on March 4, 2020 on precisely

[82] Rules of Procedure of the Inter-American Commission on Human Rights, art 37.3 (Aug. 1, 2013).
[83] *Id.* at art 29.
[84] Statute of the Inter-American Commission on Human Rights, art. 1(1) (1979).
[85] Hypothetical p.7, §33.

the same facts.[86] Just as the Commission had held, the Court rejected the request, finding none of the requisite circumstances from Article 63(2) present.[87] The similarities of the standards for each and the speed of filing for each represents an irreverence for the significance of precautionary measures and their necessity in cases of grave danger.

The

[88] inherently rules

in the present case.[89] Similarities of the standards for each and the speed of filing for each represents an irreverence for the significance of precautionary measures and their necessity in cases of grave danger. The requested measures were inappropriate in their timing without any shift in the situation.

b. The shortened timeframe and essential exclusion of the state in question represents a violation of the procedural mandate and an incomplete preliminary report.

On March 5, 2020, just two days after the arrest of Chavero and immediately following the two rejections for precautionary measures,[90] Kelsen filed an individual petition with the Commission on behalf of Chavero.[91] The Commission expedited processing the petition

[86] *Id.* at §33-34; *See also* Inter-

to a petition or not, shall concern serious and urgent situations presenting a risk of irreparable harm to persons or to subject matter of a pending petition or case before the organs of the inter-

[87] Hypothetical p.7, §35; *See also* American Convention on Human Rights, art. 63(2) (Provisional measures apply in

[88] Inter-
25 (Mar. 18, 2013).

[89] American Convention on Human Rights, art. 63(2).

[90] Hypothetical p.8, §35.

[91] *Id.* at §36.

c. Pursuit of friendly settlement was insufficiently available to Vadaluz.

By accelerating the set-out procedures, the Commission precluded opportunity and sufficient time for the parties to seek friendly settlement to resolve the concerns presented. As set out above, either party may request a friendly settlement discussion at any point through the preparation of both the admissibility and preliminary report.[99]

As a policy matter, OAS functions to mediate allegations of violations.[100] Friendly settlements have been recognized as an effective means to effectuate that. In *Strategic Plan 11* and *17*, the Commission indicated their goal to encourage friendly settlements among parties.[101] Describing the current policy of the Commission, Commissioner James Cavallaro said, "The idea is to bring the standards down to earth and turn them into norms, laws, and public policies that are concrete and attainable, working in coordination with the relevant actors from the States and with networks of nongovernmental organizations and academics."[102] The Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to OAS member states in this area.

Fundamentally, domestic settlements, as available in friendly settlements throug

pandemic, Vadaluz asserts the advisory jurisdiction is decidedly the more appropriate venue for the concerns at hand and not the contentious jurisdiction of the Court.

b. Court indicated their interest in an advisory opinion.

The motivation of this referral to the Court is consistent with the pursuit of an advisory opinion and not through a decision rendered through the contentious jurisdiction of the Court. Various procedural idiosyncrasies and submissions before the Court indicate a disguised request from the Commission for an advisory opinion.

As described above,[111] the Commission filed a request for provisional measures immediately after rejecting a request for precautionary measures in quick succession.[112] The

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interest in an advisory opinion from the Court in an unprecedented situation.

The Commission explicitly indicated to the Court that it sought new guidance regarding the increasing issuance of states of emergency for highly contagious pandemics. In the preliminary report submitted to the Court, the Commission a valuable opportunity for the Court to develop standards on which rights can be restricted

It is a well-established practice in the Americas, as well as other international regions, for states to declare a state of emergency during public health crises and pandemics.[118] For example, the Commission adopted Resolution No. 1/2020, Pandemic and Human Rights in the Americas, to provide guidance to states on how to navigate a state of emergency.[119] The resolution states that pandemics, e of the

instruments.[125]

b. The terms of the decree must clarify the object of any restrictions.

The declaration of any state of emergency must clarify the object of any imposed restrictions on rights.[142] In the present case, guidelines detailed by Emergency Decree 75/20 are satisfy that requirement.[143] These guidelines reflect the best knowledge and health guidance that the State had at the time, with the goal of protecting the health of the people of Vadaluz.[144]

c. There must be a present, legitimate cause to declare a state of emergency.

