

**REPORT No. 30/15<sup>1</sup>**  
**PETITION 1263-08**  
ADMISSIBILITY  
SANDRA CECILIA PAVEZ PAVEZ  
CHILE  
JULY 21, 2015

**I. SUMMARY**

1. On October 28, 2008, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted by Sandra Cecilia Pavez Pavez (hereinafter the “the alleged victim”), by Rolando Paul Jiménez Pérez, legal representative of the Movimiento de Integración y Liberación Homosexual (MOVILH), and Alfredo Morgado (hereinafter also “the petitioners”) alleging responsibility on the part of the Republic of Chile (hereinafter “Chile,” “the State,” or “the Chilean State”) for an alleged violation of their right not to endure arbitrary interference in their private life, as established in Article 11 of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and their right to equality before the law, established in Article 24 of the Convention, both in connection with Article 1.1 (Obligation to Respect Rights) of the same instrument.

2. For its part, the Chilean State indicated to this Commission that “without prejudice to observations on the merits that the State may formulate in due time, it has no objections regarding the petitioners’ compliance with the formal requirements.”

3. After examining the complaint in the light of the admissibility requirements provided in Articles 46 and 47 of the Convention and given the State’s response, the Commission concluded that it is competent to hear the complaints submitted regarding the alleged violation of the rights established in Articles 8, 11, 24, and 25 of the American Convention in connection with Articles 1.1 and 2 thereof. In addition, the Commission decided to inform the parties of this report, to make it public, and include it in its Annual Report to the General Assembly of the OAS.

**II. PROCESSING BY THE COMMISSION**

4. On October 28, 2008 the Commission received the initial petition, which was recorded under number P-1263-08. On October 24, 2012, the Commission asked the petitioners to provide additional information, which was received on July 10, 2013.

5. On October 10, 2013, after completing the preliminary review of the petition, the Commission proceeded to forward the relevant sections of the petition to the Chilean State, allowing it a period of three months to submit its observations, in accordance with Article 30(3) of the Commission’s Rules of Procedure. On January 17, 2014 the State requested an extension. On June 4, 2014, the Commission informed both parties that it had not granted the extension requested by the State, in accordance with the provisions of Article 30(3) of the Commission’s Rules of Procedure. On June 16, 2014, the State submitted its response.

6. Finally, on March 18, 2015, the Alliance Defending Freedom organization presented an “amicus curiae” brief in which it offers arguments intended to demonstrate that the rights of the alleged victim have not been violated in this case.

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<sup>1</sup> As provided in Article 17.2 of the Commission’s Rules of Procedure, Commissioner Felipe González, a Chilean national, did not participate in the discussion or the decision regarding this case.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the petitioners**

7. According to the information provided by the petitioners, Sandra Cecilia Pavez Pavez is a religion teacher in general basic education and has served in that profession for more than 25 years, meeting all academic and legal requirements for the position, without having been the subject of reproach by her superiors.

8. The petitioners explained that pursuant to Article 9 of Decree 924 of 1984—governing religion classes in educational facilities—in order to exercise their profession those who teach religion must have a certificate of suitability, which is granted by the religious authority corresponding to the faith whose teachings they impart, which is valid for as long as said authority does not revoke it.

9. They then indicate that on July 25, 2007, the Vicar of Education of the diocese of San Bernardo, René Aguilera Colinier, informed the alleged victim in writing that he had decided to revoke her certificate of suitability, thus disqualifying her for teaching Catholicism in educational facilities of the diocese of San Bernardo. In that communication, he indicated that his decision had been adopted “following the process analyzing the situation that [the alleged victim] already [knew about] and that [they had] discussed on various occasions and considering the Church’s provisions regarding the suitability necessary to teach Catholicism in educational facilities and current legal standards, as well as the provisions of canon law.” Copies of that communication had been submitted to the mayor of San Bernardo and the director of that municipality’s corporation for education and health.

