



INTER-AMERICAN COURT OF HUMAN RIGHTS
INTER-AMERICAN COURT OF HUMAN RIGHTS
CORTE INTERAMERICANA DE DERECHOS HUMANOS
COUR INTERAMERICAINE DES DROITS DE L'HOMME



INTER-AMERICAN COURT OF HUMAN RIGHTS

PAVEZ PAVEZ VS. CHILE

JUDGMENT OF FEBRUARY 4, 2022

(Merits, Reparations and Costs)

In the case of *Pavez Pavez v. Chile*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"), composed of the following Judges*:

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; and
Ricardo C. Pérez Manrique, Judge; also

present,

Romina I. Sijniensky, Assistant Secretary**,

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter also "the Rules of Procedure"), renders the present Judgment, which is structured in the following order:

*This Judgment is delivered during the 146th Regular Session of the Court. Pursuant to Articles 54(3) of the American Convention on Human Rights, 5(3) of the Statute of the Court and 17(1) of its Rules of Procedure, the "judges shall remain in office until the end of their term of office. However, they shall continue to hear the cases they have already dealt with and which are in the sentencing stage". In view of the foregoing and by order of the Plenary, the composition of the Court, including its board of directors, that participated in the deliberation and signing of this Judgment is the one that took cognizance of the case. Judge Eduardo Vio Grossi, a Chilean national, did not participate in the processing of this case or in the deliberation and signing of this Judgment, in accordance with the provisions of Articles 19(1) and 19(2) of the Rules of Procedure of the Court.

** The Clerk of the Court, Pablo Saavedra Alessandri, did not participate in the deliberation and signing of this Judgment.

PAVEZ PAVEZ VS. CHILE

Table of Contents

I. INTRODUCTION OF THE CAUSE OF ACTION AND SUBJECT MATTER OF THE DISPUTE	3
II. PROCEEDINGS BEFORE THE COURT	4
III. COMPETENCY	7
IV. TEST	7
V. FACTS	8
A. Relevant regulatory framework	8
B. Regarding the disqualification of Sandra Pavez Pavez from teaching the subject of Catholic religion	10
C. Judicial remedies	12
VI. BACKGROUND	13
VI.1. THE RIGHTS TO EQUALITY, TO EQUAL ACCESS TO PUBLIC SERVICE, TO PERSONAL LIBERTY, TO PRIVACY, AND TO WORK IN RELATION TO THE OBLIGATION NOT TO DISCRIMINATE AND TO ADOPT DOMESTIC LAW PROVISIONS	14
A. Arguments of the parties and the Commission	14
B. Considerations of the Court	18
B.1. General considerations on the principle of equality and non-discrimination, the rights to freedom of conscience and religion, to privacy and autonomy, to access to information, to privacy, and to freedom of conscience and religion. to public service under equal conditions, and to work.	19
B.2. About Decree 92429	
B.3. On the alleged discrimination and the alleged violation of Sandra Pavez Pavez 's rights to privacy and autonomy, to access to public service and to work	31
VI.2. THE RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE AND TO ADOPT PROVISIONS OF DOMESTIC LAW	40
A. Arguments of the parties and the Commission	40
B. Considerations of the Court	41
VII. REPAIRS	44
A. Injured Party	45
B. Measures of satisfaction and rehabilitation	45
B.1. Measures of satisfaction	45
B.2. Rehabilitation measures	46
C. Guarantees of non-repetition	46
C.1. Training measures	46
C.2. Necessary measures to ensure proper administrative and judicial oversight	47
D. Other measures requested	48
E. Compensatory allowances	48
E.1. Material Damage	48
E.2. Immaterial Damage	49
F. Expenses and costs	50
G. Method of compliance with payment orders	50

VIII. RESOLUTION POINTS51.....

I
INTRODUCTION OF THE CAUSE OF ACTION AND SUBJECT MATTER OF THE DISPUTE

1. *The case submitted to the Court.* - On September 11, 2019, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of Sandra Cecilia Pavez Pavez with respect to the Republic of Chile (hereinafter "the State" or "Chile"). The Commission stated that the case related to the alleged international responsibility of the State for the disqualification, based on sexual orientation, of Sandra Cecilia Pavez Pavez Pavez from teaching the subject of Catholic religion in a public educational institution. She indicated that this occurred after the Vicariate for Education of the Bishopric of San Bernardo (hereinafter also "the Vicariate for Education" or "the Vicariate of San Bernardo") revoked her certificate of suitability on July 25, 2007. This document is required by Decree 924 of the Ministry of Education of 1983 for teachers to be able to teach Catholic religion. According to the Commission, this certificate was revoked because of her sexual orientation, which is why Sandra Pavez Pavez was disqualified from holding the teaching position of Catholic religion teacher. The Commission determined that in this case there was a difference in treatment based on sexual orientation, without offering any reason that would pass a minimum scrutiny of objectivity and reasonableness, attributable to the State since there was a regulation that granted absolute powers in this matter to the religious authorities. By virtue of this, the Commission concluded that the State of Chile "is responsible for the violation of privacy and autonomy, the principle of equality and non-discrimination, access to public service under equal conditions, work, the right to have reasoned decisions and judicial protection, established in Articles 11.2, 24, 23.1.c), 26, 8.1 and 25 of the American Convention in relation to the obligations established in Articles 1.1 and 2 of the same instrument to the detriment of Sandra Pavez".

2. *Proceedings before the Commission.* - The procedure before the Commission was as follows:

a. *Petition.* - On October 28, 2008, the Commission received the initial petition, which was presented by Sandra Cecilia Pavez Pavez, Rolando Raúl Jiménez Pérez, legal representative of the Homosexual Integration and Liberation Movement (MOVILH), and Alfredo Morgado (hereinafter "the petitioners").

b. *Admissibility and Merits Reports.* - On July 21, 2015 and December 7, 2018, the Commission adopted, respectively, Admissibility Report No. 30/15 (hereinafter "Admissibility Report") in which it concluded that the petition was admissible, and Merits Report No. 148/18 (hereinafter "Merits Report"), in which it reached certain conclusions and made recommendations to the State.

c. *Notification to the State.* - The Commission notified the State of Report No. 148/18 by communication of March 11, 2019 and placed itself at the disposal of the parties to reach a friendly settlement, granting the statutory deadlines for submitting observations.

d. *Friendly settlement process.* - By letter of November 7, 2016, the State expressed its *willingness* to initiate a friendly settlement process. The petitioning party did not answer said request.

3. *Submission to the Court.* - On September 11, 2019, the Commission submitted the case to the Court with respect to the facts and human rights violations described in the Merits Report "in view of the need to obtain justice for the [alleged] victim in the particular case."

4. *Requests of the Commission.* - Based on the foregoing, the Inter-American Commission requested this Court to conclude and declare the international responsibility of the State for the violations contained in the Merits Report and to order the State, as measures of reparation, those included in said Report. This Court notes with deep concern that, between the presentation of the initial petition before the Commission and the submission of the case before the Court, almost 11 years have elapsed.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and the representatives*¹. - The submission of the case was notified to the State and the representatives by communication of December 4, 2019.
6. *Brief of requests, arguments and evidence*. - On February 7 and 27, 2010, the representatives submitted their brief of requests, arguments and evidence (hereinafter "brief of requests and arguments"), in accordance with Articles 25 and 40 of the Rules of Procedure of the Court. The representatives concurred with the allegations of the Commission, complemented its line of argument and proposed specific reparations.
7. *Untimely Filing of the Response*². - On July 20, 2020, Chile filed its response to the submission of the case and observations on the written pleadings and arguments (hereinafter "Response") out of time and, therefore, that pleading and its annexes were declared inadmissible³.
8. *Public Hearing*. - On March 3, 2021,⁴ the President of the Court convened the parties and the Commission to a public hearing that was held on May 12 and 13, 2021, during the 141st Regular Session of the Court, which took place through a videoconference platform⁵.
9. *Evidence sought ex officio*. - By Resolution of the President of the Court of March 3, 2021 (*supra* para. 8), and the Resolution of the Court of March 26, 2021⁶, in accordance with Article 58.a of the Rules of Court, it was resolved to summon ex officio the experts Gerhard Robbers, José Luis Lara and Paolo Carozza to give their statements before a notary public in the context of the present case.

¹ The alleged victim is represented by Branislav Marelic and Ciro Colombara.

² The State appointed Jaime Chomali Garib, Francisco Javier Urbina Molfino, Carlos Enrique Arévalo Narváez and Juana Acosta López as agents. It also appointed Karen Soledad Zacur López, Constanza Alejandra Richards Yáñez and Oliver Román López Serrano as alternate agents.

³ By means of the Secretariat's note of July 24, 2020 (CDH-26-2019/021) following instructions from the Presidency, the State was informed that a verification study was conducted with the Court's Department of Information Technology, which concluded that no communication was received on July 10, 2020 from the State. Against said decision, the State filed 7 appeals for reconsideration of said decision before the Presidency of the Court (on July 24 and 31, August 4 and 15, 2020) and before the Plenary of the Court (on September 9 and 30, and November 4, 2020). These appeals were resolved and rejected by the Presidency and the Court, respectively, and the aforementioned decisions were communicated through Secretariat notes (July 31, September 1, September 1, October 15, and November 26, 2020). Finally, by Resolution of March 26, 2021, the Court reiterated that the response brief submitted by the State was inadmissible for being out of time. *Cf. Case of Pavez Pavez v. Chile*. Resolution of the Inter-American Court of Human Rights of March 26, 2021.