A legitimate state of emergency must clarify a legitimate basis the cause upon which the is compelled to derogate temporarily from certain peacetime human rights requirements.[145] potential triggers, or causes, for the declaration of a state of emergency.[146]

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a whole, specifically the people, territory, and legal order.[150] The pandemic constituted a very real and present event, as reaffirmed by the WHO.[151] Moreover, the WHO emphasized the

-term consequences for human health.[152] The uncertainty surrounding the new and unknown virus

people, government, and legal order of Vadaluz.[153] With the risk of infection and social distancing orders, the country came to a standstill.[154] Given the infectious nature of the swine pandemic, the imposition of such emergency health measures of this scale demonstrates the continued viability of the emergency to the community as a whole.

d. Proper notice must be extended to the population impacted and the OAS Secretary General.

Proper notice in the issuance of an emergency declaration requires: (i) a reasonable guide for conduct for the country, (ii) immediate notification to the OAS Secretary General, and (iii) an exact date for the termination of such suspension.[155] Emergency Decree 75/20 provided a reasonable guide for conduct for Vadaluz, given it contained details regarding social distancing and essential activities.[156] The provisions in Emergency Decree 75/20 create guidance delineating the exact activities that are allowed and under what conditions such that the reasonable person would understand the information.[157] The official gazette and media

[150] Claudio Grossman, *A Framework for the Examination of States of Emergency Under the American Convention on Human Rights*

3. Emergency Decree 75/20 is valid under domestic law.

Emergency Decree 75/20 is valid under domestic law, even though Congress failed to approve or reject the declaration of a state of emergency within eight days.[171] The measure if legitimate because (1) Congress adjourned itself to protect its members from the pandemic until the minimum necessary conditions were objectively met, and (2) the Supreme Court affirmed the validity and constitutionality of Emergency Decree 75/20.[172]

The purpose of requiring Congress to approve or reject a declaration of a state of emergency is to ensure that the executive branch is not acting frivolously or exceeding its authority over the other branches of government.[173] This policy aims to block the executive from circumventing checks and balances under the guise of public safety.[174] The fact that Congress adjourned due to the sudden outbreak of the swine pandemic in Vadaluz underscores not only the very real and dangerous reality of the swine pandemic, but also that the pandemic was not an excuse for a power grab by the executive. If Congress believed Emergency Decree 75/20 threatened the people and emerged out of a faulty pandemic, Congress would not have adjourned and, instead, voted to reject the declaration of a state of emergency. The executive exercised no power over Congress nor influenced this decision. Additionally, the Commission and the Court also suspended their sessions during the COVID-19 pandemic, citing the emergency health crisis, for a span of five months, a practice found all over the

[180] The preamble of Emergency Decree 75/20 explicitly highlights Article 1 classes, stating groups and those subject to hist [181] Emergency Decree 75/20, both in its text and application, does not violate the Article 1(1) obligation of non-discrimination.[182] It textually defines essential and non-essential activities and the required restrictions upon such activities for the sake of public health amid an unknown pandemic.[183] Discrimination under Article 1 does not occur whenever an activity that one desires to continue falls into an extant non-essential or non-permitted category.[184] The pandemic necessitated restrictions on group activities, such as school and social activities, and travel, such as border crossings and air traffic.[185] These restrictions apply to everyone, and do not discriminate against persons with disabilities, women, and indigenous peoples, or any other protected class.[186]

For example, young people argue that closing bars and banning the sale of alcohol discriminated against them.[187] The response to this argument is twofold; (1) age is not a protected class under Article 1, (2) parties and gatherings of young people consuming alcohol are one of the proven causes of the surge of the pandemic and this action was necessary to curb the impact of the disease.[188] The circumstances of the state of emergency and pandemic necessitated state action and did not infringe upon the rights of any protected classes under Article 1.[189]

[180] American Convention on Human Rights, art. 1(1).
[181] Hypothetical, p.3-5, §17.
[182] *Id.*
[183] *Id.*
[184] American Convention on Human Rights, art. 1.
[185] Hypothetical, p.3-5, §17.
[186] *Id.*
[187] Hypothetical, p.5, §19.
[188] American Convention on Human Rights, art. 1(1). *See also* Hypothetical, p.5, §19.
[189] American Convention on Human Rights, art. 1.

