

**REPORT No. 148/18**  
**CASE 12.997**  
MERITS  
SANDRA CECILIA PAVEZ PAVEZ  
CHILE<sup>1</sup>  
September 11, 2018

**I. SUMMARY**

1. On October 28, 2008, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by Sandra Cecilia Pavez Pavez, Rolando Paul Jiménez Pérez, legal representative of the Homosexual Integration and Liberation Movement (Movimiento de Integración y Liberación Homosexual—MOVILH), and Alfredo Morgado (hereinafter “the petitioning party”)<sup>2</sup> alleging the international responsibility of Chile (hereinafter “the Chilean State,” “the State,” or “Chile”) to the detriment of Sandra Cecilia Pavez Pavez.

2. The Commission approved admissibility report No. 30/15 of July 21, 2015.<sup>3</sup> On September 29, 2015, the Commission notified said report to the parties and indicated its willingness to assist the parties in reaching a friendly settlement.<sup>4</sup> The parties benefited from the regulatory time-limits to submit their additional observations on the merits. All the information received was duly forwarded between the parties.

3. The petitioning party alleged that, for more than 20 years, Sandra Pavez discharged her duties as a religious education teacher in a public school and that, on July 25, 2007, the vicar for education of the Diocese of San Bernardo withdrew her certificate of suitability, which was required by internal regulations to perform this job. It indicated that said withdrawal was based on the sexual orientation of Sandra Pavez, as a result of which it was discriminatory and breached the other rights enshrined in the Convention. It added that it filed an appeal for protection, which was ruled inadmissible.

4. The State alleged that it did not engage in any discrimination based on sexual orientation because the regulatory framework under domestic law grants religions the authority to determine the suitability of persons to teach this subject, which is legitimate and constitutes a way of respecting the freedom of worship. It added that it does not pertain to the state to participate in said decisions and that the labor relationship of a public institution with religious education teachers is separate from the authorization pertaining to churches. It indicated that, nevertheless, it has started reviewing the regulatory framework under domestic law.

5. On the basis of determinations of fact and law, the Inter-American Commission concluded that the State is responsible for violating Article 8 (fair trial), Article 11 (privacy and autonomy), Article 23.1(c) (access to public service under conditions of equality), Article 24 (equality before the law), Article 25.1 (judicial protection), and Article 26 (right to work) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument. The Commission made the respective recommendations.

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<sup>1</sup> According to the provisions of Article 17.2 of the Commission’s Rules of Procedure, the Commissioner Antonia Urrejola, a Chilean national, did not participate in the discussion or in the decision making for the present case.

<sup>2</sup> Subsequently, Ciro Colombara López was included as a petitioner by means of a brief received on February 2, 2016.

<sup>3</sup> IACHR. Report No. 30/15. Petition 1263-08. Admissibility. Sandra Cecilia Pavez Pavez. Chile. July 21, 2015. The articles ruled admissible were Articles 8, 11, 24, and 25 of the American Convention.

<sup>4</sup> In a brief of November 7, 2016, the state expressed its willingness to start friendly settlement proceedings. The petitioning party did not reply to said request.

## **II. ALLEGATIONS OF THE PARTIES**

### **A. PETITIONING PARTY**

6. According to the petitioning party, Sandra Cecilia Pavez Pavez has been a religious education teacher for basic general education in the Cardinal Antonio Samoré Municipal High School for more than 22 years. The petitioning party indicated that, pursuant to Article 9 of Decree 924 of Chile's Ministry of Education governing classes on religion in schools, those who teach this subject, in order to exercise this activity, in addition to having graduated, require a certificate of suitability issued by the corresponding religious authority.

7. The petitioning party, pointed out that, on July 25, 2007, the vicar for education of the Diocese of San Bernardo, René Aguilera, issued a written communication addressed to Ms. Pavez where he informed her of the decision to revoke her certificate of suitability, which had been issued continuously since Ms. Pavez had started working as a teacher, and to prevent her from exercising her profession. The petitioning party alleged that this decision was taken because the authority had learned about the sexual orientation of Sandra Pavez. In that regard, the party indicated that, prior to this, the vicar had urged the alleged victim to terminate her "homosexual life" under penalty of not being allowed to work as a religious education teacher. The petitioner also pointed out that said authority had imposed on her the additional condition of undergoing psychiatric treatment to "reverse her alleged mental disorder." The party stated that the alleged victim did not agree to such conditions and, because of that, her certificate of suitability was revoked.

8. Regarding the proceedings, the petitioning party indicated that an appeal for protection against the vicar was filed. The party pointed out that said appeal was dismissed by the Court of Appeals of San Miguel as it considered that the applicable legislation empowered the religious authority to take a decision regarding this, and that it did not come under the State's jurisdiction to interfere or question it. In view of this decision, the petitioning party pointed out that appeal proceedings were filed and that Chile's Supreme Court of Justice, in its ruling, upheld all parts of the judgment that was being appealed.

9. The petitioning party argued that the present case has to do with public service employment and discrimination because of sexual orientation. The party stated that the State, even under the "protected assumption of freedom of worship, cannot nor must it tolerate acts of discrimination in a democratic society." The party indicated that the State had granted broad and boundless decision-making powers to religions, which give them the opportunity to condemn with impunity professionals for discriminatory reasons.

10. The petitioning party alleged that the facts described above constitute a violation of the right to have access, under general conditions of equality, to public service, as enshrined in Article 23(1)(c) of the American Convention on Human Rights in connection with the obligation to guarantee rights. The party stated that Sandra Pavez was working as civil servant in a state school and that the state, when granting powers to a religious authority to evaluate the suitability of a professional did not base its decision on any reasonable or objective parameter and, by tolerating the Catholic Church's decision, it discriminated against a person in her employment as a civil servant on the basis of a forbidden category. The party also pointed out that Decree 924 is not suitable to govern and regulate government employment, because this law is not in line with the Convention.

11. The petitioning party argued that the State also breached Sandra Pavez's right to equality before the law, because Victor Aguilera's conduct, together with the denial of rights by Chilean courts, "lead to the perpetuation of a situation of constant discrimination against and repudiation of homosexual minorities, for the benefit of lines of thought within the Catholic Church that directly contradict the law of the State of Chile."