⁴ *Case of Pavez Pavez v. Chile*. Summons to a hearing. Resolution of the President of the Inter-American Court of Human Rights of March 3, 2021. http://www.corteidh.or.cr/docs/asuntos/pavez_pavez_04_03_21.pdf

⁵ Appearing at this hearing were: a) for the Inter-American Commission: Joel Hernández García, Commissioner of the IACHR; Soledad García Muñoz, Special Rapporteur on Economic, Social, Cultural and Environmental Rights of the IACHR; Marisol Blanchard, Deputy Executive Secretary of the IACHR; Jorge Meza Flores, Advisor to the IACHR, and Analía Banfi Vique, Advisor to the IACHR; b) for the representatives: Ciro Colombara Lopez and Branislav Marelic Rokov, and c) for the State: Ambassador Jaime Chomali Garib, Francisco Javier Urbina, Constanza Richards Yáñez, Josemaría Rodríguez Conca, Oliver Román López Serrano, Juana Acosta López, Carlos Arévalo Narváez, Cindy Vanessa Espitia, and Ana María Idárraga.

⁶ *Cf. Case of Pavez Pavez v. Chile*. Resolution of the Inter-American Court of Human Rights of March 26, 2021. http://www.corteidh.or.cr/docs/asuntos/pavez_26_03_21.pdf

10. *Amici curiae*. - The Court received thirty-five *amicus curiae* briefs submitted by: 1) the National Association of Evangelical Jurists⁷; 2) Álvaro Paúl⁸; 3) Alliance Defending Freedom (ADF)⁹; 4) the Observatorio de Libertad Religiosa en América Latina-OLIRE in collaboration with Law in Action¹⁰; 5) the Legal Clinic of Law of the University of San Andrés and the Clinic on Policy Advocacy in Latin America of New York University¹¹; 6) Javier Martínez-Torrón and María J. Valero Estarellas¹²; 7) the Chilean Episcopal Conference¹³; 8) the Becket Pro Religious Liberty Fund¹⁴; 9) the International Center for Law and Religion Studies (ICLRS)¹⁵; 10) Juan Navarro Floria¹⁶; 11) Javier Borrego, Borrego, Giovanni Bonello, and Vincent De Gaetano¹⁷; 12) Eduardo Fuentes Caro, Fernando Arancibia Collao, Carlos Augusto Casanova Guerra, Javiera Corvalán Aspiazu, and Claudio Pierantoni¹⁸; 13) Flavio Allegreti de Campos Cooper, Odacyr Carlos Prigol, and Scott E. Isaacson¹⁹; 14) the Confederación de Padres y Apoderados de Colegios Particulares Subvencionados de Chile²⁰; 15) the Consejo Argentino para la Libertad Religiosa-CALIR²¹; 16) Jorge Barrera Rojas²²; 17) Jorge Horacio

⁷ The brief signed by Uziel Santana, Felipe Augusto, and Raíssa Martins deals with the secularity of the State, religious freedom and discrimination, and the right of parents to educate their children.

⁸ The brief signed by Alvaro Paul deals with religious freedom, church-state separation, and the right of parents to choose their children's education.

⁹ The letter signed by Tomás Henriquez C. deals with the autonomy of religious communities to choose their teachers and freedom of religion.

¹⁰ The brief signed by Teresa Flores Chiscul and Rossana Esther Muga Gonzales deals with the autonomy and immunity from coercion of denominational schools, as well as the right of parents to have their children receive the education of their choice.

¹¹ The brief signed by Eduardo Bertoni and Florencia Saulino deals with the principle of non-discrimination and equality before the law, the parameters for the appointment of public officials, the ministerial exception, and the state obligations contained in the American Convention on Human Rights.

¹² The brief signed by Javier Martínez-Torrón and María J. Valero Estarellas deals with the autonomy of religious denominations and situations analogous to the case in the jurisprudence of the European Court of Human Rights.

¹³ The brief signed by Miguel Cabrejos Vidarte, Santiago Silva Retamales, Cardinal Celestino Aós Braco, Sergio Abad, Emiliano Soto, Juan Ignacio González, Héctor Francisco Zavala Muñoz, Francisco Javier Rivera Mardones Fuad Musa Poblete and Eduardo Waingortin deals with religious autonomy.

¹⁴ The brief signed by Eric Rassbach, Diana Verm, and Kayla Toney, deals with the autonomy of religious institutions.

¹⁵ The brief signed by Brett G. Scharffs, Elizabeth A. Clark, David H. Moore, Gary B. Doxey, and J. Samuel Morales Gonzalez addresses the rights to equality and religious freedom.

¹⁶ The brief signed by Juan Navarro Floria deals with the right to religious freedom in its collective facet, the autonomy of religious denominations, the right to religious education in public schools and the hiring of religious teachers in them.

¹⁷ The brief signed by Javier Borrego Borrego, Giovanni Bonello, and Vincent De Gaetano deals with the right to religious freedom and the autonomy of religious communities in matters of their governance.

¹⁸ The paper signed by Eduardo Fuentes Caro, Fernando Arancibia Collao, Carlos Augusto Casanova Guerra, Javiera Corvalán Aspiazu, and Claudio Pierantoni deals with philosophical aspects related to whether education in general, and religious education, require that those who give it bear witness to what they proclaim in their own lives.

¹⁹ The brief signed by Flavio Allegreti de Campos Cooper, Odacyr Carlos Prigol, and Scott E. Isaacson deals with the right to work and non-discrimination.

²⁰ The brief signed by Erika Muñoz Bravo deals with religious freedom.

²¹ The brief signed by Juan G. Navarro Floria and Adrián Maldonado deals with the jurisdiction of the Inter-American Court of Human Rights and the autonomy of each religious community.

²² The brief signed by Jorge Barrera Rojas deals with the meaning and scope of the role played by the general inspectors of

Chile's schools and high schools, as well as the legality of Sandra Pavez Pavez's work as a teacher.

Gentile²³; 18) Macarena Marey²⁴; 19) the Association for the Promotion of Civil Rights (PROCEDI)²⁵; 20) Pauline Capdevielle and María del Pilar González Barreda²⁶; 21) Pablo Suárez²⁷; 22) Angela Wu Howard and Asma Uddin²⁸; 23) the Women X Women Foundation²⁹; 24) W. Cole Durham and Ján Figel³⁰; 25) the Human Rights Clinic of Santa Clara University³¹; 26) Colombia Diversa and Synergia Iniciativa por los Derechos Humanos³²; 27) students of the Research Line on Gender, Rights and Society, and the Human Rights Group of the Universidad Externado de Colombia³³; 28) Alba Rueda³⁴; 29) José Miguel Rueda, Sandra Martínez, Luis Fernando Rodríguez and Luciana Rodríguez³⁵; 30) Soledad Bertelsen³⁶; 31) the Semillero de Litigio ante sistemas internacionales de protección de derechos humanos-SELIDH de la Universidad de Antioquia³⁷; 32) Laura Saldivia

²³ The brief signed by Jorge Horacio Gentile deals with what happened to Sandra Pavez Pavez in light of the international obligations of the State and the jurisprudence of the European Court of Human Rights.

²⁴ The brief signed by Macarena Marey deals with the political philosophy of religion, informed by theoretical updates on secularism, secularism, religious plurality, LGBT+ rights, neoconservatism and sovereignty.

²⁵ The brief signed by Miguel J. Haslop deals with the balancing of rights, religious freedom, and comparative jurisprudence.

²⁶ The brief signed by Pauline Capdevielle and María del Pilar González Barreda deals with non-discrimination based on sexual orientation, the principle of secularism and the weighing of rights.

²⁷ The brief signed by Pablo Suárez deals with the scope of the right to equality and non-discrimination, the scope of the right to freedom of religion, worship and conscience, as well as the autonomy of religions in their actions in the public sphere.

²⁸ The brief signed by Angela Wu Howard and Asma Uddin addresses whether or not a state can compel religious speech in education and how preaching can have a profound existential impact on religious minorities.

²⁹ The brief signed by Florencia Sabaté, Soledad Deza and Jimena Gomez Roselló deals with the right to autonomy of the Catholic Church in the State of Chile, and the State's duty of non-discrimination.

³⁰ The brief signed by W. Cole Durham and Ján Figel deals with the interpretation to be given by an adjudicating court when a case involves conflicting fundamental rights.

³¹ The brief signed by Francisco J. Rivera Juaristi, Jasmine Gill and Isabella Perello addresses the rights to equal protection under the law, to privacy and to work.

³² The brief signed by Marcela Sánchez Buitrago, Juan Felipe Rivera Osorio, Alejandro Barreiro Jaramillo, Mauricio Albarracín Caballero, Mirta Moragas Mereles, Fanny Gómez Lugo, Fhan Medina Zavala and Steffano Fabeni deals with the principle of equality and non-discrimination, the protection of the religious autonomy of the Catholic Church in Chile, the right to work and labor discrimination, and the right to private and family life.

³³ The brief signed by Verónica Rodríguez Carrillo, Annie Ramírez Cárdenas, Melissa Cedeño, María Paula Figueroa Forero, María Paula Villamarin Molano, Xiomara Lorena Romero, Jessika Mariana Barragán and María Daniela Díaz Villamil deals with the State's obligation to guarantee, as well as indirect discrimination.

³⁴ The brief signed by Alba Rueda, Julieta Arosteguy and Jorge Alejandro Mamani deals with discrimination on the basis of gender identity, and freedom of belief and religion.

³⁵ The brief signed by José Miguel Rueda, Sandra Martínez, Luis Fernando Rodríguez and Luciana Rodríguez deals with manifestations of violence based on sexual orientation and conventionality control.

³⁶ The brief signed by Soledad Bertelsen deals with the distinction between freedom of conscience and freedom of religion.

³⁷ The brief signed by Valentina Ortiz Aguirre, Alejandro Gómez Restrepo, Jorge Andrés Pinzón Cabezas, Patricia del Pilar González Callejas, Adrián Zarate Condori, Yeni Fernanda García Palacio, Manuel Darío Cardona, Mariajosé Mejía García, Juan David Álvarez Jaramillo, Nathalia Rodríguez Cabrera, Sara Méndez Niebles, Thalia Basmagi Londoño, Estefanía Echeverri Betancur, María Paula Barbosa Rodríguez, and María Fernanda Garcés Flórez dealt with the principle of non-discrimination and the right to equality before the law, religious freedom, the right to education, the control of

conventionality, the rights to personal integrity, dignified life, private life, sexual autonomy, and the violations of the right to remain in public employment, the principle of legality and judicial guarantees.

Menajovsky³⁸; 33) Advocates for Sexual Rights (AboSex)³⁹; 34) Professors of the Canon Law Department of the Law School of the Pontificia Universidad Católica de Chile⁴⁰, and 35) Nicolás Panotto and Sebastián Valencia⁴¹.

11. *Allegations and final written observations.* - On June 14, 2021, the Commission submitted its final written observations, and the State and the representatives submitted their respective final written arguments. On June 29, 2021, the representatives and the State submitted their observations on the annexes presented in their final written arguments by the other party. On July 2, 2021, the Commission stated that it had no observations on the annexes to the final written arguments submitted by the parties.

12. *Deliberation of the present case.* - The Court began deliberation of this Judgment on February 1, 2022.

III COMPETITION

13. The Court is competent to hear the present case, in the terms of Article 62(3) of the Convention, since Chile has been a State Party to the American Convention since August 21, 1990 and recognized the contentious jurisdiction of the Court on the same date.

IV TEST

14. The Court admits the documents submitted in due time by the parties and the Commission (Article 57 of the Rules of Procedure), whose admissibility was not contested or objected to, nor whose authenticity was questioned⁴². Likewise, the Court considers it pertinent to admit the statements made at a public hearing⁴³ and before a notary public⁴⁴, to the extent that they are in keeping with the purpose defined by the Presidency and the Court in the orders to receive them in the instant case⁴⁵. In addition, the Court accepts the documentation submitted by the representatives together with their final written arguments and the evidence related to the litigation.

³⁸ The brief signed by Laura Saldivia Menajovsky deals with religious autonomy in Chile, the position of the doctrine and sacred texts of the Catholic cult on homosexuality, the principle of equality and non-discrimination, and the reparations requested by the alleged victim.

³⁹ The brief signed by Carolina Alamino Barthaburu, Abril García Bianco and Sofía Novillo Funes deals with the right to equality and non-discrimination in relation to sexual orientation, the obligations of the State in accordance with its international human rights commitments and the limits to the exercise of the autonomy of religious institutions.

⁴⁰ The paper signed by María Elena Rimstein Scroggie, Ana María Celis Brunet, Francisca Ibarra Infante, Juan Pablo Faúndez Allier, Valeria López Mancini, Cristiaán Montes Ortúzar, Patricio González Marín and Francisco Javier Astaburuaga deals with the application and understanding of canon law in Chilean law from a normative and jurisprudential perspective.

⁴¹ The brief signed by Nicolás Panotto and Sebastián Valencia deals with the limits to religious freedom.

⁴² *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Julien Grisonas Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 23, 2021. Series C No. 437, para. 48.

⁴³ Statements were received from: Sandra Pavez Pavez, Rodrigo Uprimny Yepes, José Luis Lara Arroyo, and Estefanía Esparza Reyes.

⁴⁴ Statements rendered before a notary public (*affidavit*) were received from: Paolo Carozza, Cynthia Verónica Ormazabal Pávez, Aída del Carmen Pavez Pavez Pavez, Ximena de los Ángeles Messina Bravo, Berta Leticia Fernández Pizarro, and Gerhard Robbers.

⁴⁵ The objects of the declarations are set forth in the Resolution of the President of the Court dated March 3, 2021, and in the Resolution of the Court dated March 26, 2021.

of the case before this Court insofar as they refer to costs and expenses⁴⁶. On the other hand, the Court observes that the State submitted, together with its final written arguments, a series of documents related to the subject matter and controversy of the present case⁴⁷. The Court admits these documents pursuant to Article 58(a) of the Rules of Procedure, considering them relevant and useful for the resolution of the case, and their admissibility was not contested by the representatives or by the Commission.

V FACTS

15. In this chapter, the Court will establish the facts that will be considered proven in this case, in accordance with the body of evidence that has been admitted and according to the factual framework established in the Merits Report. In addition, it will include the facts presented by the parties that allow explaining, clarifying or rejecting this factual framework. Next, the facts are set forth in the following order: a) relevant legal framework; b) regarding the disqualification of Sandra Pavez Pavez to teach Catholic religion; and c) judicial remedies.

A. Regulatory framework relevant

16. Article 19 of the Political Constitution of the Republic of Chile establishes the following:

The Constitution assures to all persons: [...]

2. Equality before the law. In Chile there are no privileged persons or groups. [...] Neither the law nor any authority may establish arbitrary differences;

3. Equal protection of the law in the exercise of their rights [...];

6. Freedom of conscience, the manifestation of all beliefs and the free exercise of all religions that are not contrary to morals, good customs or public order. [...]. Churches, confessions and religious institutions of any worship shall have the rights granted and recognized, with respect to property, by the laws currently in force. [...];

10. The right to education. The purpose of education is the full development of the person in the different stages of his life: Parents have the preferential right and the duty to educate their children. It shall be the duty of the State to grant special protection to the exercise of this right. [Basic and secondary education are compulsory, and the State shall finance a free system for this purpose, designed to ensure access to them for the entire population. [It shall also be incumbent upon the State to foster the development of education at all levels; to stimulate scientific and technological research, artistic creation, and the protection and enhancement of the Nation's cultural heritage. It is the duty of the community to contribute to the development and improvement of education [...];

11. Freedom of education includes the right to open, organize and maintain educational establishments. Freedom of education has no limitations other than those imposed by morality,

⁴⁶ They submitted a proof of payment for a hotel room during the public hearing of this case (evidence file folios 2460 and 2461).

⁴⁷ These are the following documents: 1) Employment contract signed on March 12, 1991 between teacher Sandra Pavez Pavez and the San Bernardo Municipal Education Corporation; 2) Public statement by Mayor Orfelina Bustos, dated December 24, 2007, regarding the meeting she held with teacher Sandra Pavez Pavez; 3) Letter from the Vicar for Education of the Bishopric of San Bernardo to the San Bernardo Health and Education Corporation, dated July 23, 2007; 4) Decree with Force of Law N. 5291 of 1929; 5) Law No. 6.477 of 1939; 6) Supreme Decree No. 776, which regulates religion classes in educational establishments; 7) Law 19.638 of 1999; 8) Chilean Labor Code; 9) General Education Law, promulgated as No. 20.370, and now in its consolidated and systematized text by Decree with Force of Law No. 2, of 2010, of the Ministry of Education; 10) Teachers' Statute, promulgated as Law N. 19.070, and now in its consolidated and systematized text by Decree with Force of Law N. 1, 1997, of the Ministry of Education; 11) Law N. 20.501, of 2011; 12) Opinion 66666/2013 of the Comptroller General of the Republic; 13) Opinion 13202/2005 of the Comptroller General of the Republic, and 14) Appeal for protection filed by the representation of Professor Sandra Pavez Pavez before the Court of Appeal of San Miguel.

good morals, public order and national security. Officially recognized education may not be oriented to propagate any partisan political tendency [...];

16. Freedom of labor and its protection. Everyone has the right to free hiring and free choice of employment with fair remuneration;

Any discrimination that is not based on personal capacity or suitability is prohibited, notwithstanding that the law may require Chilean nationality or age limits for certain cases [...], and

17. Admission to all public functions and jobs, with no other requirements than those imposed by the Constitution and the laws [...].

17. Decree 924 of the Chilean Ministry of Education of September 12, 1983, which regulates religion classes in educational establishments, whether public or private, establishes the following⁴⁸:

That the principles that inspire the lines of action of the current government are based on moral and spiritual values of our western humanist cultural tradition;

That one of the fundamental objectives of education is to achieve the full development of man (*sic*),

[...]

Article 1.- The study plans of the different courses of pre-basic, general basic and secondary education shall include, in each course, 2 weekly classes of religion.

Article 2.- Religion classes shall be taught during the official weekly schedule of the educational establishment.

Religion classes shall be offered in all educational establishments in the country, as an option for the student and the family. Parents or guardians must state in writing, at the time of enrolling their children or wards, whether or not they wish to have Religion classes, indicating if they opt for a particular creed or if they do not want their child or ward to attend Religion classes.

Article 4.- The teaching of any religious creed may be imparted, provided that it does not violate healthy humanism, morals, good customs and public order [...].

Article 5.- Private denominational establishments shall offer their students the teaching of the religion to whose creed they belong and for which reason they have been chosen by parents when enrolling their children [...].

The teaching of Religion shall be imparted in accordance with the study programs approved by the Ministry of Public Education, at the proposal of the corresponding religious authority.

The same procedure will be applied when it is necessary to introduce modifications to the current program.

Article 8.- Religion classes will have an evaluation expressed in concepts. This information will be given to the parents or guardians, together with the performance evaluation of the other disciplines of the corresponding Study Plan. The evaluation of Religion will not affect the student's promotion.

The teacher of Religion, in order to exercise as such, shall be in possession of a certificate of suitability granted by the corresponding religious authority, whose validity shall last as long as the latter does not revoke it, and shall also accredit the studies carried out to serve such position.

The corresponding religious authority may grant a certificate of suitability to foreigners to work in municipal and private educational establishments.

⁴⁸ Decree 924 of September 12, 1983, Ministry of Education, Regulates Religious Classes in Educational Establishments (evidence file, folios 293 to 295).

If the educational establishment does not have suitable personnel, it must request it from the corresponding religious authority, according to the preferences of the parents and guardians.

18. Law No. 19.638, which establishes norms on the legal constitution of churches and religious organizations⁴⁹ states the following:

The State guarantees freedom of religion and worship under the terms of the Constitution of the Republic.

No person may be discriminated against by virtue of his religious beliefs, nor may these be invoked as a reason to suppress, restrict or affect the equality enshrined in the Constitution and the law.

Article 3. The State guarantees that people may freely develop their religious activities and the freedom of churches, confessions and religious entities.

[...]

Freedom of religion and worship, with the corresponding autonomy and immunity from coercion, mean for every person, at least, the faculties of:

[...]

d) To receive and impart religious instruction or information by any means; to choose for themselves -and parents for unemancipated minors and guardians for incapable persons under their custody and care-, the religious and moral education that is in accordance with their own convictions, and

[...]

By virtue of freedom of religion and worship, religious entities are recognized as having full autonomy for the development of their own purposes and, among others, the following faculties:

a) To freely exercise their own ministry, worship, hold meetings of a religious nature, and establish and maintain places for these purposes;

b) Establish its own internal organization and hierarchy; train, appoint, elect and designate the corresponding persons to positions and hierarchies and determine their designations; and

c) To enunciate, communicate and disseminate, orally, in writing or by any means, its own creed and to manifest its doctrine.

B. Regarding the disqualification of Sandra Pavez Pavez from teaching the subject of religion catholic

19. Sandra Cecilia Pavez Pavez was born on March 20, 1958. She has a Professional Title of "Catholic Religion and Moral Teacher" issued by the Universidad de Ciencias de la Educación; a Professional Title of "Religion Teacher for General Basic Education", issued by the Pontificia Universidad Católica de Chile, and a Title of "Catechist" issued by the Pontificia Universidad Católica de Chile⁵⁰.

20. She had been working as a Catholic religion teacher at the "Cardenal Antonio Samoré" Municipal School since 1985. On April 9, 1991, she became a permanent teacher at this educational institution⁵¹. The "Cardenal Antonio Samoré" school is a public educational establishment, administered and financed by the Chilean State through the San Bernardo Municipal Corporation,

⁴⁹ Law 19638, of October 1, 1999, establishes rules on the legal constitution of churches and religious organizations (evidence file, folios 1083 and 1084).

⁵⁰ Titles obtained by Sandra Pavez Pavez as Religion Teacher, Catechist and Catholic Religion and Moral Teacher (evidence file, folios 17 to 20).

⁵¹ Cf. Resolution No. 129 that provides for the hiring of Sandra Pavez Pavez as a teacher at the Colegio Cardenal Antonio Samoré on April 9, 1991 (evidence file, folios 21 and 22).

under the Municipality of San Bernardo⁵². The municipality of San Bernardo is located in the southern part of the Metropolitan Region. It is an uncontroversial fact that Sandra Pavez Pavez's remuneration and social security were assumed by the municipality of San Bernardo and derived from the national budget.

21. The form of regulation of the labor relationship between the Municipal Corporation and Sandra Pavez Pavez was through the Labor Code, which is the Statute applied mainly to private relationships. Sandra Pavez Pavez taught Catholic religion classes in a public educational establishment, administered and financed by the Chilean State.

22. In accordance with the applicable normative framework derived from Decree 924 (*supra* para. 17), Sandra Pavez Pavez received several certificates of suitability from the ecclesiastical authority since 1985. With that certificate, Sandra Pavez Pavez complied with the provisions of Article 9 of Decree 924 and had the necessary requirements to teach Catholic religion. The last certificate of suitability issued by the Vicariate for Education of San Bernardo, which depends on the Bishopric of San Bernardo of the Chilean Catholic Church, was issued on April 30, 2006, and was valid until 2008⁵³.

23. In 2007, through anonymous calls to the educational establishment and to the Diocese of San Bernardo, the rumor was allegedly "spread" that the alleged victim was a lesbian. The Vicar reportedly urged the alleged victim on several occasions to end her "homosexual life", and indicated to her that, in order to continue in her position, she should undergo psychiatric therapy⁵⁴.

24. On July 25, 2007, the Vicar issued a written communication to Sandra Pavez Pavez informing her of the decision to revoke her certificate of suitability, disqualifying her from teaching Catholic religion in the educational establishments located in the Diocese of San Bernardo. In the aforementioned communication, it was indicated that the decision was taken in accordance with the norms of canon law and after analyzing a situation that had already been discussed with Mrs. Pavez Pavez. This communication indicated that the Mayor of the Municipality of San Bernardo and the Director of the Municipal Corporation of Education and Health had been informed of the revocation of Sandra Pavez Pavez Pavez's certificate of suitability⁵⁵.

25. Likewise, in that communication the Vicar stated textually: "as you know, as a priest and Vicar of this bishopric, I have tried to do everything possible so that this difficult decision would not be reached, leaving on record that the spiritual and medical help offered was rejected by you, which I deeply regret "⁵⁶.

26. On the other hand, in the letter dated July 23, 2007, by which the College was notified of the withdrawal of the certificate of suitability by the Vicariate, the latter indicated, regarding the suitability of the position of professor of religion, that it "implies three aspects that are closely related: professional suitability[,], doctrinal suitability and moral suitability". He added with respect to moral suitability that:

⁵² These Corporations are established by the Municipalities for administration purposes. On the other hand, the Organic Constitutional Law of Municipalities establishes that the Municipalities are part of the State and administer the communes.

⁵³ Authorization No. 0176/06 Certificate of Suitability of Sandra Cecilia Pavez Pavez of April 30, 2006 (evidence file, folios 23 and 24).

⁵⁴ In this regard, Sandra Pavez Pavez stated during the public hearing that the Vicar asked her if it was true that she was a lesbian, that this "could not be" and that if she continued this way she could lose the position of religion teacher and that in order not to do so she had to separate and stop having a partner and that this would remain between them. Statement of Sandra Pavez Pavez made during the public hearing.

⁵⁵ Communication addressed to Sandra Pavez Pavez from the Vicariate for Education of the Bishopric of San Bernardo on July 25, 2007 (evidence file, folio 26).

⁵⁶ Communication addressed to Sandra Pavez Pavez from the Vicariate for Education of the Bishopric of San Bernardo on July 25, 2007 (evidence file, folio 26).

[from] every religious belief there follows a personal or moral behavior derived from that belief. The teacher must be consistent with the conduct required of members of the religion. It is the responsibility of the religious authority of each denomination to ensure not only that an upright doctrine is taught, but also that the teacher is consistent, at least on the most crucial points of morality, since morality is not only taught by word, but above all by example and witness. A person who lives in contradiction with essential aspects of the Catholic doctrine and morals that he is called to teach is not qualified to transmit these teachings to his students".

[...]

In the case in question, this separation has occurred. Indeed, although Professor Pavez has a legitimately granted degree and even her knowledge of the contents of Catholic doctrine may be sufficiently known to her, her moral suitability has suffered a serious alteration by living publicly as a lesbian, in open contradiction with the contents and teachings of Catholic doctrine that she herself was called to teach⁵⁷.

27. As a consequence of the revocation of the Certificate of Suitability by the Vicariate for Education of San Bernardo, Sandra Pavez Pavez has been prevented from teaching Catholic religion classes in any national educational entity and, in particular, in the "Cardenal Antonio Samoré" School where she worked as a Catholic religion teacher.

28. The school administration offered her a position as interim inspector general. As of 2011, she was appointed to the position of inspector general as mandated by law. This position does not allow her to teach Catholic religion. However, her employment contract was not interrupted, the benefits she enjoyed as a teacher were maintained, and she began to receive an additional salary allowance for her managerial duties. In 2020, Sandra Pavez Pavez resigned from the educational establishment to access a retirement incentive granted by the State.

29. According to what was indicated by expert witness Lara Arroyo during the public hearing, the position of inspector general fulfills managerial teaching functions in accordance with the Chilean Teachers' Statute and "is given to teaching professionals with extensive experience for them to fulfill this function"⁵⁸. According to Article 34.c of the Chilean Teachers' Statute, to be an inspector general requires training as an education professional and, in addition, the persons appointed to these positions must belong to the teaching staff of the respective commune⁵⁹. On the other hand, the Statute establishes that the teaching management function "is that of a higher-level professional nature that, on the basis of specific teaching training and experience for the function [...], deals with matters related to the direction, administration, supervision and coordination of education, and that entails additional direct supervision and responsibility over the teaching, para-teaching, administrative, auxiliary or minor services personnel, and over the students"⁶⁰.

C. Resources judicial

30. Sandra Pavez Pavez, the legal representative of the Movimiento de Integración y Liberación Homosexual (MOVILH) and the President of the Colegio de Profesores A.G. (Asociación Gremial)⁶¹ filed before the Court of Appeals of San Miguel a writ of protection in which they alleged the arbitrariness and illegality of the actions of the Vicaría, stating that they violated several constitutional guarantees. They indicated, in particular, that the Vicarage's actions violated the following guarantees

⁵⁷ Cf. Communication from the Vicariate for Education of the Bishopric of San Bernardo of July 23, 2007 (evidence file, folios 520 to 524).

⁵⁸ Expert testimony of José Luis Lara during the public hearing of this case.

⁵⁹ Cfr. Law 19,070, article 34.c.

⁶⁰ Law 19,070 Article 7.

⁶¹ This is the Chilean organization that brings together the teachers' union of elementary and secondary education.

The constitutional rights that refer to the respect and protection of private and public life and the honor of persons, to freedom of labor and its protection, and to equality before the law⁶².

31. On November 27, 2007, the Court of Appeals of San Miguel rejected the appeal on the grounds that the act being appealed could not be qualified as illegal or arbitrary. It pointed out that the very legislation applicable to the case, i.e. Decree 924, empowers the religious body to grant and revoke the corresponding authorization in accordance with its principles, a situation that does not allow any interference by the State or any private individual. The Court of Appeals of San Miguel considered that "the applicable legislation in the special case empowered the corresponding religious body to grant and revoke the authorization to be granted in accordance with its particular religious, moral and philosophical principles, a situation that will depend only on each one of them, with no interference by the State or any private individual, since the power rests on the creed itself, which has a broad power to establish its own rules and principles". The referred Court also understood that the appealed act could not be qualified as illegal or arbitrary and that, therefore, the action attempted lacked the basic and fundamental assumptions to claim the protection required in this way. The Court of Appeals of San Miguel declared the appeal inadmissible and rejected it "without it being necessary [...] to analyze and refer in detail to the constitutional guarantees invoked by the appellant "⁶³.

32. Against the above decision, Sandra Pavez Pavez's attorneys filed an appeal before the Supreme Court of the Republic of Chile. In a decision dated April 17, 2008, the Supreme Court dismissed the arguments presented and confirmed in all their parts the sentence of the Court of Appeals of San Miguel. Specifically, the decision of the Supreme Court indicated that it did not accept the "pleadings requested" and that "the appealed judgment is confirmed "⁶⁴.

VI BACKG ROUND

33. In the instant case, the Court must analyze the scope of the State's international responsibility for the alleged violation of various conventional rights due to the disqualification as a Catholic religion teacher of Sandra Pavez Pavez as a result of the revocation of her certificate of suitability by the Vicariate for Education of San Bernardo, dependent on the Bishoprpic of San Bernardo of the Chilean Catholic Church. Next, the Court will analyze the arguments on the merits in the following order: a) the rights to equality, to access to public service, to personal liberty, to privacy and to work in relation to the obligation not to discriminate and to adopt domestic law provisions, and b) the rights to judicial guarantees and to judicial protection in relation to the obligations to respect and guarantee and to adopt domestic law provisions.

⁶² Cf. First Instance Judgment of the Court of Appeals of San Miguel of November 27, 2007 (evidence file, folios 263 to 266).

⁶³ Cf. First Instance Judgment of the Court of Appeals of San Miguel of November 27, 2007 (evidence file, folio 269).

⁶⁴ Cf. Judgment of the Supreme Court of Justice of April 17, 2008 (evidence file, folios 275).

VI.1

THE RIGHTS TO EQUALITY⁶⁵ , TO EQUAL ACCESS TO PUBLIC SERVICE⁶⁶ , TO PERSONAL FREEDOM⁶⁷ , TO PRIVATE LIFE⁶⁸ , AND TO WORK⁶⁹ IN RELATION TO THE OBLIGATION NOT TO DISCRIMINATE⁷⁰ AND TO ADOPT DOMESTIC LAW PROVISIONS⁷¹

A. Arguments of the parties and the Commission

34. The **Commission** noted that there is no dispute that the reason for the revocation of the certificate of competence was Sandra Pavez Pavez's sexual orientation, which constituted a difference in treatment based explicitly and exclusively on that ground. There is also no controversy about the suspicious nature of sexual orientation, both in case law and in authoritative doctrine. In this sense, he recalled that, in this case, there was a difference in treatment that also resulted in an interference in the private life and autonomy, which is presumed to be in conflict with the international obligations of the State and it is necessary to evaluate whether there is a justification of sufficient weight to overcome a strict scrutiny of a proportionality trial.

35. In this regard, the Commission noted that the contents of the revocation do not offer any explanation that would make it possible to determine the imperative need pursued by the difference in treatment, the suitability of such difference in relation to such need, nor its strict proportionality. It indicated that, on the contrary, the revocation is limited to making explicit that the differentiating criterion was the sexual orientation of Sandra Pavez Pavez without offering any reason that would pass a minimum test of objectivity and reasonableness, much less, a strict scrutiny as required when dealing with such category.

36. It argued that in analyzing whether Ms. Pavez Pavez could be removed from her position as a religious teacher, the State had an obligation to analyze multiple aspects in order to safeguard the rights at stake and ensure that the restriction on her rights was not disproportionate. He recalled that the counterpart of this respect for the autonomy of religions is the public sphere of the State, which must be strictly governed by human rights obligations.

37. The Commission also indicated that the Chilean authorities were faced with a difference in treatment based on sexual orientation, which gave rise to specific obligations, such as the obligation to reverse existing discriminatory situations to the detriment of a certain group of persons. It recalled that the state authorities did not confront these duties with the right to religious freedom if it was clear that it collided with the scope of protection of the right to equality.

38. Regarding the attribution of the facts to the State, the Commission recalled that: (a) Sandra Pavez Pavez was a teacher in a public school and had the character of a public official and, therefore, her relationship with the State was direct, and (b) the power given to religious authorities to certify the suitability of persons is provided for in the legislation, Therefore, it was the State that delegated a component of the public function to non-State entities, such as religious authorities, and that such delegation was made in absolute terms, without establishing safeguards to prevent it from being carried out in an arbitrary manner or in violation of fundamental rights, including the principle of equality and non-discrimination. Based on these two elements, the Commission considered that

⁶⁵ Article 24 of the American Convention.

⁶⁶ Article 23(1)(c) of the American Convention.

⁶⁷ Article 7(1) of the American Convention.

⁶⁸ Article 11(2) of the American Convention.

⁶⁹ Article 26 of the American Convention.

⁷⁰ Article 1(1) of the American Convention.

⁷¹ Article 2 of the American Convention.

that the actions of the religious authorities in the exercise of the delegation contained in Decree 924 of 1983 for the exercise of a public function necessarily engage the international responsibility of the State. Finally, the Court indicated that upon learning of a discriminatory act or unjustified differential treatment by a non-State actor, the State has a duty to protect and respond in order to put an end to such discrimination and provide due reparation. It is therefore essential that there be effective judicial remedies to protect people against discriminatory acts by both the State and non-State actors.

39. In accordance with the foregoing, the Commission concluded that the difference in treatment based on sexual orientation to the detriment of Sandra Pavez Pavez did not have a minimum justification that would allow an analysis of even the first step of the proportionality test, i.e., the legitimacy of the purpose. The latter, when it refers to the categories established in Article 1.1 of the Convention, must be evaluated strictly in the sense of requiring a compelling necessity. Thus, in this case, such difference in treatment does not pass the first step of the proportionality test and, therefore, is discriminatory and in violation of Articles 24 and 1(1) of the Convention.

40. On the other hand, it considered that in the present case Sandra Pavez Pavez was discriminated against because of her sexual orientation in her work as a teacher, and that there were no concrete and deliberate actions to prevent this type of violation. On the contrary, the State ratified and reinforced them through the decisions of its judicial authorities. It added that the nature of Sandra Pavez Pavez's employment as a school teacher also implied the exercise of a public function, so that the discrimination in the continuity of this work exercised for many years of her professional life resulted in the violation of the rights to access to public service under conditions of equality and not to be discriminated against in the workplace, rights protected by Articles 23(1)(c) and 26 of the American Convention.

41. Regarding the right to privacy and autonomy, the Commission concluded that both the previous inquiries about Sandra Pavez Pavez's sexual orientation and relationship, including the warnings to "correct" such issues, and the revocation of the certificate of suitability based precisely on them, constituted an interference in her privacy and autonomy. For this reason, the Commission stated that in the present case it was not possible to demonstrate a legitimate purpose that was fully applicable to this point and, therefore, that this was sufficient to establish that the interference in the private life and autonomy of Sandra Pavez Pavez was arbitrary, in violation of Article 11(2) of the Convention.

42. The **representatives** agreed with the Commission and added that "this is a case about religious freedom in the understanding that religion has limits: it cannot intervene in the State and cannot be a basis for discrimination". They indicated that the situation experienced by Sandra Pavez Pavez "was a dismissal based on her lesbianism with State tolerance, therefore this case does not refer to intervening in the doctrine of the Catholic Church". They added that the "background of this case is that of a Democratic State of Law that allows religious entities to intervene, discriminatorily, in public employment matters, and dismiss a person objectively prepared to teach". They also indicated that accepting that acts protected by religions have "license to discriminate" would be tantamount to destroying the entire system of respect and guarantee of human rights.

43. In its final arguments, the **State** referred to the content and scope of the right to religious freedom, which is recognized in Article 12 of the American Convention and includes, among others, the right of parents and guardians to ensure that their children and wards receive a religious education in accordance with their own convictions. It also indicated that the recognition of religious freedom protects the right of religious communities to freely choose their teachers and that this principle has been included in precedents of the universal human rights system, as well as in the European regional system, and in the comparative jurisprudence of the American States.

44. On the other hand, it argued that in the present case the elements that allow attributing liability to the State are absent. First, with respect to the duty to adopt provisions of domestic law, it argued that Decree 924 is conventional to the extent that such a duty to adopt provisions

of domestic law is not a duty of the State.

The Court stated that the norm was necessary to give effect to the rights and freedoms contained in Article 12.4 of the Convention. On the other hand, it indicated that there are safeguards for the protection of freedom of religion, including the autonomy of religious communities and the right of parents to ensure that their children receive religious education in accordance with their convictions, within a general framework of non-discrimination⁷².

45. Regarding the certificate of suitability, he indicated that it operates as a mechanism to guarantee the autonomy of the religious entities to develop their fundamental activities, including the selection of their teachers. It held that requiring this particular qualification for the performance of the specific function of representing the religious community in the teaching guarantees that the teaching will be faithfully imparted by who, in fact, represents that community according to its criteria. On the other hand, the certificate is only a requirement to perform a specific and determined function within the schools, which is to teach the subject of confessional religion. All persons with professional degrees in education, or who are legally qualified or authorized to exercise the profession, are eligible to be hired to perform teaching functions, whether classroom, managerial or technical-pedagogical⁷³. The State insisted that the possession of a certificate of suitability is not a legal requirement to be hired in a teaching staff and that, for the same reason, the loss of the certificate of suitability is not a legal cause for termination of employment.

46. Regarding the lack of the duty to respect, it alleged that Decree 924 does not delegate a public power to the churches since the certification of the suitability of teachers of confessional religion is not an attribution of the public power due to the fact that the religious suitability of teachers of confessional religion is not a mandate of the State and that, on the contrary, it is a power of the religious communities or their authorities. Likewise, the State considered that it was not responsible for a violation of the Convention due to a breach of the duty to guarantee for the alleged failure to comply with the duty to protect, arguing that the judicial authorities did not take any action to safeguard the rights of the alleged victim. It indicated on this point that the State had adequate and effective remedies that were not exhausted and that this point has an impact on the merits of the case⁷⁴.

47. Regarding the right to equal access to public service, it indicated that Sandra Pavez Pavez had, since 1991, an employment contract that linked her to the San Bernardo Educational and Health Corporation, that the employees of municipal corporations under private law are not public servants and that, therefore, they do not have the right to stability in public service⁷⁵. The State indicated, therefore, that Professor Pavez Pavez, as well as the other teachers and educational personnel employed by private law corporations, was not a public servant and, therefore, Article 23(1)(c) of the American Convention is not applicable in the instant case.

⁷² In addition, he insisted on the fact that these religion classes are optional for students and families in all educational establishments in the country, even if they have an institutional religious educational project, and that the religion class is not evaluated with a numerical grade, and the student's performance in it does not affect his promotion to the next course or educational level.

⁷³ Likewise, it recalled that the non-possession of a certificate of suitability does not alter this fact, being the education professionals eligible to teach in the classroom in any other subject, or in the religion class on behalf of other churches or religious entities that are required to issue a certificate of suitability.

⁷⁴ He argued that, in particular with regard to the alleged discrimination to which Sandra Pavez Pavez had been subjected, as well as the alleged violation of the right to work and access to public service, the remedy of protection was filed against the Vicar of Education and not against a public authority or the educational establishment. Moreover, he considered that the judicial decisions handed down at the domestic level did not represent a breach of the State's duty to protect. It recalled that a decision denying the claims is not in itself a reason to attribute international responsibility to the State and that, furthermore, such decisions do not violate the duty to state reasons.

⁷⁵ He recalled that the teachers or the personnel that work in them could not be classified as public officials, they are not public officials under Chilean administrative law.

48. On the other hand, the State indicated that even if the work of Professor Pavez Pavez were classified as a public position, the facts of the case are such that the right in question is not affected, since the right contained in the Convention protects public officials, or potential public officials, from being discriminated against in the processes of appointment, promotion, suspension or dismissal. It understood that, in this case, Sandra Pavez Pavez was not prevented from obtaining a promotion⁷⁶, nor did she suffer a measure that implied dismissal or suspension in the exercise of her teaching functions, nor has she been legally prevented from exercising the professional functions in accordance with her professional title of educator, neither in the public nor in the private sector⁷⁷. The State recalled that, in 2007, when the certificate of suitability was revoked, the contract remained in force, and the only practical consequence of such revocation was the reassignment of Professor Pavez Pavez's duties, from Catholic religion teacher to general inspector⁷⁸. The State argued that the elements of access and permanence in public office were not affected, and there was not even a modification of functions not included in the employment contract, so that the actions of the educational corporation to functionally reassign the alleged victim are not within the scope of protection of Article 23(1)(c); therefore, it is not possible to conclude that this right has been violated.

49. Regarding Article 26 of the Convention, he indicated that this article is not applicable to the present case since the right to work is a guarantee of the inter-American system that is only enforceable on those States that have ratified the Protocol of San Salvador and that, to date, Chile has not ratified the aforementioned instrument. Therefore, the rights recognized therein, including the right to work, do not generate obligations for the Chilean State. On the other hand, she argued that none of the dimensions of the right to work recognized by this Court in its jurisprudence (free choice or acceptance of employment, labor stability, and equitable and satisfactory working conditions) had been affected, since she had continuity in her work and was legally authorized to exercise the profession of educator, in accordance with her degree⁷⁹; the claim of a vocation to teach specifically the Catholic religion does not constitute an obligation for the State, and the functional reassignment in no way constituted a real, objective and unlawful demotion.

50. On the other hand, it argued subsidiarily that, if it were to be considered that the functional reassignment generated some type of affectation to the right to work of Professor Pavez Pavez, it will be demonstrated later that this alleged affectation would be completely proportional in accordance with the strict proportionality test. The State argued on this point that the specific case requires a weighing of rights that takes into account all the interests involved (the right of Professor Pavez Pavez and, on the other hand, the freedom of religion of the Catholic community and the children and parents who are part of it). He pointed out that the revocation of the certificate of

⁷⁶ She recalled that, in fact, she was promoted to a managerial and hierarchical superiority position which, like any promotion, entails greater responsibilities, hierarchy and remuneration.

⁷⁷ Her lack of a certificate of suitability for Catholic religious education did not disqualify her for classroom teaching, technical pedagogical support or directive teaching functions. It further held that Professor Pavez Pavez could teach any other subject in the basic education cycle, including the teaching of religion on behalf of any other religious community that wished to certify her to do so.

⁷⁸ He added that this consequence, which was decided by the employer, was accepted by Professor Pavez Pavez, and that there is no record in the file of any claim by her against the State or her employer for the functional reassignment. He also argued that it is clear from Sandra Pavez Pavez's employment contract that the purpose of the contract was not to hire a Catholic religion teacher but a teacher to join the staff of the Cardenal Samoré High School, and that it is a generic teaching position in the staff. He recalled that according to Chilean law and Ms. Pavez's employment contract, the employer has the power to unilaterally modify the functions performed by the employee, provided that they do not constitute a labor impairment, and that even if it were considered that Professor Pavez Pavez is a civil servant, this power of *ius variandi* also applies to public employment.

⁷⁹ She recalled that the functions of general inspector are teaching functions as such, that her appointment as general inspector required the quality of a teacher, a professional in education, and that the loss of the certificate of suitability does not imply a loss of employment or the quality of teaching. He added that Chilean law does not contemplate a legal disqualification that would prevent Professor Pavez Pavez from working as an educator in any of the teaching functions set forth in the Teachers' Statute. Furthermore, she continued to be entitled to the benefits and prerogatives of teachers in Chile.

adequacy: (a) it pursued a legitimate and compelling purpose such as the satisfaction of the right to religious freedom contained in Article 12 of the American Convention; (b) it was suitable to fulfill that purpose⁸⁰; c) it was necessary since there were no alternatives that would have allowed the right to freedom of religion to be fulfilled to the same degree, affecting to a lesser extent the interests of Professor Pavez Pavez, and d) it was strictly proportional because the impact on the rights of Professor Pavez Pavez is less than the interference that a different action would have had on the right to freedom of religion of the Catholic community, its members and the children and parents who benefit from confessional religious education⁸¹. On the other hand, he referred to the ministerial exception according to which the right to non-discrimination in employment applied differently in relation to religious communities by virtue of the very separation between churches and the State, and that this figure applies to the circumstances of the specific case.

51. Regarding the right to equality and non-discrimination, he indicated that it had not been violated since there was no difference in treatment based on a suspect category insofar as Supreme Decree No. 924 does not expressly or implicitly include differentiated treatment based on sexual orientation. He argued that the requirement of the suitability certificate and the functional reassignment did not constitute differential treatment, and that the removal of the suitability certificate by the Vicariate was based on religious requirements of coherence of life as part of the suitability and the decision of the national judge was based on respect for religious freedom.

52. Regarding the right to honor, the State indicated that it did not delegate public powers to the ecclesiastical authorities nor did it allow "prior inquiries" into the private life of Mrs. Pavez Pavez, that she was fully aware that the Catholic Church, in the development of its rights as a religious community, would pay certain attention to aspects related to her personal life for the issuance of the certificate of suitability and that the private life of Mrs. Pavez Pavez was made public prior to the revocation of her certificate of suitability.

B. Considerations of the Court

53. The Commission and the representatives alleged that the State is responsible for the violation of privacy and autonomy, the principle of equality and non-discrimination, access to public service under conditions of equality, and the right to work established in Articles 11(2), 24, 23(1)(c) and 26 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of Sandra Pavez Pavez. This was due to the revocation of her certificate of suitability by the Vicariate for Education of San Bernardo, which was related exclusively to her sexual orientation, and the subsequent reassignment of her duties at the school, which meant that she could no longer work as a Catholic religion teacher. According to the allegations, this responsibility is attributable to the State due to: a) the existence of a norm that is not compatible with the American Convention insofar as it confers on a third party, in this case a religious authority, the power to issue certificates of suitability to teachers of religion in public education establishments; b) for a breach of the duty to respect insofar as the Vicariate revoked that certificate exercising powers of public authority, and c) a breach of the duty to guarantee those rights insofar as there were no subsequent controls by the judicial authorities in relation to the conformity of the revocation of the certificate in relation to the standards

⁸⁰ He understood that removing from the denominational religion class those teachers who no longer have the confidence of their religious authorities is ideal to avoid imposing denominational religion teachers.

⁸¹ He recalled that the certificate of suitability is not a requirement to practice as a teacher, its loss does not automatically result in the dismissal of teachers, or the non-renewal of their contract. Furthermore, the legislation does not disqualify the teacher from teaching other subjects, including religion classes on behalf of other religious communities, if she had sought to do so. In addition, not only was continuity sought in her employment contract, but she was offered a promotion to the position of general inspector, which also resulted in an increase in her remuneration, and her permanence within the same educational community to which she was linked. She kept her teaching hours, her job stability remained constant over time, under the same conditions as for all other education professionals in Chile, and there was no objective and concrete labor deterioration. The only consequence of the withdrawal of the certificate of suitability was the functional reassignment,

without losing her teaching status, in accordance with the exercise of *ius variandi*.

international human rights law. Finally, they also alleged that Mrs. Pavez Pavez's right to privacy was violated through the inquiries that were allegedly made about her sexual orientation and her family situation.

