

Clarification Questions and Answers
Twenty-Sixth Inter-American Human Rights Mo 40113.(n)-T

The Federal Supreme Court examined the decree in light of the Constitution of Vadaluz and Article 27.2 of the American Convention, and determined that, although a state of emergency was declared, it did not formally suspend any non-derogable rights. However, the decree did restrict—albeit without formally announcing it—rights that generally can be limited, such as the right of assembly and freedom of expression.

6. How are administrative detentions regulated in Vadaluz’s domestic law and what powers do the authorities in charge of executing them have?

Domestic law authorizes administrative detentions for administrative offenses provided for in municipal ordinances and national laws. If expressly authorized, the police may arrest a person in flagrante delicto and bring him or her before the police chief for the imposition of short-term administrative detention. The State is a party to the American Convention.

7. What do the laws of Vadaluz say about jurisdiction, remedies, and procedures for hearing and deciding writs of *habeas corpus*?

All trial court judges have jurisdiction to hear and decide writs of *habeas corpus*, except for the family judicial police stations, which are only competent to hear complaints of gender-based violence.

Once a writ of *habeas corpus* has been adjudicated, it may be challenged on appeal to a higher court; in extraordinary cases, it may be reviewed by the Federal Supreme Court if there is a manifest error of law or a serious error in weighing evidence.

8. What do the laws and regulations of Vadaluz provide in terms of procedures, requirements, and rights that may be limited for the declaration of a state of emergency?

The procedures and requirements were described in the facts of the case. The State is a party to the American Convention.

9. On what grounds did the Federal Supreme Court deny Claudia Kelsen’s action challenging the constitutionality of Decree 75/20?

The Federal Supreme Court found that the pandemic was an exceptional public health event that threatened to cause enormous harm to the population of Vadaluz, especially since—at the time of the decree’s publication—the full extent of the pandemic’s causes and implications for human health, as well as treatments for the disease, were unknown. The Federal Supreme Court also found that the executive branch, based on WHO recommendations, had taken extraordinary and urgent measures to prevent the spread of the virus; therefore, it could not wait for Congress to convene during the pandemic. Indeed, in its decision, the Supreme Court urged Congress to resume activities.

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restrict—albeit without formally announcing it—rights that generally can be limited, such as the right of assembly and freedom of expression.

- 10. According to paragraph 23 of the hypothetical case, Pedro Chavero had been informed that he could pursue the legal actions provided for in the legal system of Vadaluz. So, what remedies would be applicable and available for Pedro to file, given that he had been deprived of his liberty? Referring to the same paragraph, what authority is competent to hear Pedro Chavero after his arrest, under the law of Vadaluz?**

The judicial remedy available at the domestic level for the protection of personal liberty is *habeas corpus*. The State is a party to the American Convention.

- 11. Under the domestic laws of Vadaluz, what is the legal effect of Congress's failure to act (by either approving or rejecting decrees declaring a state of emergency) within the eight-day period established by the new Constitution, as described in paragraph 7 of the hypothetical case? Does the executive branch have the power to enact laws on criminal matters by decree?**

There is no consequence under domestic law for Congress's inaction. However, the Federal Supreme Court found the executive branch's decision constitutional, given the urgent need to act and the fact that the executive branch could not wait for Congress to convene. Under the Constitution and the American Convention, Vadaluz is governed by the principle of criminal legality.

- 12. Regarding paragraphs 36 and 37 of the hypothetical case, how did the petition with the IACHR proceed? What were the specific dates and statements made by the parties?**

The admissibility report was adopted on August 30, 2020.

The report on the merits was adopted on October 30, 2020.

The case was submitted to the Inter-American Court on November 8, 2020.

The Inter-American Court scheduled a hearing for May 20, 2021.

- 13. According to paragraph 23, can it be understood that the Police Headquarters performs court functions in proceedings arising under Decree 75/20?**

Yes, it performs court functions to charge, investigate, indict, and impose administrative penalties of up to four days of detention. The State is a party to the American Convention.

- 14. In relation to paragraph 28, what policies have the State adopted to eliminate the digital divide in the country, specifically to improve access to filing applications for remedies?**

The judiciary has been gradually adopting effective measures to improve the virtual filing and processing of applications for remedies.

22. While the state of emergency declared by the executive branch is in force, can the executive branch create new administrative and criminal offenses on an extraordinary basis?

Formally, the executive branch cannot es th5J0.004 T(e)2.2(.)-3.1(1)304 T((o)4(t)6(y)1(i)1(s)-2(t)3(s)3(t)6(

- 34. What is the meaning of the offense of noncompliance with public health measures, which is established in the Criminal Code and referred to in Article 3 of the decree?**

It means that, in addition to the penalty provided for in Decree 75/20, there is a criminal offense for failure to comply with public health measures. Its enforcement is not part of the facts of the case.

- 35. The fact that proceedings are being conducted virtually during the pandemic did not interfere with the operation of the courts or procedural deadlines. Did Vadaluz make any changes to adapt and improve court services during the pandemic, such as suspending procedural deadlines if there are difficulties or interruptions in the judiciary's virtual system?**

The judicial system of Vadaluz had never before faced such a situation. After some initial problems, it has gradually taken steps to improve its virtual operations.

- 36. Were the churches and temples (of any religious denomination) that were able to hold services and activities maintaining social distance and was there a limit on the number of people at these meetings?**

Yes.

- 37. Paragraph 10 of the facts states that Vadaluz's judiciary has been mired in corruption scandals, allegations about its tolerance of structural racism, sexual harassment, and other problems. What decisions can be made to justify this criticism?**

This is not relevant to the issues of the case.

- 38. What are the conditions for incarceration in Vadaluz, especially in relation to the number of administrative detentions carried out under Decree 75/2020?**

The conditions are as established in Decree 75/20. There are no particular considerations about the number of administrative detentions under Decree 75/20.

- 39. What was the content of the notice given to the Secretary General of the OAS, specifically as to the reasons for the suspension, and which articles of the American Convention were suspended?**

A copy of Decree 75/20 was forwarded to the Secretary General of the OAS.

- 40. Aside from continuing to provide in-person services at the women's police stations, mentioned in paragraph 26 of the hypothetical case, what measures did the judiciary take in Vadaluz to meet the demands of adapting to the pandemic? Were there shifts for handling urgent requests and/or was there any investment in technology? Did the State have experience with online judicial services?**

The judicial system of Vadaluz had never faced a situation like the pandemic. It has gradually taken steps to improve its operations.

- 41. Have there been any new discoveries about the characteristics and spread of the virus? If so, has the State adapted its pandemic response measures? What impact did government measures have on infection rates? How did the public react to these measures taken by the State?**

When Decree 75/20 was published and when Pedro was arrested, all the implications for human life and health were unknown.

- 42. Given Article 3 of Decree 75/20, which deems appropriate the use of all judicial remedies provided for under the domestic law of the State of Vadaluz, the question is: How does the appeal system work? What types of remedies are provided for in the domestic legal system, and what are the possibilities for judicial review in the adjudication of these remedies? Was this appeal filed by [Pedro's] attorney? Was he tried? If so, when?**

Habeas corpus to protect personal liberty. The trial court's *habeas corpus* ruling is subject to appeal and eventually to extraordinary review by the Federal Supreme Court.

- 43. Does the state of emergency in Vadaluz grant State agencies (such as the police) special powers or authority?**

In principle, the state of emergency authorizes the executive branch to take extraordinary

- 47. Did the Federal Supreme Court of the State of Vadaluz review the constitutionality of Decree 75/20, either at the request of a party or sua sponte?**

The Federal Supreme Court conducted the review at the request of Claudia Kelsen.

- 48. Regarding paragraphs 22 and 23, do the police authorities of the State of Vadaluz have the power to perform judicial functions under the constitution?**

Yes.

- 49. What are the current infection and mortality rates of the swine pandemic?**

Infection rates are very high. Mortality rates are lower than expected. When the decree was published, the full implications for human health were unknown.

- 50. What material changes are there now compared to the beginning of the pandemic in Vadaluz?**

The question is vague. The State has gradually taken steps to adapt its operations.

- 51. What is the maximum time limit established by the Constitution of Vadaluz for the duration of a state of emergency?**

To the extent and for the period of time strictly required by the exigencies of the situation.

- 52. What are the police protocols for the apprehension of participants in peaceful protests?**

There are protocols in place that incorporate inter-American standards regarding the legitimate use of force.

- 53. Was Decree 75/2020 subject to constitutional review?**

Yes, at the request of a party, through the action filed by Claudia Kelsen.

- 54. What constitutional guarantees does the State have and what are their respective legal effects under the legal system of Vadaluz?**

The question is vague. The Constitution contains a generous catalog of rights. It also establishes the constitutional status of ratified human rights treaties such as the American Convention.

- 55. Did the State inform the OAS General Secretariat or, failing that, the IACHR, about the human rights situation during the pandemic?**

A copy of Decree 75/20 was forwarded to the Secretary General of the OAS.

- 56. What was the position of the Congress of Vadaluz on the approval or rejection of Decree 75/20?**

There is no legal consequence for Congress's failure to issue a decision. At present, the validity of virtual sessions is still under debate.

- 57. Under Vadaluz's constitutional, legal, and regulatory frameworks, how is the procedure for declaring a state of emergency regulated and what are the effects of Congress's failure to decide on the matter?**

There is no legal consequence for Congress's failure to issue a decision. The validity of virtual sessions is still under debate.

- 58. Did the judiciary suspend activities completely (in-person and virtual) as of publication of Decree 75/20, based on Article 2.1 of the decree, or did it suspend only in-person activities as of the publication of the Judicial Union's Directive No. 1 of 2020?**

The judiciary suspended its in-person activities upon the publication of Decree 75/20. However, it has been taking steps to improve its virtual service.

Since the March 4 announcement made by the Superior Council for the Administration of Justice, the judiciary has been partially resuming in-person services.

- 59. What powers do the police — particularly the chief of Police Headquarters No. 3 — have in relation to administrative offenses?**

Under the domestic law, if there is an express provision, the police may arrest a person in flagrante delicto and bring him or her before a police chief.

- 60. How long did the state of emergency last in the State of Vadaluz, and was it for all the states?**

The decree did not set a time limit. Nor did it set a geographical limit, so it is assumed to apply throughout the national territory.

- 61. How was the judiciary functioning through the "new virtual system"?**

It has been gradually improving.

- 62. Is the Superior Council for the Administration of Justice part of the judiciary? is it a judicial or administrative body?**

Yes, the Superior Council for the Administration of Justice is the independent public entity responsible for the governance and administration of the judiciary and is attached to the judiciary.

- 63. Did Congress and the judiciary resume their activities after March 2021? Did the members of Congress evaluate Decree 75/20?**

Congress is still debating the validity of virtual sessions.