12. The petitioning party also stated that Chile is responsible for violating the right to the protection of honor and dignity because the Chilean courts protected, by their rulings, schools of thought that foster discrimination and interference in the private lives of individuals. Finally, the party contended that the State's failure to adopt measures to prevent discrimination, such as amendments to Decree 924, did not fulfill the duty of adopting provisions under domestic law.

**B. STATE**

13. The state indicated that it had no objections to the facts described by the petitioner.

14. It pointed out that the formal separation of Catholic Church and state had been in force since 1925, a fact attested to by the autonomy enjoyed by churches and religions coexisting in the country with respect to religious matters. It argued that, as a result, the decisions adopted by the Catholic Church in areas that come under its exclusive jurisdiction must not be interpreted or interfered with by actions of the lay state.

15. The state contended that Decree 924 is consistent with what the American Convention sets forth regarding the freedom of conscience and religion. It stated that this norm does not interfere nor does it express any view, rather it confines itself to granting to each religion the possibility of deciding, on the basis of its beliefs, which characteristics those who teach its religion must have. It argued that the power is not arbitrary as it involves a legitimate authority established to guarantee the independence of churches.

16. It pointed out that, without detriment to the above, the Decree referred to is being the subject of a review “regarding the relevance of a modification aimed at leaving the door closed to situations that might be viewed as vague or unclear in connection with compatibility with international standards.” It indicates that the study started on the occasion of a friendly settlement agreement that was entered into in the petition “César Peralta and others” on same-sex marriage in Chile. It stated that the following was enshrined in the agreement:

To ensure that the study of Supreme Decree 924 of September 12, 1983 of the Ministry of Education Governing Religious Education Classes in Schools shall lead to updating the Decree and shall take into consideration relevant aspects that guarantee non-discrimination in regard to teachers and students, bearing in mind the categories of protection defined in Law No. 20.609, which Establishes Measures against Discrimination. It is mentioned that the study of Supreme Decree 924 started the first semester of 2016.

17. Furthermore, the Chilean state pointed out that the entity that appoints or hires a teacher—in this case a public school—with which there is a strictly employment relationship must be differentiated from the religious authority that gives the authority to teach. As for the enabling authority, it asserted that loss of trust is sufficient motive or reason to revoke an appointment, as an essential element of the so-called “pastoral trust.”

18. It indicated that “the case that is submitted to the Commission is aimed at attributing to the State responsibility for an alleged failure to act (...) Nevertheless, the thin line separating the areas between the state and religion, makes it complicated to openly and decidedly single out the state as exclusively responsible for a violation of human rights based on discrimination for sexual orientation.”

19. The state stressed that the petitioning party never claimed she had had her right to freedom of conscience and religion breached, as a result of which the state cannot be accused of having an attitude contrary to the petitioner’s free exercise of religious faith.

20. Finally, it contended that, regarding the actions taken by state agents or public institutions, there are no objective elements leading one to think that there was a discriminatory treatment against the alleged victim because of her sexual orientation.

**III. DETERMINATIONS OF FACT**

**A. RELEVANT REGULATORY FRAMEWORK**

21. Decree 924 of September 12, 1983 by Chile’s Ministry of Education “governs religious education classes in schools.” In its ninth article, this Decree establishes that:

The teacher of religious education, to act as such, must hold a certificate of suitability granted by the corresponding religious authority, which will be valid for as long as it is not revoked, and must also have graduated from the studies taken to discharge said duties.

The corresponding religious authority may grant the certificate of suitability to foreigners so they can work in municipal and private schools.

If the school does not have a suitable person, they must request the corresponding religious authority to provide them with one, in accordance with the preference of parents and guardians.<sup>5</sup>

## **B. FACTS OF THE CASE**

22. Sandra Cecilia Pavez Pavez was working as a religious education teacher for basic general education.<sup>6</sup> The alleged victim had worked as a teacher of said subject in the Cardinal Antonio Samoré Municipal High School since 1985 and, in 1991, earned the status of teacher belonging to the school's permanent staff.<sup>7</sup> The petitioner pointed out that Ms. Pavez was never the target of any criticism by her superiors, peers, or students.<sup>8</sup>

23. In line with the regulatory framework applicable in the matter, as a result of Decree 924, Ms. Pavez had received twelve certificates of suitability by the ecclesiastic authority up to the year 2007.<sup>9</sup>

24. The petitioning party indicated that the Cardinal Antonio Samoré High School is a public school, administered and funded by the Chilean state through the municipality of San Bernardo.<sup>10</sup>

25. The petitioning party indicated that, in 2007, via phone calls to the school and to the Diocese of San Bernardo, rumors spread that the alleged victim was a lesbian.<sup>11</sup> The party asserted that, because of these incidents, the Vicar for Education of the San Bernardo Diocese, René Aguilera Colinier, on behalf of the Bishop of the Diocese of San Bernardo, Juan Ignacio González Errázuriz, questioned Sandra Pavez about the truthfulness of the assertions.<sup>12</sup> The party pointed out that Ms. Pavez confirmed her sexual orientation to the vicar and that she had a stable relationship with her same-sex partner.<sup>13</sup>

26. The petitioning party stated that the vicar urged the alleged victim, on various occasions, to terminate her "homosexual life" under penalty of not being able to exercise her profession as a religious education teacher any longer, and he required that, to continue working in her job, she must undergo psychiatric treatment.<sup>14</sup> The party pointed out that Ms. Pavez refused to abide by the indications of the religious authority.<sup>15</sup>

27. On July 25, 2007, the vicar René Aguilera issued a written communication addressed to Sandra Pavez where he informed her of the decision to revoke her certificate of suitability, preventing her from

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<sup>5</sup> Annex 1. Official letter No. 840-2008 of May 13, 2008 from the Court of Appeals of San Miguel. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>6</sup> Annex 2. Diplomas obtained by Sandra Pavez as a Religious Education Teacher, Catechist, and Teacher of the Catholic Religion and Ethics. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>7</sup> Annex 3. Resolution No. 129 of April 9, 1991, providing for the hiring of Sandra Pavez as teacher of the Cardinal Antonio Samoré High School. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>8</sup> Brief of October 28, 2008 from the petitioning party.

<sup>9</sup> Annex 4. Authorization No. 0176/06 Certificate of Suitability of April 30, 2006 for Sandra Cecilia Pavez Pavez. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>10</sup> Brief of April 5, 2016 from the petitioning party.

<sup>11</sup> Brief of April 5, 2016 from the petitioning party.

<sup>12</sup> Brief of April 5, 2016 from the petitioning party.

<sup>13</sup> Brief of April 5, 2016 from the petitioning party.

<sup>14</sup> Brief of October 28, 2008 from the petitioning party.

<sup>15</sup> Brief of October 28, 2008 from the petitioning party.

working as a religious education teacher in schools located in the Diocese of San Bernardo.<sup>16</sup> In the above-mentioned communication, it was indicated that the decision was taken in accordance with the norms of canon law and that, after a review of the situation, there had been a conversation with Ms. Pavez.<sup>17</sup>

28. In the communication, the vicar also pointed out “as you have observed, as a priest and vicar of this Diocese, I have tried to do everything possible to prevent reaching this difficult decision, noting that the spiritual and medical assistance offered was turned down by you, which I deeply regret.”<sup>18</sup> A copy of this communication was forwarded to the Mayor of San Bernardo and to the Director of the Education and Health Department of this municipality.<sup>19</sup>

### C. PROCEEDINGS UNDER DOMESTIC LAW

29. Sandra Pavez, the legal representative of MOVILH, and the President of the Teachers Association A.G. jointly filed an appeal for protection against René Aguilera Colinier.<sup>20</sup> The appeal filed was based on the arbitrariness and illegality of the Office of the Vicar’s actions, indicating that it severely breached constitutional guarantees, as it prevented her from exercising her rights, and that the arbitrary discrimination to which she was subjected by the Church has not allowed her to exercise them as guaranteed.<sup>21</sup>

30. On November 27, 2007, the Court of Appeals of San Miguel dismissed the appeal as it deemed that the action being appealed could not be qualified as illegal or arbitrary.<sup>22</sup> It pointed out that the legislation itself applicable to the case, that is, Decree 924, authorizes the religious body to grant and revoke the corresponding authorization in line with its principles, a situation that does not allow the state or any individual to interfere with it in any way.<sup>23</sup> The court ruled that “it underlies the cited norm itself that whoever imparts said religion in classrooms must abide by said norms, beliefs, and dogmas and that it does not come under the jurisdiction of state bodies to interfere with or question them.”<sup>24</sup> In that respect, it established that “Decree 924 must be related, in turn, to the standards contained in Articles 803, 804, 805, and 806 of the Canon Law Code, as the latter legal body enshrines the authority of the Catholic Church and its authorities to set the guidelines needed in the matter of disseminating the Catholic faith, in terms of both its contents and the suitability of the persons in charge of teaching the Church’s doctrine.”<sup>25</sup>

31. Against the above-mentioned ruling, the attorneys of Sandra Pavez filed an appeal with the Supreme Court of the Republic of Chile.<sup>26</sup> The petitioning party pointed out that the appeal was based on the failure of the Court of Appeals of San Miguel to consider the arbitrariness of the measure adopted by the Office of the Vicar.<sup>27</sup>

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<sup>16</sup> Annex 5. Communication of July 25, 2007 addressed to Sandra Pavez from the Vicar’s Office for Education of the Diocese of San Bernardo. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>17</sup> Annex 5. Communication of July 25, 2007 addressed to Sandra Pavez from the Office of the Vicar for Education of the Diocese of San Bernardo. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>18</sup> Annex 5. Communication of July 25, 2007 addressed to Sandra Pavez from the Office of the Vicar for Education of the Diocese of San Bernardo. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>19</sup> Annex 5. Communication of July 25, 2007 addressed to Sandra Pavez from the Office of the Vicar for Education of the Diocese of San Bernardo. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>20</sup> Annex 1. Official letter No. 840-2008 of May 13, 2008 from the Court of Appeals of San Miguel. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>21</sup> Annex 1. Official letter No. 840-2008 of May 13, 2008 from the Court of Appeals of San Miguel. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>22</sup> Annex 1. Official letter No. 840-2008 of May 13, 2008 from the Court of Appeals of San Miguel. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>23</sup> Annex 1. Official letter No. 840-2008 of May 13, 2008 from the Court of Appeals of San Miguel. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>24</sup> Annex 1. Official letter No. 840-2008 of May 13, 2008 from the Court of Appeals of San Miguel. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>25</sup> Annex 1. Official letter No. 840-2008 of May 13, 2008 from the Court of Appeals of San Miguel. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>26</sup> Annex 1. Official letter No. 840-2008 of May 13, 2008 from the Court of Appeals of San Miguel. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>27</sup> Brief of October 28, 2008 from the petitioning party.

32. In its ruling of April 17, 2008, the Supreme Court considered that the petition's allegations were inadmissible and upheld all parts of the judgment of the Court of Appeals of San Miguel.<sup>28</sup> The IACHR notes that, in the ruling appearing in the case file, there is no reason set forth for the decision, beyond the above-mentioned upholding of the judgment of the court of first instance.

#### **D. INFORMATION ABOUT THE IMPACT ON THE ALLEGED VICTIM**

33. The petitioning party stated that the situation that Ms. Pavez encountered when, because of her sexual orientation, she lost the job she had performed for 22 years, triggered a severe depression that she has been suffering over the past years.<sup>29</sup> The party pointed out that the decision of the Office of the Vicar forced her to traumatically come to terms with her sexual orientation, a matter that, for all of these years, she had kept confidential as part of her private life.<sup>30</sup>

34. The petitioning party indicated that the alleged victim has been prevented from exercising her profession not only in schools that are part of the Diocese of San Bernardo, but also in any school of the nation because of the foundations structuring the Catholic Church.<sup>31</sup> The party asserted that, after the revocation of Sandra Pavez's certificate of suitability, the school's administration offered her an administrative post as acting inspector general, a job in which, in 2016, she was working.<sup>32</sup> The party indicated that the job did not allow her to exercise the profession for which she had studied, that her pay had not been increased, and that it does not ensure the job stability she had when she was a teacher.<sup>33</sup> Because of this, the party pointed out that the incidents caused incalculable harm to Sandra Pavez's life plans.<sup>34</sup>

#### **IV. ANALYSIS OF LAW**

##### **A. Rights to a fair trial, privacy and autonomy, access to public service under conditions of equality and non-discrimination, judicial protection, and work (Articles 8.1,<sup>35</sup> 11.2,<sup>36</sup> 23.1(c),<sup>37</sup> 24,<sup>38</sup> 25,<sup>39</sup> and 26<sup>40</sup> in connection with Articles 1.1 and 2 of the American Convention)**

##### **1. Considerations on the principle of equality and non-discrimination, the right to privacy life and autonomy, and sexual orientation**

<sup>28</sup> Annex 1. Official letter No. 840-2008 of May 13, 2008 from the Court of Appeals of San Miguel. Annex to the brief of October 28, 2008 from the petitioning party.

