PEDRO CHAVERO

Victim

v.

STATE OF VADALUZ

State

MEMORIAL FOR THE VICTIM

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STATEMENT OF FACTS

treatment.[9] The public was enraged, and rightly so, a feeling which was only compounded by the pithy response of the President of the state.[10] According to his press release, this was simply a

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move outside of authorized times and places, effectively placing a curfew; meetings and protests (ent

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and prison visits.[19] 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.[20] The decree exempted religious services and activities from these stated restrictions.[21] The provision with perhaps the most grave implications, and thankfully not overtly and directly

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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.[37] Chavero was informed that he was to serve the remainder of his administrative detention in jail.[38]

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.[39] When Kelsen arrived at the Palace of Justice (the headquarters of the federal judiciary) to file both actions, the building was closed.[40] Other courts in the city were likewise closed.[41] Kelsen found a sign stating that court documents must be filed and processed through a new digital portal of the judiciary.[42]

Kelsen attempted to file the *habeas corpus* action through the judicial portal on March 5, to no avail.[43] The website would not process her request, and kept displaying an error message.[44]

day, and a week later the trial court dismissed the *habeas*

post facto laws; personal liberty; a fair trial; judicial protection; freedom of thought and expression; assembly; and association.[56]

LEGAL ANALYSIS

I. ADMISSIBILITY

On March 5, 2021, Kelsen lodged a valid petition with the Commission for the violation ts,[57] which the Commission submitted to the Inter-American Court for review pursuant to Article 61 of the Convention.[58] The State of Vadaluz recognized the jurisdiction of the Inter-American Court when it ratified the Inter-American system of human rights.[59] Thus, the Inter-

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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.[61] 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.[62] The Commission is required to issue its report within at least 180 days, with no

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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

[56] H.C. ¶ 38.
[57] H.C. ¶ 36.
[58] H.C. ¶ 38.
[59] H.C. ¶ 6.
[60] American Convention on Human Rights, Nov. 22, 1969 art
[61] Convention art. 48(2).
[62] Convention art. 50.
[63] Statute of the Inter-American Commission on Human Rights, art. 23(2).

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.[73] 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.[74]

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.[75] 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,[76] and by either foregoing procedural formalities where and as allowed by

[77] The State cannot implore that the Commission respond to

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.[78]

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

[73] Convention art. 46(2)(b).
[74] Convention art. 46(1)(b).
[75] H.C. ¶ 36.
[76] *Id.*
[77] Rules of Procedure of the Inter-American Commission on Human Rights, art. 30.
[78]

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.[79] There is no indication of the time between which the Commission issued its report and the time it issued its opinion,[80] however it was likely within three months. Regardless, there were no dissenting

nor was there

discriminatory on its face on the ground of religion where it provide

While the Constitution of Vadaluz establishes a maximum time limit for the duration of states of emergency,[100] 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,[101] of establishing duration, geographical coverage, and

suspend the rights protected under the Convention may involve discrimination on the ground of religion.[106]

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,[107] yet no corresponding change in the decree or its restrictions, it cannot

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

more research was done on the virus.[108]

For over a year, the State has halted all education middle school and above.[109] For over a year, the State has restricted social gatherings to less than three people. [110] For over a year, the [111] [112] For over a year, men have been compelled into military service for the purpose of activation against their fellow citizens.[113]

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.[114]

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.[115] 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 584 460.39 73American Court or th

are non-religious, noted by the involvement of the Association of Students for a Secular State.[117] 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.

has failed to allow for adaptation of restrictions based on new scientific information. The

where they remain unchanged. Executive Decree 75/20 fails to suspend the guarantees provided by the Convention at several junctures.

[117] H.C. ¶ 19.

B. Freedom from *Ex Post Facto* Laws

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 establ

[123] It restricts

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[124] This is in opposition to

: protests) which state with the utmost clarity that those cannot include larger than three individuals.[125] 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.[126]

likewise improbable. Protests continued unabated in Vadaluz from January 15 to even after

[127] 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. [128] During the time of the protests after the imposition of Executive Decree 75/20, and to date, Chavero is the sole arrestee.[129]

protest in the future.[130] Where no other members of the protest groups had been arrested, before

[123] H.C. ¶ 17 (Executive Decree 75/20 art. 2(3)).
[124] *Id.*
[125] *Id.*
[126] H.C. at ¶ 17 (Executive Decree 75/20 art. 3).
[127] H.C. ¶¶ 14, 24.
[128] H.C. ¶¶ 18, 19.
[129] H.C. ¶¶ 21, 22.
[130] *Id.*

failure of the State to enforce the law evenly. Accordingly, even if it should ha

his freedom from *ex post facto* laws to subject him to criminal liability where no other protester has been prosecuted.[131]

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.[132] 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.[133] It also states that no one shall be subject to arbitrary arrest or imprisonment.[134] 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.[135] 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.[136]

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

[131] Alibux v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 276 ¶ 56 (Jan. 30, 2014).
[132] Convention art 7(5).
[133] Convention art 7(1).
[134] Convention art 7(3).
[135] Convention art 7(5).
[136] Convention art 7(6).

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

duties.[154] 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.[155] This Court emphasized on the importance of the recourse to be available in all situations, ordinary or extraordinary.[156]

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

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

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

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 267.10 gng pe5q0.00000912 0 612 792 reW*nBT/F1 12 Tf1 0 0 1 355.27 267.17

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.[166] 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. [167]

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from congregating even if they were maintaining a distance between themselves so as to keep

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-
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;