10. The petitioners also explained that by referring to the “situation that [the alleged victim] already [knew about] and that [they had] discussed on various occasions,” the vicar was making direct reference to the fact that the alleged victim is a lesbian and to the series of conversations held with her since April 2007, in which both that vicar and the bishop of the diocese of San Bernardo had reproached her for her sexual orientation and for maintaining a stable relationship with someone of the same sex. Thus, they had urged her to “immediately terminate her homosexual life” [sic], under penalty of no longer being able to exercise her profession as a religion teacher. The petitioners also indicate that they had imposed on her the additional condition of submitting to “psychiatric therapy” for the purpose of “reversing her alleged mental disorder” [sic]. As indicated in the petition, the alleged victim did not agree to such conditions, so the vicar proceeded to revoke her certificate of suitability.

11. The petitioners indicate that in view of the vicar’s decision, the alleged victim filed an appeal for protection with the local courts of justice, seeking protection for her rights to equality before the law and a private life. However, in a decision dated November 27, 2007, the Court of Appeals of San Miguel decided to dismiss the action filed. In making that decision, the court opined that the applicable legislation empowered the respective religious body to grant and revoke authorization to teach religion in accordance with its particular religious, moral, and philosophic principles, with regard to which the State did not have any power to interfere. Along these same lines, the court opined that that power rests with the religion itself, which has broad freedom to establish its standards and principles, and the underlying legal standard provides that someone who teaches a faith in the classroom must conform to those standards, beliefs, and dogmas without State agencies’ having jurisdiction to intrude or to question those principles.

12. In response to the dismissal by the Court of Appeals of San Miguel, the alleged victim appealed to the higher court. On April 17, 2008, the Supreme Court of the Republic of Chile confirmed all portions of the judgment of the Court of Appeals.

13. The petitioners allege that the vicar’s decision to revoke the alleged victim’s certificate of suitability, followed by the national courts’ failure to protect her rights, violated the right to equality before the law, as established in Article 24 of the American Convention. They allege that said actions lead to the perpetuation of a situation of constant discrimination and repudiation against lesbian, gay, bisexual, and

transsexual persons and foster a line of thinking within the Catholic church that directly contradicts the law of the State of Chile.

14. In addition, they allege that there was a violation of Article 11 of the Convention, in that Chilean courts may not protect within the country “lines of thinking that undermine the constitutional maxims” and that while it is true that the Constitution protects religious freedom, that freedom must strictly adhere to the law, thus prohibiting any form of discrimination and interference in the life of individuals. They also add that “it is neither possible to apply a treaty while disregarding the general principles of law or the common law that precedes or supplements it, nor to ignore when interpreting a treaty the other sources of law that may have succeeded it, clarifying or supplementing it.”

#### **B. Position of the State**

15. In its response, the State succinctly indicated that “without prejudice to the observations on the merits that the State may formulate in due time, it has no objections regarding the petitioners’ compliance with the formal requirements.”

### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

#### **A. Competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae* of the Commission**

16. The petitioners are empowered by Article 44 of the American Convention to lodge petitions with the Commission. The petition indicates as the alleged victim an individual with respect to whom the Chilean State committed to respect and guarantee the rights established in the American Convention. With regard to the State, the Commission indicates that Chile has been a State Party to the American Convention since August 21, 1990, the date on which it deposited its instrument of ratification. Thus, the Commission is competent *ratione personae* to examine the petition.

17. In addition, the Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected in the American Convention that would have taken place under the jurisdiction of the Chilean State, a State Party to that treaty.

18. The Commission is competent *ratione temporis*, in that the obligation to respect and guarantee the rights protected in the American Convention were already in effect for the State on the date the events alleged in the petition would have occurred.

19. Finally, the Commission is competent *ratione materiae*, in that the petition alleges possible violations of human rights protected by the American Convention.

#### **B. Exhaustion of domestic remedies**

20. Article 46(1)(a) of the American Convention provides that in order for a petition submitted to the Commission to be admissible in accordance with Article 44 of the Convention, the domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to hear the alleged violation of a protected right and, if appropriate, to have the opportunity to resolve it before it is heard by an international body. The requirement of prior exhaustion applies when the national system has remedies available that are adequate and effective for remedying the alleged violation of human rights.