<sup>29</sup> Brief of April 5, 2016 from the petitioning party.

<sup>30</sup> Brief of April 5, 2016 from the petitioning party.

<sup>31</sup> Brief of October 28, 2008 from the petitioning party.

<sup>32</sup> Brief of April 5, 2016 from the petitioning party.

<sup>33</sup> Brief of April 5, 2016 from the petitioning party.

<sup>34</sup> Brief of April 5, 2016 from the petitioning party.

<sup>35</sup> Article 8 of the American Convention enshrines the following relevant provision: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>36</sup> Article 11 provides, in its relevant part, that: 2) No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3) Everyone has the right to the protection of the law against such interference or attacks.

<sup>37</sup> Article 23 of the American Convention provides, in its relevant part, the following: 1. Every citizen shall enjoy the following rights and opportunities: ... c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

<sup>38</sup> Article 24 of the American Convention provides that all persons are equal before the law. As a result they have the right, without discrimination, to equal protection of the law.

<sup>39</sup> Article 25.1 of the American Convention establishes that: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting the course of their official duties.

<sup>40</sup> Article 26 establishes that the States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

35. The Inter-American Court has pointed out that the notion of equality stems directly from the unity of humankind and is inseparable from the essential dignity of the person, in response to which the latter is incompatible with any situation that might lead to treating a given group deemed to be superior with privilege or, inversely, treating a group deemed inferior with hostility or in any way that might discriminate its enjoyment of the rights that are effectively recognized to those who do not consider themselves subject to said situation. The Court's case law has indicated that, in the current stage of evolution of international law, the basic principle of equality and non-discrimination has been included under the principle of *jus cogens*. It is on this principle that the legal scaffolding of national and international public order is built, and it permeates the entire legal structure.<sup>41</sup>

36. The principle of equality and non-discrimination must be understood in the sense of incorporating two conceptions: "(...) a negative conception related to the prohibition of arbitrary differences in treatment and a positive conception related to the obligation of states to create conditions of real equality with respect to groups who have been historically excluded or who are at a greater risk of being discriminated against."<sup>42</sup>

37. Regarding the first conception, which is the relevant one in the present case, dating back to early case law in the matter, the Inter-American Court pointed out that not all differentiated treatment is discriminatory and that is necessary to establish if it is objectively and reasonably justified.<sup>43</sup> This analysis is especially strict when it involves a difference in treatment based on one of the categories forbidden by Article 1.1 of the Convention.

38. As for sexual orientation, since the case of *Atala Riffo and daughters v. Chile*, and in subsequent cases, the Inter-American Court established, in Article 1.1 of the Convention, what was understood by "any other social condition."<sup>44</sup> In the words of the Court:

The Inter-American court has already established that the sexual orientation and gender identity of persons is a category protected by the Convention. Therefore, any regulation, act, or practice considered discriminatory based on a person's sexual orientation is prohibited. Consequently, no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation.<sup>45</sup>

In that respect, the inter-American instrument prohibits discrimination in general, including categories such as sexual orientation, which cannot serve as the grounds for denying or restricting any of the rights set forth in the Convention. The above would be contrary to what is established in Article 1.1 of the American Convention.<sup>46</sup>

39. Regarding the right to privacy and autonomy, the Court has pointed out that Article 11 of the Convention prohibits all arbitrary or abusive interference in a person's private life, setting forth various spheres of the latter such as the private life of their families. In that respect, the Court has contended that the realm of privacy is exempt and immune from abusive and arbitrary intrusion or aggression by third parties or

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<sup>41</sup> I/A Court H.R. Case Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2016. Series C No. 315. Para. 109.

<sup>42</sup> I/A Court H.R. Case of Furlan and family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246. Para. 267.

<sup>43</sup> I/A Court H.R. Proposal to amend the Political Constitution of Costa Rica relative to naturalization. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4. Paras. 55 and 56.

<sup>44</sup> I/A Court H.R. Case of Atala Riffo and daughters v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239. Paras. 91 and 93.

<sup>45</sup> I/A Court H.R. Case of Duque v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 26, 2016. Series C No. 310. Para. 104.

<sup>46</sup> I/A Court H.R. Case of Duque v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 26, 2016. Series C No. 310. Para. 105.

by public authorities.<sup>47</sup> It also pointed out that “privacy is an ample concept that is not subject to exhaustive definitions and includes, among other protected realms, the sex life and the right to establish and develop relationships with other human beings. Thus, privacy includes the way in which the individual views himself and to what extent and how he decides to project this view to others.”<sup>48</sup>

40. On the basis of the above, the Inter-American Court has pointed out that sexual orientation is part of the private life of persons and therefore it involves a sphere that cannot be subject to arbitrary interference.<sup>49</sup> In the case of *Atala Riffo and daughters v. Chile*, the Court ruled that the fact that a court gave importance to “sexual orientation as a reference,” entailed an exposure of private life.<sup>50</sup>

41. Thus, in the analysis of concrete cases, both to analyze intrusions in private life and autonomy and to analyze differences in treatment, a judgment of proportionality has been used, consisting of the following scaled elements: i) legality of the restriction, that is if it was provided for in the law both formally and materially; ii) the existence of a legitimate purpose; iii) the suitability, that is, the determination of whether or not there is a logical relationship of causality between the means and the ends, as well as the distinction and end that is being sought; iv) the need, that is, the determination of whether or not there are less restrictive and equally suitable alternatives; and v) the proportionality in the strict sense, that is striking a balance between the interests at stake and the degree of sacrifice between them.<sup>51</sup>