Additionally, there was no discrimination based upon indigenous status in the enactment of Emergency Decree 75/20.[190] Prior and informed consent consultations for indigenous populations were suspended until further notice.[191] At that same time, decision-making which might impact the indigenous population was likewise suspended until further notice.[192] The indigenous population was not excluded from participation and decision-making because any state action which could affect the indigenous population had been suspended to protect the health of both the indigenous population and the nation of Vadaluz.[193] Considering indigenous populations are more at risk, the temporary suspension of this business was even more so necessary to proactively curb the impact of the pandemic on this specific population.[194]

Further, religion is a protected class under Article 1.[195] Because religion is protected under Article 1, Emergency

the bans on gathering.[196] While Vadaluz continued to discourage group gatherings in response to the pandemic, this law complied with the requirements outlines in Emergency Decree 75/20 regarding restrictions imposed on religious people as a class.[197] Also of note, the churches and temples of religious denominations followed all social distancing and capacity limits outlines by the authorities.[198]

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[190] *Id.*
[191] *Id.*
[192] *Id.*
[193] *Id.*
[194] Goha A, Mezue K, Edwards P, et al. *Indigenous People and the COVID-19* Pandemic. 75 J. Epidemiol Community Health 207, 208 (2021)
[195] American Convention on Human Rights, art. 1(1).
[196] Hypothetical, p.3-5, §17.
[197] American Convention on Human Rights, art. 1(1).
[198] Clarification Questions, p.7, §36.

b. The State met its obligations to restrict its action to a temporary response as necessitated by the situation.

public safety or public order, or to protect public health or morals or the rights or freedom of

[210] Article 16 is likewise subject to those restrictions as necessary [211]

Expressions of Article 15 and Article 16 rights often go hand-in-hand, and because of these similarities, they follow the same tests for legitimate restrictions.[212] The OSRFE and the Commission detail a three-part test to assess the permissibility of restrictions on demonstrations and protests, including Article 15 and Article 16 rights.[213] UN treaty bodies also recognize and utilize this same test.[214] This three-part test requires: (1) any limitation must be provided for in the law, (2) should pursue the legitimate objectives expressly set out in the Convention, and (3) be necessary, and proportional, in a democratic society.[215]

First, Emergency Decree 75/20 explicitly provides for the limitations of the rights of assembly and freedom of association in the law.[216]

and activities related to assembly and association.[217] Emergency Decree 75/20 detailed the limitations imposed thereby providing notice as to exactly what movements and gatherings fell within the restrictions of the Decree.[218]

Secondly, the limitations on assembly and association strictly pursued the legitimate

consistent with Articles 15 and

[210] *Id.*
[211] *Id.* at art. 16(2).
[212] *Protest and Human Rights*, Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, para. 33 (September 2019).
[213] *Id.*
[214] *Id.*
[215] *Id.*
[216] Hypothetical, p.3-5, §17.
[217] *Id. See also Protest and Human Rights*, Office of the Special Rapporteur for Freedom of Expression of the Inter-

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fundamental individual rights.[251] No rights under the Convention, specifically Article 9 and Article 7, were violated by the state in the arrest, detention, and judicial redress of Chavero.[252]

f. The State met its obligations under Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection).

Vadaluz did not infringe upon protected rights under Articles 8 and 25 during judicial proceedings. Article 8 protects the right to a fair trial, with detailed specifications about what is required for a fair trial.[253] Article 25 protects the right to judicial protection.[254]

Article 8(1) requires a due process hearing within a reasonable timeline by a previously established legal, competent, independent, and impartial tribunal with a substantiated criminal accusation.[255] Chavero was immediately notified of his charges and the proceedings occurred promptly after his arrest.[256] The proceedings were facilitated by the Chief of Police, as lawfully provided for in Executive Decree 75/20.[257] Article 8(2) affirms the presumption of innocence until guilt is proven.[258] Chavero participated in lawful proceedings--where he did not deny the committed acts--and was found to be guilty as charged and required to serve four days in administrative detention.[259] The proceeding rejected

actions were protected as lawful protest, and established his guilt.[260] A rejection of an invoked

(2) The state did not violate its international obligations under Articles 1, 7, 8, 9, 13, 15, 16, and 25 of the American Convention.