21. As indicated in the petition and the copies submitted as an attachment, in response to the revocation of her certificate of suitability by the vicar, the alleged victim filed an appeal for protection with the Court of Appeals of San Miguel seeking to have that court protect her rights to equality before the law and the right not to endure arbitrary interferences in her private life. That appeal was dismissed by the court on

November 27, 2007. In response to that decision, the alleged victim filed an appeal with the higher court, which was resolved by the Supreme Court of Justice of Chile in a judgment dated April 17, 2008. This latter ruling confirmed all parts of the judgment of the Court of Appeals of San Miguel.

22. The Commission notes that the alleged victim exhausted the remedies that the Chilean legal order offered her to put an end to the situation alleged to be a violation of her rights. The Commission also notes in particular that the State has expressly indicated that it does not have any objection regarding the formal requirements, and it is thus appropriate to deem as properly confirmed the exhaustion of domestic remedies imposed under Article 46(1)(a) of the American Convention.

### **C. Deadline for submitting the petition**

23. Article 46(1)(b) of the American Convention establishes that in order for a petition to be declared admissible, it must have been submitted within a period of six months from the date on which the interested party was notified of the final judgment that exhausted the domestic jurisdiction.

24. In the specific case, the Commission has already established that the domestic remedies were exhausted with the judgment of the Supreme Court of Justice dated and reported in the *Estado Diario* of April 17, 2008, with respect to which the “to be carried out,” [locally referred to in Spanish as the “cúmplase” order] as can be seen in the copies of the proceedings provided by the petitioners, was reported to the alleged victim on April 30, 2008. In that the petition was received on October 28, 2008, the Commission considers the deadline provided in Article 46(1)(b) of the American Convention to have been met.

### **D. Duplication of proceedings and international *res judicata***

25. Article 46(1)(c) of the Convention provides that the admission of petitions is subject to the requirement that the subject “is not pending in another international proceeding ” and Article 47(d) of the Convention stipulates that the Commission will not accept a petition that is substantially the same as one previously studied by the Commission or by another international organization.

26. The file does not indicate that the subject of the petition is pending another international proceeding or that it reproduces a petition already examined by this or any other international body. Therefore, it is appropriate to deem that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

### **E. Characterization of the alleged facts**

27. For admissibility purposes, the Commission must decide whether the petition states facts that tend to establish a violation, as stipulated in Article 47(b) of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with paragraph (c) of the same article. The standard for assessing these points is different from that required to rule on the merits of a complaint. The Commission must perform a *prima facie* evaluation to examine whether the complaint provides the basis for the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. Such examination is a summary analysis and does not imply a prejudgment or advance opinion on the merits.

28. Neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

29. In light of the arguments of fact and of law presented by the parties and the nature of the matter before it, the IACHR finds that the petitioners’ submissions regarding the alleged withdrawal of the

certificate of suitability based on the alleged victim's sexual orientation, which was ordered by religious authorities in use of powers delegated by the State by means of an executive order, will require an analysis in the merits stage to assess its compatibility with the provisions set forth in Articles 11 and 24 of the American Convention, in connection with Articles 1.1 and 2 thereof. In addition, though the petitioners do not expressly allege as much, the IACHR notes that the purported inexistence of judicial protection and the purported omission to ensure due process in the access to domestic remedies, could represent a violation of articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 of said instrument.

## **V. CONCLUSIONS**

30. Based on the factual and legal considerations presented, and without prejudging the merits of the case, the Inter-American Commission concludes that this complaint meets the admissibility requirements indicated in Articles 46 and 47 of the American Convention and accordingly,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To declare the petition admissible with respect to Articles 8, 11, 24, and 25 of the American Convention in connection with the obligations established in articles 1.1 and 2 of the same instrument.
2. To report this decision to the State and to the petitioners;
3. To initiate processing on the merits of the case;
4. To publish this decision and include it in its Annual Report, to be submitted to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 21<sup>st</sup> day of the month of July, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez, Second Vice President, Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners.