

# Pavez Pavez v. Chile

## ABSTRACT<sup>1</sup>

*This case is about a religious education teacher in a public school in Chile who was terminated from employment after she came out as lesbian. Catholic church authorities had denied her the certification of suitability to teach religion required under State law on morality grounds. The Court found the State in violation of several articles of the American Convention, including Article 26.*

## I. FACTS

### A. Chronology of Events

**September 12, 1983:** Chile’s Ministry of Education proclaims Decree 924, which governs religious education.<sup>2</sup> Article 9 of the Decree establishes that teachers of religious education must hold a certificate of suitability, which can be granted and revoked by the religious authority.<sup>3</sup>

**1985-1991:** Sandra Cecilia Pavez Pavez teaches Catholic religious education at the Cardinal Antonio Samoré Municipal High School,<sup>4</sup> a public school located in the city of San Bernardo, near Santiago del Chile, and funded by the State.<sup>5</sup>

**April 9, 1991:** Ms. Pavez Pavez earns permanent staff status at the Cardinal Antonio Samoré Municipal High School.<sup>6</sup> Throughout her

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<sup>1</sup> Rachana Reddi, Author; Aria Soeprono, Editor; Emily Bernstein and Davina Shoumer, Senior IACHR Editors; Sophia Suarez, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

<sup>2</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Comm’n H.R., (ser. C) No. 449, ¶ 17 (Feb. 4, 2022).

<sup>3</sup> *Id.*

<sup>4</sup> Pavez Pavez v. Chile, Report on Merits, Report No.148/18, Inter-Am. Comm’n H.R., Case No. 12.997, ¶ 22 (Dec. 7, 2018).

<sup>5</sup> *Id.* ¶ 24.

<sup>6</sup> *Id.* ¶ 22.

tenure, Ms. Pavez Pavez is never criticized or reprimanded by her supervisors, students, or peers.<sup>7</sup>

**1991-2007:** The ecclesiastic authority grants Ms. Pavez Pavez the twelve certificates of suitability that are necessary for her to remain a teacher of religious education at the school.<sup>8</sup>

**April 30, 2006:** Ms. Pavez Pavez receives her last certificate of suitability.<sup>9</sup>

**April 2007:** Phone calls are made to the Diocese of San Bernardo and Cardinal Antonio Samoré Municipal High School, spreading rumors that Ms. Pavez Pavez is a lesbian.<sup>10</sup> Mr. René Aguilera Colinier, the Vicar for Education, confronts Ms. Pavez Pavez, who confirms her sexual orientation and that she is in a successful, stable relationship with her female partner.<sup>11</sup> The vicar urges Ms. Pavez Pavez several times to discontinue her lesbian lifestyle and receive psychiatric treatment.<sup>12</sup> He states that not doing so would result in Ms. Pavez Pavez being unable to keep her job.<sup>13</sup> Ms. Pavez Pavez refuses to abide by the vicar's instructions.<sup>14</sup>

**July 23, 2007:** The vicar sends a letter to the Cardinal Antonio Samoré Municipal High School indicating that Ms. Pavez Pavez's certificate of suitability has been withdrawn.<sup>15</sup> The letter states that religious teachers must live consistently with the Catholic doctrine to be qualified to guide students' morals, and that Ms. Pavez Pavez's publicly known lesbianism is inconsistent with it and amounts to moral unsuitability.<sup>16</sup>

**July 25, 2007:** The vicar sends Ms. Pavez Pavez a letter regarding the revocation of her certificate of suitability.<sup>17</sup> The letter reiterates that

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<sup>7</sup> Pavez Pavez v. Chile, Report on Merits, ¶ 22.

<sup>8</sup> *Id.* ¶ 23.

<sup>9</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 22 (Feb. 4, 2022).

<sup>10</sup> Pavez Pavez v. Chile, Report on Merits, ¶ 25.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ¶ 26.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 26.

<sup>16</sup> *Id.* ¶¶ 26-27.

<sup>17</sup> *Id.* ¶ 24.