54. The State argued that the actions of the Vicariate should be read in light of the right to freedom of conscience and religion contained in Article 12 of the American Convention, which includes the right of parents and, if applicable, guardians, to have their children or wards receive the religious and moral education that is in accordance with their own convictions. It argued that in the specific case, the violations alleged by the Commission and the representatives had not occurred, inasmuch as the religious authorities have the autonomy to appoint religious teachers, and furthermore, Mrs. Pavez Pavez was not a public official, she was not dismissed from her job, her duties were reassigned, and in all cases the restriction to these rights would meet a strict test of proportionality.

55. In view of the content of the State's allegations, the Court will proceed to analyze the alleged violations of the right to privacy and autonomy, to have access to public service under conditions of equality, and to work, taking into account the right to freedom of conscience and religion contained in Article 12 of the American Convention in the educational context.

56. The Court will now address the arguments of the parties and the Commission in the following order: 1) general considerations on the principle of equality and non-discrimination, the rights to freedom of conscience and religion, to liberty, to privacy, to equal access to public service, and to work; 2) on the alleged conventional nature of Decree 924, and 3) on the alleged discrimination and the alleged violation of the rights to privacy and autonomy, to access public service and to work to the detriment of Sandra Pavez Pavez.

B.1. General considerations on the principle of equality and non-discrimination, the rights to freedom of conscience and religion, to privacy and autonomy, to equal access to public service, and to work.

a) On the rights to privacy, personal freedom, equality and non-discrimination of persons on the basis of sexual orientation

57. The Convention contains a universal clause for the protection of dignity, which is based both on the principle of the autonomy of the person and on the idea that all persons should be treated as equals, inasmuch as they are ends in themselves according to their intentions, will and their own life decisions. In addition, the American Convention also recognizes the inviolability of private and family life, among other protected spheres. This area of the private life of individuals is characterized as a space of freedom exempt and immune from abusive or arbitrary interference by third parties or public authorities⁸².

58. On the other hand, the Court has specified that the protection of the right to privacy is not limited to the right to privacy, as it encompasses a series of factors related to the dignity of the individual, including, for example, the ability to develop his or her own personality, aspirations, determine his or her identity and define his or her personal relationships. The concept of privacy encompasses aspects of physical and social identity, including the right to personal autonomy, personal development and the right to establish and develop relationships with other human beings and the outside world. The effectiveness of the exercise of the right to privacy is decisive for the possibility of exercising personal autonomy over the future course of events relevant to one's quality of life.

⁸² Cfr. Gender identity, and equality and non-discrimination of same-sex couples. State obligations in relation to the change of name, gender identity, and rights derived from a bond between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1 of the American Convention on Human Rights). Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 86, *Case I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*, para. 149; *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 194, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and Reparations*. Judgment of September 1, 2020. Series C No. 411, para. 102.

the person. Likewise, private life includes the way in which the person sees himself and how he decides to project himself towards others, this being an indispensable condition for the free development of the personality⁸³.

59. A central aspect of the recognition of dignity is the possibility of every human being to self-determine and freely choose the options and circumstances that give meaning to his existence, according to his own options and convictions⁸⁴. In this framework, the principle of personal autonomy plays a fundamental role, which prohibits any State action that seeks to instrumentalize the person, that is, to turn him/her into a means for purposes unrelated to the choices about his/her own life, body and the full development of his/her personality, within the limits imposed by the Convention. Thus, in accordance with the principle of free development of the personality or personal autonomy, each person is free and autonomous to follow a life model in accordance with his or her values, beliefs, convictions and interests⁸⁵.

60. On the other hand, and along these lines, this Court has broadly interpreted Article 7.1 The American Convention's definition of liberty includes a concept of liberty in a broad sense, which is understood as the ability to do and not to do all that is lawfully permitted. In other words, it constitutes the right of every person to organize, in accordance with the law, his individual and social life according to his own choices and convictions⁸⁶. Freedom, thus defined, is a basic human right, proper to the attributes of the person, which is projected throughout the American Convention⁸⁷.

61. Regarding the right to identity, this Court has indicated that it can be conceptualized, in general, as the set of attributes and characteristics that allow the individualization of the person in society and that, in this sense, it comprises several rights depending on the subject of rights in question and the circumstances of the case⁸⁸. The right to identity can be affected by a number of situations or contexts that can occur from childhood to adulthood⁸⁹. Although the American Convention does not refer specifically to the right to identity under that name, it nevertheless includes other rights that compose it⁹⁰. In this way, the Court recalls that the American Convention protects these elements as rights in themselves, however, not all of these rights will necessarily be involved in all cases that are linked to the right to identity⁹¹. In addition, the right to identity cannot be reduced, confused, or confused with the right to identity.

⁸³ Cf. *Advisory Opinion OC-24/17*, para. 87, and *Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 2, 2021. Series C No. 441, para. 204.

⁸⁴ Cf. *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*, para. 150; *Case of Atala Riffo and Girls v. Chile. Merits, Reparations and Costs*, para. 136, and *Case of Vicky Hernández et al. v. Honduras. Merits, Reparations and Costs*. Judgment of March 26, 2021. Series C No. 422, para. 116.

⁸⁵ Cf. *Advisory Opinion OC-24/17*, *supra*, para. 88. See also, *Case of Manuela et al. v. El Salvador*, *supra*, para. 204.

⁸⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 52, and *Case of Vicky Hernández et al. v. Honduras*, *supra*, para. 116.

⁸⁷ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 52; *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica*, *supra*, para. 142, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of March 9, 2018. Series C No. 351, para. 327.

⁸⁸ Cf. *Advisory Opinion OC-24/17*, *supra*, para. 90, *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 122; *Case of Fornerón and Daughter v. Argentina*, *supra*, para. 123, and *Case of Ramírez Escobar et al. v. Guatemala*, *supra*, para. 359.

⁸⁹ *Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs*. Judgment of August 31, 2011. Series C No. 232, para. 113, and *Advisory Opinion OC-24/17*, *supra*, para. 90.

⁹⁰ Cf. *Case of Gelman v. Uruguay*, *supra*, para. 122, and *Case of Ramírez Escobar et al. v. Guatemala*, *supra*, para. 359. Also, see OAS, Inter-American Juridical Committee, Opinion "on the scope of the right to identity", resolution CJI/doc. 276/07 rev. 1, of August 10, 2007, para. 11.2.

⁹¹ Cf. *Case of Rochac Hernández et al. v. El Salvador*. Merits, Reparations and Costs. Judgment of October 14, 2014. Series C No. 285, para. 116 and *Case of Ramírez Escobar et al. v. Guatemala*, *supra*, para. 359.

be subordinated to one or the other of the rights it includes, nor to the sum of them⁹². On the other hand, this Court has indicated that the right to identity is closely related to human dignity, to the right to privacy and to the principle of personal autonomy (Articles 7 and 11 of the American Convention)⁹³.

62. It can also be understood that this right is intimately linked to the person in his or her specific individuality and private life, both based on a historical and biological experience, as well as on the way in which he or she relates to others, through the development of ties in the family and social spheres.⁹⁴ This also implies that people may experience the need to be recognized as differentiated and distinguishable from others. This also implies that people may experience the need to be recognized as differentiated and distinguishable from others. To achieve this end, it is essential that the State and society respect and guarantee the individuality of each person, as well as the right to be treated in accordance with the essential aspects of his or her personality, with no other limitations than those imposed by the rights of others. It is for this reason that the strengthening of the individuality of the person before the State and society, is translated by his legitimate faculty to establish the externalization of his way of being, in accordance with his most intimate convictions. Similarly, one of the essential components of any life plan and of the individualization of persons is precisely sexual orientation and sexual identity⁹⁵.

63. Moreover, the right to identity and, therefore, the right to sexual identity, has among its most relevant implications and scope, that of being constituted as a right with an autonomous character that feeds its content both from the norms of international law, as well as from those derived from the cultural traits contemplated in the domestic law of the States, thus contributing to shape the specificity of the person, with the rights that make him unique, singular and identifiable⁹⁶.

64. In relation to sexual orientation and sexual identity, this Court reiterates that they are also linked to the concept of freedom and the possibility of every human being to self-determine and freely choose the options and circumstances that give meaning to their existence, according to their own convictions, as well as the right to the protection of privacy. Thus, regarding sexual orientation and sexual identity, this Court established that the affective life with the spouse or permanent partner, which logically includes sexual relations, is one of the main aspects of this sphere or circle of intimacy⁹⁷, which is also influenced by the sexual orientation of the person, which will depend on how he/she identifies himself/herself⁹⁸.

65. Regarding the right to equality and non-discrimination, the Court has indicated that States must refrain from actions that in any way are aimed, directly or indirectly, at creating situations of *de jure* or *de facto* discrimination⁹⁹. In this regard, it has established that Article 1(1) of the Convention is a general rule whose content is

⁹² Cf. *Advisory Opinion OC-24/174, supra*, para. 90, and *Case of Ramírez Escobar et al. v. Guatemala, supra*, para. 359. Also, see OAS, Inter-American Juridical Committee, Opinion "on the scope of the right to identity", resolution CJI/doc. 276/07 rev. 1, of August 10, 2007, para. 11.

⁹³ Cf. *Case of I.V. v. Bolivia, supra*, paras. 149-152, and *Advisory Opinion OC-24/17, supra*, para. 90.

⁹⁴ Cf. *Case of Contreras et al. v. El Salvador, supra*, para. 113, and *Case of Ramírez Escobar et al. v. Guatemala, supra*, para. 359.