42. In dealing with differentiated treatment based on one of the categories forbidden by Article 1.1 of the Convention, such as sexual orientation, the Commission has pointed out that each one of these steps must be closely scrutinized, because it involves a suspect category that it is presumed to be unconventional, and that the state concerned must bear the burden of justifying its actions on the basis of compelling reasons.<sup>52</sup> Along the same line, the Court has indicated that “involving the prohibition of discrimination for one of the protected categories envisaged in Article 1.1 of the Convention, the eventual restriction of a right requires strong grounds, which implies that the reasons used by the state to implement the differentiation of treatment must be particularly serious and supported by thorough arguments.”<sup>53</sup>

## **2. Considerations on the right of access to public service under conditions of equality and the right to work**

43. The Court has indicated that Article 23.1(c) does not establish the right to access a public position, but to do so under “general conditions of equality.” This means that the respect and guarantee of this right are fulfilled when “the criteria and procedures for the appointment, promotion, suspension and dismissal [are] reasonable and objective” and when “the people are not object of discrimination” in the exercise of this right.<sup>54</sup> Likewise, the Human Rights Committee has interpreted that the guarantee of protection covers both the access and the continuance under equal conditions and non-discrimination with regard to the suspension

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<sup>47</sup> I/A Court H.R. Case of *Atala Riffo and daughters V. Chile*. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239. Para. 161.

<sup>48</sup> I/A Court H.R. Case of *Atala Riffo and daughters V. Chile*. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239. Para. 162.

<sup>49</sup> I/A Court H.R. Case of *Atala Riffo and daughters V. Chile*. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239. Para. 165.

<sup>50</sup> I/A Court H.R. Case of *Atala Riffo and daughters V. Chile*. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239. Para. 166.

<sup>51</sup> I/A Court H.R., Case of *Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2012. Series C No. 257, para. 273; and I/A Court H.R. Case of *Atala Riffo and daughters v. Chile*. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239. Para. 146.

<sup>52</sup> IACHR. Complaint filed with the Inter-American Court of Human Rights. Case of *Karen Atala and daughters*. Para. XX.

<sup>53</sup> I/A Court H.R. Case of *Duque V. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 26, 2016. Series C No. 310. Para. 106. Quoting. Cf. Case of *Gonzales Lluay et al. v. Ecuador*, para. 257. Likewise, *mutatis mutandi*, Case of *Atala Riffo and daughters v. Chile*. Merits, Reparations, and Costs, para. 124, and Case of *Granier et al. (Radio Caracas Televisión) v. Venezuela*, para. 228.

<sup>54</sup> I/A Court H.R. Case of *Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197. Para. 138. Quoting. United Nations, Human Rights Committee, General Comment No. 25: Participation in Public Affairs and the Right to Vote, CCPR/C/21/Rev. 1/Add. 7, 12 July 1996, para. 23.

and dismissal procedures.<sup>55</sup> In the words of the Court “the access in equal conditions would constitute an insufficient guarantee if it were not accompanied by the effective protection of the continuance of what is accessed.”<sup>56</sup> It also pointed out that:

(...) the right to have access to public service in general conditions of equality protects the access to a direct form of participation in the design, implementation, development, and execution of the state’s political guidelines through public service. Therefore, it is necessary that the State generate the optimal conditions and mechanisms in order for those political rights to be exercised effectively, respecting the principle of equality and non-discrimination.<sup>57</sup>

44. As for Article 26 of the American Convention, it establishes an obligation inherent to states parties to ensure the progressive development of the rights contained in this norm. Both bodies of the Inter-American System<sup>58</sup> have confirmed their competence to rule on possible violations of Article 26 of the American Convention in the framework of the system of individual petitions and cases.<sup>59</sup>

45. The Commission recognizes that Article 26 of the Convention and the concrete determination of its scope and content may entail certain interpretive complexities. Thus the Commission deems that the review of a concrete case in the light of Article 26 of the American Convention must be carried out at two levels. First, it must be established whether or not the right being dealt with in the case stems from “the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States,” as instructed by the text of Article 26. That is, Article 26 of the American Convention is the one that identifies the OAS Charter as a direct source of rights, assigning a human rights character to the provisions on the matter that can emanate from this treaty. Since the purpose of the OAS Charter was not to individualize rights without establishing an international body, it is necessary to resort to auxiliary texts to identify the rights stemming from the provisions of said instrument, including basically the American Declaration and other relevant norms of the international *corpus juris*.

46. When applying the above parameters to the present case, the Commission and the Court already established that the right to work is one of the rights stemming from the economic and social norms mentioned in Article 26 of the Convention, as a result of which it is not necessary to recapitulate said analysis.<sup>60</sup>

47. Once this has been established, it must be determined whether or not the state concerned failed to fulfill the obligation of “progressively achieving” the full realization of said right or those general obligations to respect and guarantee it. At the second level, the nature and scope of the obligations requiring

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<sup>55</sup> I/A Court H.R. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197. Para. 138. Quoting: Pastukhov v. Belarus (814/1998), ICCPR, A/58/40 vol. II (5 August 2003) 69 (CCPR/C/78/D/814/1998) at paras. 7.3 and 9; Adrien Mundy Busyo, Thomas Osthudi Wongodi, René Sibu Matubuka et al. v. Democratic Republic of the Congo (933/2000), ICCPR, A/58/40 vol. II (31 July 2003) 224 (CCPR/C/78/D/933/2000) at para. 5.2.

<sup>56</sup> I/A Court H.R. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197. Para. 138.

<sup>57</sup> I/A Court H.R. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197. Para. 139. Quoting. Cf. Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Series C No. 127, para. 195.

<sup>58</sup> See, for example, forms of admissibility where the possible violation of Article 26 of the Convention has been admitted: Report 29/01. Case of 12.249. Jorge Odir Miranda Cortez et al. El Salvador, March 7, 2001; and Report 70/04. Petition 667/01. Admissibility. Jesús Manuel Naranjo Cárdenas et al. (Pensioners of the Venezuelan Aviation Company VIASA). Venezuela, October 13, 2004. See also the ruling on the merits in connection with Article 26 in Report 38/09. Case of 12.670. National Association of Ex-Employees of the Peruvian Social Security Institute et al. v. Peru. March 27, 2009. Likewise, the Court upheld said jurisdiction in the Case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller’s Office”) v. Peru (Preliminary Objection, Merits, Reparations, and Costs), Judgment of July 1, 2009; I/A Court H.R. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 23, 2018. Series C No. 359. Paras. 74-97.

<sup>60</sup> I/A Court H.R. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340. Para. 146; I/A Court H.R. Case of Discharged Workers of Petroperú et al. V. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2017. Series C No. 344. Para. 192; and I/A Court H.R. Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations, and Costs. Judgment of February 8, 2018. Series C No. 348. Para. 220.

enforcement by the state under Articles 1.1, 2, and 26 of the Convention, as well as the contents of the right concerned, must be taken into consideration.

48. In that regard, the Commission understands that Article 26 of the American Convention imposes various obligations upon states that are not confined to prohibiting regressiveness, which is a correlate to the obligation of progressiveness, but it cannot be construed as the only obligation subject to justice in the inter-American system under this norm. Thus, the Commission asserts that, bearing in mind the interpretive framework of Article 29 of the American Convention, Article 26 viewed in the light of Articles 1.1 and 2 of the same instrument, leads to, at least, the following immediate and enforceable obligations: i) general obligations of respect and guarantee, ii) application of the principle of non-discrimination to economic, social, and cultural rights, iii) obligations to take steps toward or adopt measures for achieving the enjoyment of the rights incorporated into said article; and iv) offering suitable and effective remedies for their protection. The methodologies or sources of analysis that turn out to be relevant for each one of these obligations must be established in accordance with the circumstances specific to each case.

49. In connection with the enforceable and immediate components of the obligation to take steps or adopt measures, the ESCR Committee has indicated, for example, that the adoption of measures, by itself, is not limited to or conditioned by other considerations; to that end, although achieving the effective enforcement of rights may be gradual, the adoption of measures or ordinances for such purposes must be deliberate, concrete, and targeted as clearly as possible at their enforcement. The state, in addition, has basic obligations that must meet the basic levels of such rights, which are not subject to progressive development but rather must be immediate in nature.<sup>61</sup>

50. In the case of *San Miguel Sosa et al. v. Venezuela* and when applying the relevant contents of the right to work, the Inter-American Court established the violation of the right to work in connection with the principle of equality and non-discrimination, after ruling that three civil servants had been removed from their posts in a discriminatory fashion.<sup>62</sup>

51. The Commission considers that, although in the present case the alleged victim was not dismissed, but rather had to stop being a religious education teacher and take up a post that was different from what she had been doing for more than 20 years, the above-mentioned precedent is relevant to the extent that it dealt with a presumably discriminatory action that had an impact on her work, which in this case involved performing the public service of teaching or being a teacher in a school. Thus, in addition to the principle of equality and non-discrimination and the right to privacy and autonomy, the Commission also deems it is relevant to examine the present case in the light of Articles 23.1(c) and 26 of the Convention.

### **3. Considerations on the right to benefit from reasoned decisions and the right to judicial protection**

52. Regarding the right to judicial protection, the Court has pointed out that Article 25.1 of the Convention establishes, in ample terms, the obligation of states to provide to all persons subject to their jurisdiction an effective legal remedy against acts violating their fundamental rights.<sup>63</sup> In addition, the Court has established that, for the state to comply with the provision in Article 25 of the Convention, it is not enough for remedies to exist formally, but rather that they be effective under its terms, in other words, that they yield results or responses to the violations of rights recognized either by the Convention, the Constitution, or the law. The above implies that the redress must be adequate to combat the violation and that its enforcement by the competent authority must be effective. Likewise, an effective remedy requires that the review of a judicial

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<sup>61</sup> United Nations Committee on Economic, Social, and Cultural Rights, General Comment 3: The nature of states parties obligations (paragraph 1 of Article 2 of the Covenant), 1990. In that respect, see: IACHR. Report on poverty and human rights in the Americas OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017), paras. 236 and 237.

<sup>62</sup> I/A Court H.R. Case of *San Miguel Sosa et al. v. Venezuela*. Merits, Reparations, and Costs. Judgment of February 8, 2018. Series C No. 348. Paras. 221 and 222.

<sup>63</sup> I/A Court H.R. Case of *Maldonado Ordóñez v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of May 3, 2016. Series C No. 311. Para. 108.

remedy by the competent authority cannot be reduced to a mere formality, but rather it must examine the arguments invoked by the complainant and expressly address them.<sup>64</sup>

53. As for the duty to state sufficient grounds, the Inter-American Court has pointed out that it constitutes one of the “due guarantees” referred in Article 8.1 of the Convention. Regarding its content, it indicates that:

(...) the grounds are “the exteriorization of the reasoned justification that allows a conclusion to be reached.” The duty to state grounds is a guarantee linked to the proper administration of justice,<sup>65</sup> protecting the right of citizens to be tried for the reasons provided by Law, and giving credibility to the legal decisions adopted in the framework of a democratic society.<sup>66</sup>

The Court has underscored that the decisions adopted by national bodies that could affect human rights must be duly justified, because, if not, they would be arbitrary decisions.<sup>67</sup> In such sense, the reasons given for a judgment must show that the arguments by the parties have been duly weighed and that the body of evidence has been analyzed. Moreover, a reasoned decision demonstrates to the parties that they have been heard and, when the decision is subject to appeal, it affords them the possibility to argue against it, and of having such decision reviewed by an appellate body.<sup>68</sup>

#### **4. Analysis of the case**

54. Taking into account the allegations of the parties, the Commission must decide, first of all, whether in the present case there was a difference in treatment based on the sexual orientation of the alleged victim. If that is the case, the IACHR must then establish if said difference in treatment was objective and reasonable, by applying the above-mentioned judgment of proportionality on the basis of rigorous scrutiny, taking into account that it would involve one of the categories prohibited by Article 1.1 of the American Convention.

55. As for the first item, the Commission observes that there is no controversy about the fact that Sandra Pavez worked as a religious education teacher in the Cardinal Antonio Samore Municipal High School and that, on July 25, 2007, her certificate of suitability was withdrawn by the Diocese of San Bernardo. As indicated in the evidence, the certificate of suitability was required by Decree 924 of 1983 of the Ministry of Education, which governs religious education classes in schools. This regulation granted this authority to the respective religions. Nevertheless, there is no dispute that the post held by Sandra Pavez as a teacher was a public service post. Nor is there any dispute about the fact that the reason for the withdrawal of her certificate of suitability was Sandra Pavez’s sexual orientation and the fact that she had a relationship with a person of her own gender. This is evident from both the contents of the withdrawal itself and the previous incidents with respect to inquiries conducted by the vicar on the alleged victim’s sexual orientation and the warnings that were transmitted to her, including the requirement that she submit to treatment.

56. By virtue of the above, the IACHR deems that it has been sufficiently proven that the withdrawal of the certificate of suitability on July 25, 2007 constituted a difference in treatment, which was based explicitly and exclusively on Sandra Pavez’s sexual orientation.

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<sup>64</sup> I/A Court H.R. Case of Maldonado Ordóñez v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs. Judgment of May 3, 2016. Series C No. 311. Para. 109.

<sup>65</sup> I/A Court H.R. Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) V. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No. 182. Para. 77. Quoting. “The European has established this in the Case of Suominen: ‘[t]he Court therefore reiterates that, according to its constant jurisprudence and reflecting a principle relative to the correct administration of justice, the judgments of the courts and tribunals must adequately expose the reasons on which they are based’ (translation by this Court Corte). Cf. Suominen v. Finland, No. 37801/97, § 34, 1 July 2003”.

<sup>66</sup> I/A Court H.R. Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No. 182. Para. 77.

<sup>67</sup> I/A Court H.R. Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No. 182. Para. 78.

<sup>68</sup> I/A Court H.R. Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No. 182. Para. 78.

57. According to the standards described and because it involves a suspect category protected by Article 1.1 of the Convention, the difference in treatment is alleged to clash with the state's international obligations and it must be assessed whether or not there is a sufficiently solid justification outweighing a strict scrutiny of the steps of the above-mentioned judgment of proportionality. Regarding this, the Commission observes that the contents of the withdrawal does not provide any explanation that would make it possible to determine the imperative need sought by the difference in treatment, the suitability of said difference in connection with said need, nor its strict necessity or proportionality. On the contrary, the withdrawal is confined to explicitly indicating that the differentiating criterion was Sandra Pavez's sexual orientation without providing any reason that would pass a minimum test of objectivity and reasonability, much less a rigorous scrutiny as required when dealing with this category.

58. The Commission, however, also observes that the defense of the Chilean state rests rather on the fact that the domestic regulatory framework grants the respective religions the authority to certify the suitability of persons who are going to teach religious education, as a result of which these decisions would not come under the state's responsibility. In fact, the state alleges that the ultimate goal of this regulation is to respect the freedom of worship and that it is not up to the state to intrude in such matters.

59. The Commission considers that these arguments made by the state would seem to be more connected to a dispute about the attribution of international responsibility for the actions taken by religious authorities in the exercise of the legal authority granted to them by Decree 924 of 1983. Regarding this matter, the Commission believes it must set forth various considerations.

60. The first is that there is no dispute about the fact that Sandra Pavez was a teacher in a public high school and that she held a public service post. In that respect, the relationship with the state was direct. The second is that the authority granted to religious authorities to certify the suitability of persons is not provided for by law, as a result of which it was the state that delegated a component of public service to non-state bodies, such as religious authorities. In that respect, the Commission observes that this delegation was made on the basis of absolute terms, without establishing any safeguards to prevent its implementation in an arbitrary fashion or in violation of fundamental rights, including the principle of equality and non-discrimination. On the basis of these two elements, the Commission considers that the actions taken by religious authorities when exercising the delegation contained in Decree 924 of 1983 for the exercise of a public service necessarily engages the state's international responsibility.

61. The third consideration is that, without detriment to the above and, for the sake of argument, even when it is accepted that it did not involve an action that can be attributed to the state, the principle of equality and non-discrimination, because of its essential nature, extends its impacts onto relationships between individuals, imposing *erga omnes* obligations. This means that the state must guarantee its strict enforcement not only in the sphere of state actions, but also in the private realm. Thus, when apprised of an unjustified discriminatory act or differentiated treatment by a non-state party, the state is required to discharge its duty of protecting and responding in order to stop said discrimination and to provide due reparations. That is why it is essential to have effective judicial remedies to protect persons against discriminatory acts perpetrated by both the state and non-state parties.

62. On the basis of the above-mentioned elements, the Commission reiterates that the difference in treatment on the basis of sexual orientation to the detriment of Sandra Pavez did not benefit from the least justification that would make it possible to conduct an analysis even on the first step of the judgment of proportionality, that is, the legitimacy of the end, which in the case of the suspect categories set forth in Article 1.1 of the Convention must be assessed strictly in the sense of requiring an imperative need. Thus, said difference in treatment does not outweigh the first step of the judgment of proportionality and, therefore, it is discriminatory and violates Articles 24 and 1.1 of the Convention. This discrimination is attributable to the Chilean state, because it involves an unjustified difference in treatment not only in the exercise of a public service, such as education, but also in her status as a worker on the basis of her direct labor relation with the state, which, in addition, took place as a result of a regulation that granted absolute powers in the matter to religious authorities without any safeguard to prevent the violations of fundamental rights, including the

principle of equality and non-discrimination. In cases where services of public interest are provided, such as health services, the Inter-American Court has pointed out that states have the duty to regulate and supervise these services, regardless of whether they are public or private;<sup>69</sup> the IACHR considers that education, which includes labor aspects of teachers because it has a direct impact on that, brings together similar characteristics for the application of said obligations. In that respect, for the IACHR it is essential for the principle of equality and non-discrimination to steer all regulations governing the access and continuance of teaching staff in schools in order to prevent human rights violations as those examined in the present case, a situation that is not in line with the application of Decree 924 of 1983 for the above-mentioned reasons.

63. The Commission recalls that it has already urged OAS member states to adopt and enforce effective measures to prevent violence and discrimination against LGBTI persons in both public and private educational institutions.<sup>70</sup> In this framework, the IACHR considers that acts of retaliation, discrimination, or harassment at work on the basis of sexual orientation are especially critical when they take place in the context of education, because states must guarantee that their education-related policies, which as indicated include labor aspects of the teaching staff, must combat social and cultural patterns of discriminatory behavior. Otherwise, a powerful social message of rejection is being transmitted against non-dominant diverse sexual orientations, promoting not only behavior against the teaching staff but also against the student body, most of them boys and girls belonging to this group, and at the same time reinforces stigmas and feelings of shame and inferiority onto these persons.

64. In addition to the violation of the principle of equality and non-discrimination, the Commission believes that both the prior inquiries into Sandra Pavez's sexual orientation and life with her partner, including warnings that she "correct" said matters, and the withdrawal itself of the certificate of suitability precisely on the basis of the latter, constitute an intrusion into her privacy and autonomy. The victim herself indicated that internal procedures turned an aspect of her private life into a public matter. As indicated earlier, in inter-American case law, the analysis of arbitrariness of intrusion into a person's privacy and autonomy responds to the same methodology relative to differences in treatment, that is, it refers to the same judgment of proportionality. In that sense, the conclusion of the preceding paragraphs on how, in the present case, it was not possible to give proof of a legitimate aim, it is fully applicable to this item and, therefore, sufficient to establish that the intrusion into Sandra Pavez's privacy and autonomy was arbitrary, in violation of Article 11.2 of the Convention.

65. The IACHR reiterates that, among the immediate obligations relative to the right to work protected by Article 26 of the American Convention, there is the obligation to guarantee its exercise without any discrimination and the obligation of adopting measures or take deliberate, concrete steps aimed at ensuring the full realization of the right concerned. These obligations are not subject to any progressive application nor are they subject to available remedies. According to the ESCR: "Discrimination in the field of employment comprises a broad cluster of violations affecting all stages of life [...] and can have a considerable impact on the work situation of individuals," therefore among the essential obligations there is the following: "To avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups" in this area.<sup>71</sup> Therefore, according to facts proven in this case, the IACHR observes that not only was Sandra Pavez discriminated against because of her sexual orientation in her work as a teacher, but also there were no concrete and deliberate actions taken to prevent this type of violation; on the contrary, the state ratified and reinforced them as a result of the decisions taken by its judicial authorities. The IACHR underscores that one of the substantial elements of the contents of the right to work involves the freedom of choice and acceptance of this work, which in turn leads to devoting oneself to the activity that reasonably meets one's expectations or plans for life, whether by creating opportunities that permit this free choice or by adopting measures that do not prevent anyone from pursuing his or her vocation.

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<sup>69</sup> I/A Court H.R. Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 21, 2013. Series C No. 261, para. 132.

<sup>70</sup> IACHR. Violence against Lesbian, Gay, Bisexual, Trans, and Intersex Persons in the Americas. November 12, 2015, para. 453.

<sup>71</sup> Committee on Economic, Social and Cultural Rights. General Remark No. 18, February 6, 2006, para. 31.

66. Thus, the Commission considers that the nature of Sandra Pavez's employment as a schoolteacher also involved the exercise of a public service, as a result of which discrimination in the continuance of this job performed for many years of her professional career involved a violation of the rights to access to public service under conditions of equality and to non-discrimination in the labor sector, protected by Articles 23.1(c) and 26 of the American Convention.

67. Finally, the Commission highlights that the way in which the protection remedy was decided upon, stressed how completely defenseless Sandra Pavez was in respect to the discriminatory act that she sustained, because the Court of Appeals of San Miguel did not examine whether or not the withdrawal of the certificate of suitability breached her constitutional rights and her rights under the Convention, but rather confined itself to establishing the legality of the action taken by the religious authority, because Decree 924 was in force. Although Sandra Pavez, in her appeal proceedings, explicitly referred to the need to assess the arbitrariness of the measure in the light of her rights, the Supreme Court of Justice upheld the entire ruling of the Court of Appeals of San Miguel without providing any grounds or responding to the victim's allegation that this was essential, because it provided a ruling which, completely apart from the legality of the withdrawal, would determine if it had violated her human rights. In that respect, in addition to failing to fulfill its duty to guarantee in response to the violation of the rights examined up until then, the protection remedy violated the rights to benefit from duly reasoned decisions and judicial protection.

68. By virtue of the considerations indicated above, the Commission concludes that the state of Chile is responsible for the violation of the right to privacy and autonomy, the principle of equality and non-discrimination, access to public service under conditions of equality, to work, to benefit from reasoned decisions and to judicial protection, as enshrined in Articles 11.2, 24, 23.1(c), 26, 8.1, and 25.1 of the American convention in connection with the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of Sandra Pavez.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

69. On the basis of the determinations of fact and law, the Inter-American Commission concluded that the state is responsible for the violation of Article 8 (fair trial), Article 11 (privacy and autonomy), 23.1(c) (access to public services under conditions of equality), Article 24 (equality before the law), Article 25.1 (judicial protection), and Article 26 (right to work) of the American Convention in connection with the obligations set forth under Articles 1.1 and 2 of the same instrument.

70. By virtue of the conclusions indicated above,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE CHILEAN STATE,**

1. Reinstate Sandra Pavez to the post she held as a teacher in a public school, if that is what she wishes and in coordination with her.

2. Integrally repair the human rights violations stated in the present report against Sandra Pavez in both material and immaterial aspects. The material aspect must take into account the differences in the salary-based economic amounts and the social benefits that she would have received as a teacher. In addition, the state must adopt the corresponding measures of economic compensation and satisfaction.

3. Establish mechanisms to prevent repetition including: i) adjustment of the regulatory framework under domestic law, including Decree 924 of 1983 of the Ministry of Education, in order to ensure that it does not promote acts of discrimination based on sexual orientation in its implementation; ii) the adoption of the measures needed to ensure due administrative and judicial control over possible discriminatory situations in the context of the application of said regulatory framework; and iii) training of persons in charge of assessing the suitability of teaching staff and judicial civil servants of all instances that are required to hear appeals on the protection of basic rights and on the scope and contents of the principle of equality and non-discrimination, including the prohibition to discriminate because of sexual orientation.