Ms. Pavez Pavez can no longer work as a religious education teacher at schools that are in the Diocese of San Bernardo and that this decision is in accordance with canon law.<sup>18</sup> In this letter, the vicar notes that he is revoking her certificate as a last resort, pointing out that Ms. Pavez Pavez turned down his offers to assist her psychiatrically and spiritually.<sup>19</sup> Both the Mayor of San Bernardo and Director of the Education and Health Department each receive a copy of this communication.<sup>20</sup> Shortly after, Ms. Pavez Pavez files an appeal against the vicar's action to revoke her certificate of suitability.<sup>21</sup>

**November 27, 2007:** The Court of Appeals of San Miguel dismisses the appeal stating that the vicar's action was not against the law or without cause.<sup>22</sup> The court establishes that, due to Decree 924, a religious body is allowed to give or rescind work authorization on the basis of their principles without State or individual interference.<sup>23</sup> Decree 924 allows the Catholic Church and its authorities to set its own guidelines they believe are needed, which the court deems lawful.<sup>24</sup>

**2008:** Ms. Pavez Pavez's attorneys file an appeal to the Supreme Court of Chile.<sup>25</sup> Ms. Pavez Pavez contends that the vicar's action was arbitrary, a factor that the San Miguel Court of Appeals failed to consider.<sup>26</sup>

**April 17, 2008:** The Supreme Court holds the allegations as inadmissible and upholds the San Miguel Court of Appeals' judgment.<sup>27</sup> The Supreme Court does not explain its decision other than its desire to uphold the appellate court's judgment.<sup>28</sup>

**2011:** The school appoints Ms. Pavez Pavez to Inspector General, an administrative position that does not involve teaching Catholic religion classes.<sup>29</sup> Ms. Pavez Pavez's employment contract is still in effect; she

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<sup>18</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 24.

<sup>19</sup> Pavez Pavez v. Chile, Report on Merits, ¶ 28.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* ¶ 29.

<sup>22</sup> *Id.* ¶ 30.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Pavez Pavez v. Chile, Report on Merits, ¶ 31.

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

<sup>27</sup> *Id.* ¶ 32.

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

<sup>29</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 28.

keeps her teacher benefits and receives additional pay for her duties as Inspector General.<sup>30</sup>

**2016:** Ms. Pavez Pavez is working at her new position as Inspector General.<sup>31</sup> The position involves teaching, supervision, and administrative work as set forth in the Chilean Teachers' Statute and is typically given to experienced teachers capable of fulfilling the role.<sup>32</sup> A background in professional education and membership to the teaching staff is required in order to be an Inspector General.<sup>33</sup> Furthermore, the Statute emphasizes that teaching management is a high-level role that necessitates extensive training and teaching experience.<sup>34</sup>

**2020:** Ms. Pavez Pavez resigns from the school to qualify for a State retirement incentive.<sup>35</sup>

### *B. Other Relevant Facts*

[None]

## II. PROCEDURAL HISTORY

### *A. Before the Commission*

**October 28, 2008:** Ms. Pavez Pavez files a petition to the Inter-American Commission on Human Rights ("Commission").<sup>36</sup>

**June 16, 2014:** Chile submits its response.<sup>37</sup> The State claims that it did not discriminate against Ms. Pavez Pavez based on sexual orientation, arguing that, due to freedom of religion, Chile's domestic law leaves religious authorities the right to determine independently the suitability of teachers to teach religion.<sup>38</sup>

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<sup>30</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 28.

<sup>31</sup> Pavez Pavez v. Chile, Report on Merits, ¶ 34.

<sup>32</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 29.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* ¶ 28.

<sup>36</sup> Pavez Pavez v. Chile, Report on Merits, ¶ 1.

<sup>37</sup> Pavez Pavez v. Chile, Admissibility Report, Report No. 30/15, Inter-Am. Comm'n H.R., Case No. 12.997, ¶ 5 (July 21, 2015).

<sup>38</sup> Pavez Pavez v. Chile, Report on Merits ¶ 4.

**March 18, 2015:** The organization Alliance Defending Freedom submits a brief arguing that the rights of Ms. Pavez Pavez were not violated.<sup>39</sup>

**July 21, 2015:** The Commission issues Admissibility Report 30/15, which declares the petition admissible.<sup>40</sup> The Commission claims of violation of Articles 8 (Right to Fair Trial), 11 (Protection of Honor and Dignity), 24 (Equal Protection), and 25 (Judicial Protection) of the American Convention admissible.<sup>41</sup>

**December 7, 2018:** The Commission adopts the Report on the Merits, No. 148/18.<sup>42</sup> In it, the Commission concludes that the State is responsible for violating Articles 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), 24 (Right to Equal Protection), 23(1)(c) (Right to Have Access to Public Service), 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and 25 (Right to Judicial Protection) in connection with the obligations set forth in Articles 1(1) and Article 2 of the American Convention.<sup>43</sup>

The Commission recommends that the State: (1) reinstate Ms. Pavez Pavez's role as a public school teacher, if she wishes; (2) compensate Ms. Pavez Pavez for her financial and emotional losses and adopt such measures of economic satisfaction; and (3) establish principles of equity and non-discrimination to prevent repetition of human rights violations, such as adjusting local regulatory provisions including Decree 924, adopting measures to properly adjudicate possible cases of such discrimination, and better training personnel on evaluating suitability for teaching.<sup>44</sup>

### *B. Before the Court*

**September 11, 2019:** The Commission submits the case to the Court

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<sup>39</sup> Pavez Pavez v. Chile, Admissibility Report, ¶ 6.

<sup>40</sup> *Id.* ¶ 30.

<sup>41</sup> *Id.* “Decides,” ¶ 1.

<sup>42</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(b).

<sup>43</sup> Pavez Pavez v. Chile, Report on Merits, ¶ 5.

<sup>44</sup> *Id.*, *Id.* “The Inter-American Commission on Human Rights Recommends that the Chilean State,” ¶¶ 1-3.

after the State failed to adopt its recommendations.<sup>45</sup>

**February 7 – 27, 2020:** The representatives submit their pleadings and motions brief, reiterating the Commission's arguments and proposed reparations.<sup>46</sup> The Court receives thirty-five amicus curiae briefs.<sup>47</sup>

**July 20, 2020:** Chile submits its answering brief, which is deemed inadmissible due to its late submission.<sup>48</sup>

**June 14, 2021:** The parties submit their final written arguments.<sup>49</sup>

**February 1, 2022:** The Court begins deliberation.<sup>50</sup>

### 1. Violations Alleged by Commission<sup>51</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity)

Article 23(1)(c) (Right to Have Access to Public Service)

Article 24 (Right to Equal Protection)

Article 25(1) (Right of Recourse Before a Competent Court)

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) and

Article (2) (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

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<sup>45</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 3.

<sup>46</sup> *Id.* ¶ 6.

<sup>47</sup> *Id.* ¶ 10.

<sup>48</sup> *Id.* ¶ 7.

<sup>49</sup> *Id.* ¶ 11.

<sup>50</sup> *Id.* ¶ 12.

<sup>51</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

## 2. Violations Alleged by Representatives of the Victim<sup>52</sup>

Same Violations Alleged by Commission, plus:

Article 7(1) (Right to Personal Liberty and Security) of the American Convention.

### III. MERITS

#### A. *Composition of the Court*<sup>53</sup>

Elizabeth Odio Benito, President  
L. Patricio Pazmiño Freire, Vice President  
Humberto Antonio Sierra Porto, Judge  
Eduardo Ferrer Mac-Gregor Poisot, Judge  
Eugenio Raúl Zaffaroni, Judge  
Ricardo C. Pérez Manrique, Judge

Romina I. Sijniensky, Deputy Secretary

#### B. *Decision on the Merits*

**February 4, 2022:** The Court issues its Judgment on Merits, Reparations and Costs.<sup>54</sup>

The Court found unanimously that Chile had violated:

Article 1(1) (Obligation of Non-Discrimination) and Article 24 (Right to Equal Protection) in relation to Article 1(1) (Obligation of Non-Discrimination), to the detriment of Ms. Pavez Pavez,<sup>55</sup> because:

*The Court ruled that States are required to prevent discriminatory situations that currently exist in their societies. Potential Article 1(1)*

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<sup>52</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1 n.1, n.67. Branislav Marelic and Ciro Colombara served as representatives for Ms. Sandra Cecilia Pavez Pavez.

<sup>53</sup> *Id.* ¶ n \*, n\*\*. Judge Eduardo Vio Grossi did not participate in this judgment, pursuant to Articles 19(1) and 19(2) of the Court’s Rules of Procedure because he is a Chilean national. Pablo Saavedra Alessandri, the Secretary of the Court, did not participate in the deliberation or signing of the judgment.

<sup>54</sup> *Id.* ¶ 1.

<sup>55</sup> *Id.* “Declares,” ¶ 1.

violations should be scrutinized closely because discriminatory actions offend people's unique identities.<sup>56</sup> The Court recognized that sexual orientation and identity are connected to freedom, self-determination, meaning of life, and right to privacy.<sup>57</sup> Thus, the Court noted that life with a sexual partner is intertwined with intimacy and sexual orientation.<sup>58</sup> To maintain equality and non-discrimination, the Court reiterated that States cannot take actions that result in any discrimination, directly or indirectly.<sup>59</sup>

Article 1(1) of the Convention established that States must ensure no differentiated treatment.<sup>60</sup> The Court emphasized that State participation in any form of discrimination is a breach of its international responsibility.<sup>61</sup> Sexual orientation a protected category under Article 24 of the Convention because people's sexual orientation has led to discrimination, stigmatization, violence, and human rights violations.<sup>62</sup> To avoid violating the Convention, the State should have adopted measures to address discriminatory actions in its jurisdiction.<sup>63</sup>

In relation to Article 1(1), the Court recognized the State obligation to ensure that human rights are freely and fully exercised.<sup>64</sup> Sexual orientation was held to be an undisputedly protected category under Article 1(1).<sup>65</sup> The Court found no evidence that parents or guardians at Cardinal Antonio Samoré High School opposed Ms. Pavez Pavez's teaching.<sup>66</sup> In fact, Ms. Pavez Pavez received over 700 signatures from students and parents in support of her continuing to teach.<sup>67</sup> Lastly, the Court found that the use of Decree 924 to change Ms. Pavez Pavez's role was discriminatory because the resulting restrictions on Ms. Pavez Pavez rights outweighed the State's interest in protecting religious education.<sup>68</sup> The Court disallowed such discriminatory actions.<sup>69</sup>

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<sup>56</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 67.

<sup>57</sup> *Id.* ¶ 64.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* ¶ 65.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* ¶¶ 65-66.

<sup>62</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 68.

<sup>63</sup> *Id.* ¶ 67.

<sup>64</sup> *Id.* ¶ 109.

<sup>65</sup> *Id.* ¶ 143.

<sup>66</sup> *Id.* ¶ 144.

<sup>67</sup> *Id.*

<sup>68</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 142, 145.

<sup>69</sup> *Id.* ¶ 144.



*Although Decree 924 did not violate the Convention by itself, it raised discrimination issues by not establishing any administrative review of arbitrary or discriminatory decisions which are contrary to Article 24 in relation to Article 1(1).<sup>70</sup> In particular, Chile failed to provide an explicit procedure to access judicial review of religious leader's actions taken pursuant to Decree 924.<sup>71</sup>*

Articles 7(1) (Right to Personal Liberty and Security) and 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity) and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) in relation to Article 1(1) (Obligation of Non-Discrimination), to the detriment of Ms. Pavez Pavez,<sup>72</sup> because:

*The Court found that the right to a private life is comprised of multiple factors, including the right to develop personal dignity, seek out personal identity and personality, and surround oneself with fulfilling personal relationships.<sup>73</sup> The Court interpreted Article 7(1) of the American Convention to include a concept of liberty that allows everyone to organize their individual and social life in any lawful way.<sup>74</sup> The Court noted that the right to identity and human dignity, the right to privacy, and the right to personal autonomy (Articles 7 and 11) are closely related.<sup>75</sup>*

*Ms. Pavez Pavez's sexual orientation, an important aspect of her private life, was exposed when her certificate of suitability was revoked for the express reason that she was lesbian.<sup>76</sup> Additionally, the vicar disrespected Ms. Pavez Pavez's dignity and interfered with her sexual life when he made her employment contingent on conversion therapy and her ending her same-sex relationship.<sup>77</sup> The Court held this behavior as an intolerable violation of Ms. Pavez Pavez's dignity.<sup>78</sup>*

*The Court recognized dignity as one of the many components of the right to a private life.<sup>79</sup> The Court adopted a broad definition of*

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<sup>70</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 97, 99.

<sup>71</sup> *Id.* ¶¶ 100-101.

<sup>72</sup> *Id.* "Declares," ¶ 2.

<sup>73</sup> *Id.* ¶ 58.

<sup>74</sup> *Id.* ¶ 60.

<sup>75</sup> *Id.* ¶ 61.

<sup>76</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 134.

<sup>77</sup> *Id.* ¶ 135.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* ¶ 133.

*dignity which included an individual's ability to develop their identity and personal relationships as well as the freedom to choose the things that give their existence meaning.*<sup>80</sup>

*The Court found that the vicar's action to revoke Ms. Pavez Pavez's certificate of suitability under these ultimatums can be attributed to the State because it was done under the State authority.*<sup>81</sup>

*Although the Court did not analyze in detail the violation of Article 26, it emphasized that Article 26(2) requires that education be used to develop personality and strengthen human rights and freedoms.*<sup>82</sup>

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, to the detriment of Ms. Pavez Pavez,<sup>83</sup> because:

*As part of the State's due process requirements under Article 8(1), it should have stated the grounds for its actions to prevent arbitrary decision making and provide credibility to the legal system.*<sup>84</sup> *The Court deemed Ms. Pavez Pavez's appeal ineffective because the State court did not provide adequate reasoning to preclude arbitrary decision-making in its judgment.*<sup>85</sup>

*The Court ruled that Article 25 of the Convention gives people access to have a competent authority determine when there has been a violation of a right and to implement an effective remedy.*<sup>86</sup> *The Court defined ineffective remedies to include illusory remedies—when particular conditions or circumstances render the proposed remedy useless.*<sup>87</sup> *Here, the domestic court system dismissed Ms. Pavez Pavez's appeal because, according to its reasoning, religious authorities are not subject to State authorities.*<sup>88</sup> *The Chilean authorities did not exercise*

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<sup>80</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 133.

<sup>81</sup> *Id.* ¶ 115-116.

<sup>82</sup> *Id.* ¶ 79.

<sup>83</sup> *Id.* "Declares," ¶ 3.

<sup>84</sup> *Id.* ¶¶ 152-153.

<sup>85</sup> *Id.* ¶¶ 151, 154.

<sup>86</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 157.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* ¶ 158.

*adequate control over the vicar's decision to remove Ms. Pavez Pavez from her position as a religious teacher.<sup>89</sup> In particular, the vicar's decision regarding certificates of suitability should have been subject to review by State authority, including the implementation of necessary remedies.<sup>90</sup> Chile's failure to oversee such review was a violation of Ms. Pavez Pavez's rights.<sup>91</sup>*

The Court found unanimously that the State did not violate:

Article 23(1)(c) (Right to Have Access to Public Service) to the detriment of Ms. Pavez Pavez,<sup>92</sup> because:

*Ms. Pavez Pavez did not suffer from change in her employment contract because she continued to perform a public function even after her certificate of suitability was revoked, alongside an effective promotion that gave her a higher salary and more responsibility.<sup>93</sup> Ms. Pavez Pavez's contract for the position of Inspector General lasted for four years, the common procedure for all teachers.<sup>94</sup> According to the report, Ms. Pavez Pavez was commissioned as Inspector General and promoted from within the same faculty as a tenured teacher.<sup>95</sup> Further, her reassignment was aligned with her employment contract.<sup>96</sup> Thus, the Court found that since Ms. Pavez Pavez was not dismissed from her job entirely, she did not lose her rights under Article 23(1)(c).<sup>97</sup>*

*The Court determined that any procedure which involves dismissal or appointment must be reasonable to satisfy the guarantees of due process.<sup>98</sup> The Court noted that Article 23(1)(c) provides for general equality which includes tenure protections for public service positions.<sup>99</sup> The State contended Ms. Pavez Pavez was not working in a protected public service position because Ms. Pavez Pavez's employment was privately contracted.<sup>100</sup> Even after switching jobs to inspector general, Ms. Pavez Pavez continued to be paid for her*

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<sup>89</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 160.

<sup>90</sup> *Id.* ¶ 159.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* "Declares," ¶ 4.

<sup>93</sup> *Id.* ¶ 138.

<sup>94</sup> *Id.*

<sup>95</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 138-139.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* ¶ 139.

<sup>98</sup> *Id.* ¶ 85.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* ¶ 137.

*position as a public education teacher in a public school with public funds.*<sup>101</sup> Thus, Ms. Pavez Pavez was granted the extent of the tenure protections afforded by Article 23(1)(c) with no violation because she was not dismissed entirely.<sup>102</sup>

### C. Dissenting and Concurring Opinions

#### 1. Concurring Opinion of Judge Humberto Antonio Sierra Porto

Judge Porto noted that, while he agreed with the outcome of the decision, he disagreed with the Court's considerations regarding Article 26.<sup>103</sup> In Judge Porto's view, the Court did not substantiate its legal basis for a person's vocation being protected by the right to work in Article 26.<sup>104</sup> The court did not explain if Article 26 was associated with a person's profession generally, the scope of a specific job's contract, the State's obligation, or, critically, which provisions of the Article recognize suitability to a certain position as part of the intrinsic right to work.<sup>105</sup> The Court provided no legal basis for their use of Article 26 and only specified that Article 26 protects the right to work by discussing the prohibition of discrimination in matters of labor generally.<sup>106</sup> The Court presented a vague and inaccurate analysis of Article 26 that included a discussion of equality which should have been analyzed in terms of an Article 23 violation.<sup>107</sup> While the Court intended to make its position on the protection of each of the rights stronger, the lack of differentiation between separate articles and the ineffectual relation of Article 23 to the economic, social, cultural, and environmental rights protected under Article 26 weakened the majority decision.<sup>108</sup>

## IV. REPARATIONS

The Court ruled unanimously that the State had the following

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<sup>101</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 137.

<sup>102</sup> *Id.* ¶¶ 137, 139.

<sup>103</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Comm'n H.R., (ser. C) No. 449, ¶ 5 (Feb. 4, 2022).

<sup>104</sup> *Id.* ¶ 9.

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

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* ¶ 10.

<sup>108</sup> *Id.* ¶¶ 11-12.

obligations:

*A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Judgment as a Form of Reparation.

The Court notes that the Judgment itself is a form of reparation.<sup>109</sup>

2. Publish the Judgment

The Court ordered the State to publish the official summary of this judgment in the official gazette, in a newspaper with wide national circulation, and the entire judgment on the State's official website.<sup>110</sup> The State was required to notify the Court immediately once the publications were made.<sup>111</sup>

3. Publicly Acknowledge Responsibility

The Court ordered the State to publicly acknowledge their international responsibility for the treatment of Ms. Pavez Pavez.<sup>112</sup> In the public acknowledgement, the State must refer to the human rights violations committed.<sup>113</sup> This acknowledgement should be made within one year of the judgment's notification and done in a public ceremony where high-ranking State officials, Ms. Pavez Pavez, and her representatives are present.<sup>114</sup> The Court ordered the State to publicize the event through radio, television broadcasts, and the Ministry of Education.<sup>115</sup>

4. Training of Officials

The Court ordered the State to implement a training plan for teaching staff suitability evaluators-within two years of the judgment.<sup>116</sup> In this

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<sup>109</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, "And Establishes," ¶ 5.

<sup>110</sup> *Id.* ¶ 168.

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

<sup>112</sup> *Id.* "And Establishes," ¶ 7.

<sup>113</sup> *Id.* ¶ 172.

<sup>114</sup> *Id.*

<sup>115</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 173.

<sup>116</sup> *Id.* "And Establishes," ¶ 8.

training plan, the State should include information about the right to equality and non-discrimination in relation-to sexual orientation and include indicators that verify enforcement of the training plan.<sup>117</sup>

### 5. Administrative and Judicial Oversight

The Court ordered the State to make changes to the procedure regarding Decree 924 so that any regulatory actions are in accordance with human rights.<sup>118</sup> The State must make these adjustments within two years from the notification of this judgment.<sup>119</sup> Further, the Court emphasized that State authorities should enforce the adjustments that relate to the removal of religious education teachers to Decree 924.<sup>120</sup>

#### *B. Compensation*

The Court awarded the following amounts:

##### 1. Pecuniary Damages

With respect to the pecuniary damages, the Court awarded Ms. Pavez Pavez \$5,000 in damages.<sup>121</sup>

##### 2. Non-Pecuniary Damages

With respect to the non-pecuniary damages, the Court awarded \$30,000 in equity to Ms. Pavez Pavez for psychiatric treatment and the other suffering she faced because of this case.<sup>122</sup>

##### 3. Costs and Expenses

The Court awarded Ms. Pavez Pavez \$30,000 for her costs and expenses in attempting to obtain justice.<sup>123</sup>

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<sup>117</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 179.

<sup>118</sup> *Id.* “And Establishes,” ¶ 9.

<sup>119</sup> *Id.* ¶ 184.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* ¶ 193.

<sup>122</sup> *Id.* ¶ 198.

<sup>123</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 202.

4. Total Compensation (including Costs and Expenses ordered):

\$65,000 USD

*C. Deadlines*

The State must publish the judgment and circulate it to the public within six months of the Court's decision.<sup>124</sup>

The State has one year to publicly acknowledge its responsibility for Ms. Pavez Pavez's harms.<sup>125</sup> The State must pay compensation for pecuniary damages, non-pecuniary damages, and cost and expenses within one year of this Judgment.<sup>126</sup>

The state must also develop a training plan for evaluating the suitability of teachers, and make regulatory adjustments as necessary, within two years of the judgment.<sup>127</sup>

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

**April 19, 2023:** The Court declared that the State fully complied with three reparation measures: 1) publishing the judgment and official summary; 2) paying the total compensation amount to Ms. Pavez Pavez; and 3) paying the costs and expenses.<sup>128</sup> The Court declared that it will continue monitoring the remaining reparations: 1) a public acknowledgement; 2) a permanent training plan; and 3) regulations for procedures on appointing or removing religious teachers.<sup>129</sup>

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<sup>124</sup> Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, ¶ 168; "And Establishes," ¶ 6.

<sup>125</sup> *Id.* ¶ 173.

<sup>126</sup> *Id.* ¶ 203.

<sup>127</sup> *Id.* ¶¶ 179, 184.

<sup>128</sup> Pavez Pavez v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Resolves," ¶ 1 (April 19, 2023).

<sup>129</sup> *Id.* "Resolves," ¶ 2.

## VII. LIST OF DOCUMENTS

A. *Inter-American Court*

## 1. Preliminary Objections

Pavez Pavez v. Chile, Summary of Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Comm'n H.R., (ser. C) No. 449 (Feb. 4, 2022).

## 2. Decisions on Merits, Reparations and Costs

Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Comm'n H.R., (ser. C) No. 449 (Feb. 4, 2022).

Pavez Pavez v. Chile, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Comm'n H.R., (ser. C) No. 449 (Feb. 4, 2022).

## 3. Provisional Measures

[None]

## 4. Compliance Monitoring

Pavez Pavez v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (April 19, 2023).

## 5. Review and Interpretation of Judgment

[None]

B. *Inter-American Commission*

## 1. Petition to the Commission

[None]



## 2. Report on Admissibility

Pavez Pavez v. Chile, Admissibility Report, Report No. 30/15, Inter-Am. Comm'n H.R., Case No. 12.997 (July 21, 2015).

## 3. Provisional Measures

[None]

## 4. Report on Merits

Pavez Pavez v. Chile, Report on Merits, Report No.148/18, Inter-Am. Comm'n H.R., Case No. 12.997 (Dec. 7, 2018).

## 5. Application to the Court

Pavez Pavez v. Chile, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.997 (Sept. 11, 2019).

## VIII. BIBLIOGRAPHY

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Patricio Trincado Vera, Right to Religious Freedom and Non-Discrimination, GLOBAL HUMAN RIGHTS DEFENSE (Feb. 2023), <https://ghrd.org/report.php?region=Latin%20America>.