⁹⁵ Cf. *Advisory Opinion OC-24/17, supra*, para. 91.

⁹⁶ Cf. *Advisory Opinion OC-24/17, supra*, para. 92. See also, OAS, Inter-American Juridical Committee, Opinion "on the scope of the right to identity", resolution CJI/doc. 276/07 rev. 1, of August 10, 2007, para. 15.

⁹⁷ Cf. *Case of Atala Rizzo and Girls v. Chile. Merits, Reparations and Costs, supra*, para. 141 and *Advisory Opinion OC-24/17, supra*, para. 93.

⁹⁸ Cf. *Case of Flor Freire v. Ecuador, supra*, para. 103, and *Advisory Opinion OC-24/17, supra*, para. 93.

⁹⁹ *Legal status and rights of undocumented migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18*, para. 103, and *Case of Montesinos Mejía v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 27, 2020. Series C No. 398*, para. 125.

extends to all the provisions of the treaty, and provides for the obligation of the States Parties to respect and ensure the full and free exercise of the rights and freedoms recognized therein "without any discrimination whatsoever". In other words, whatever the origin or form it takes, any treatment that may be considered discriminatory with respect to the exercise of any of the rights guaranteed in the Convention is, *per se*, incompatible with the Convention¹⁰⁰. Failure by the State to comply with the general obligation to respect and guarantee human rights, through any different treatment that may be discriminatory, i.e., that does not pursue legitimate aims, is unnecessary and/or disproportionate, gives rise to international responsibility. This is why there is an indissoluble link between the obligation to respect and guarantee human rights and the principle of equality and non-discrimination¹⁰¹.

66. On the other hand, while the general obligation of Article 1(1) refers to the State's duty to respect and guarantee "without discrimination" the rights contained in the American Convention, Article 24 protects the right to "equal protection of the law."¹⁰² In other words, Article 24 of the American Convention prohibits discrimination in law, not only with respect to the rights contained in that treaty, but with respect to all laws adopted by the State and their application¹⁰³. In other words, if a State discriminates in respecting or guaranteeing a conventional right, it would be in breach of the obligation established in Article 1(1) and the substantive right in question. If, on the contrary, the discrimination refers to unequal protection of domestic law or its application, the fact must be analyzed in the light of Article 24 of the American Convention, in relation to the categories protected by Article 1(1) of the same instrument¹⁰⁴.

67. Therefore, by virtue of the obligation not to discriminate, States are also obliged to adopt positive measures to reverse or change existing discriminatory situations in their societies, to the detriment of a certain group of people. This implies the special duty of protection that the State must exercise with respect to the actions and practices of third parties that, under its tolerance or acquiescence, create, maintain or favor discriminatory situations¹⁰⁵. In this sense, discrimination carried out on the basis of one of the categories indicated by way of illustration in Article 1(1) of the Convention, merits a particular or peculiar consideration, given that the respective unlawful act that its exercise signifies, takes place on the basis of what the alleged victim specifically represents or appears to be and which is what distinguishes him from other persons¹⁰⁶.

68. The Inter-American Court has recognized that many people have historically been victims of structural discrimination, stigmatization, various forms of violence and violations of their fundamental rights because of their sexual orientation¹⁰⁷. Similarly, the Court has already established that

¹⁰⁰ Cf. *Proposed amendment to the Political Constitution of Costa Rica related to naturalization*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of October 6, 2021. Series C No. 440, para. 132.

¹⁰¹ Cf. *Advisory Opinion OC-18/03, supra*, para. 85, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra*, para. 132.

¹⁰² Cf. *Advisory Opinion OC-4/84, supra*, paras. 53 and 54, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra*, para. 133.

¹⁰³ Cf. *Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 23, 2005. Series C No. 127, para. 186, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra*, para. 133.

¹⁰⁴ Cf. *Case of Apitz Barbera et al ("Corte Primera de lo Contencioso Administrativo") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182, para. 209, and *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra*, para. 133.

¹⁰⁵ Cf. *Advisory Opinion OC-18/03, supra*, para. 104, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*. Judgment of August 31, 2021. Series C No. 432, para. 110.

¹⁰⁶ Cf. *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 89, and *Case of Vicky Hernández et al. v. Honduras. Merits, Reparations and Costs*, para. 66.

¹⁰⁷ *Case of Atala Rifo and girls v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, paras. 92 and 267, and *Case of Vicky Hernández et al. v. Honduras. Merits, Reparations and Costs, supra*, para. 119.

sexual orientation is a category protected by the Convention¹⁰⁸. Consequently, the State may not act in a discriminatory manner against a person on the basis of his or her sexual orientation¹⁰⁹.

69. Likewise, the Court considers that the criteria for analyzing whether there has been a violation of the principle of equality and non-discrimination in a specific case may have different intensity, depending on the reasons for which there is a difference in treatment. In this sense, the Court considers that, when it is a matter of a measure that establishes differential treatment involving one of these categories protected by Article 1(1) of the Convention, the Court must apply strict scrutiny that incorporates particularly demanding elements in the analysis, i.e., that the different treatment must constitute a necessary measure to achieve a conventionally imperative objective. Thus, in this type of examination, in order to analyze the suitability of the differentiating measure, it is required that the purpose it pursues is not only legitimate under the Convention, but also imperative. The means chosen must not only be adequate and effectively conducive, but also necessary, i.e., that it cannot be replaced by a less harmful alternative means. In addition, it includes the application of a strict proportionality test, according to which the benefits of adopting the measure in question must clearly outweigh the restrictions it imposes on the conventional principles affected by it (*supra* para. 69).

70. In another order of ideas, specifically with respect to the scope of the right to non-discrimination based on sexual orientation, this Court indicated that it is not limited to the homosexual condition in itself, but includes its expression and the necessary consequences in the life project of the persons¹¹⁰. In this sense, for example, sexual acts are a way of expressing a person's sexual orientation, which is why they are protected within the same right to non-discrimination based on sexual orientation¹¹¹.

71. On the other hand, it should be recalled that in *Advisory Opinion OC-24/17*, this Court recognized the important role that cultural, religious, sociological, economic, ideological and linguistic convictions play in the life and dignity of the persons who profess them; although it indicated that these cannot be used as a parameter of conventionality since the Court would be prevented from using them as an interpretative guide to determine the rights of human beings. In this sense, the Court is of the opinion that such convictions cannot condition what the Convention establishes with respect to discrimination based on sexual orientation. Thus, in democratic societies there must be a mutually peaceful coexistence between the secular and the religious; therefore, the role of the States and of this Court is to recognize the sphere in which each of these dwells, and in no case to force one into the sphere of the other¹¹².

b) On the right to education, freedom of religion and religious education

72. The Court has indicated that "among the special measures for the protection of children and among the rights recognized to them in Article 19 of the American Convention, the right to education is a prominent one, which favors the possibility of enjoying a decent life and contributes to prevent unfavorable situations for the child and for society itself"¹¹³. This Court has explained that this right, with respect to girls and boys, arises from the aforementioned provision interpreted in accordance with the Convention on the Rights of the Child, Article 26 of the American Convention on Human Rights, and Article 26 of the American Convention on Human Rights.

¹⁰⁸ Cf. *Case of Atala Riffo and girls v. Chile. Merits, supra*, para. 78, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 90.

¹⁰⁹ Cf. *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 90.

¹¹⁰ Cf. *Case of Atala Riffo and Girls v. Chile. Merits, Reparations and Costs, supra*, para. 133, and *Advisory Opinion OC-24/17, supra*, para. 82.

¹¹¹ Cf. *Case of Flor Freire v. Ecuador, supra*, para. 119, and *Advisory Opinion OC-24/17, supra*, para. 82.

¹¹² Cf. *Advisory Opinion OC-24/17, supra*, para. 223.

¹¹³ Juridical Condition and Human Rights of the Child. Advisory Opinion OC 17/02, *supra*, para. 84 and *Case of Garzón Guzmán et al. v. Ecuador. Merits, Reparations and Costs, supra*, para. 117.

American Convention and the Protocol of San Salvador¹¹⁴. The latter recognizes the right to education in Article 13, over which the Court may exercise its jurisdiction¹¹⁵. Likewise, the right to education is recognized in Article 28 of the Convention on the Rights of the Child. Likewise, this right is established in Article XII of the American Declaration of the Rights and Duties of Man, which establishes that every "person has the right to education, which shall be inspired by the principles of liberty, morality and human solidarity". Similarly, Article 3.n) of the OAS Charter states that the "education of peoples shall be directed towards justice, liberty and peace". In turn, in its Article 30, this instrument establishes that "integral development encompasses the economic, social, educational, cultural, scientific and technological fields".

73. The Chilean Constitution recognizes the right to education and states that its purpose is "the full development of the individual in the different stages of his or her life". It also states that parents have the preferential right and duty to educate their children. It is incumbent upon the State to grant special protection to the exercise of this right (*supra* para. 16).

74. On the other hand, Article 12(1) of the American Convention on freedom of conscience and religion establishes that everyone "has the right to freedom of conscience and religion and that this right includes freedom to maintain his religion or belief, or to change his religion or belief, and freedom, either individually or in community with others and in public or private, to profess and disseminate his religion or belief. Similarly, Article 12.3 indicates that the "freedom to manifest one's religion and beliefs is subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the rights or freedoms of others". Finally, Article 12.4 states that "parents and, when applicable, guardians have the right to ensure that their children or wards receive the religious and moral education that is in accord with their own convictions". On the other hand, the American Convention establishes in Article 27.2 that freedom of conscience and religion is one of the rights that may not be subject to derogation, and Article 1.1 mentions religion as a protected category with respect to possible differential treatment that may be discriminatory.

75. This Court has understood that, in accordance with Article 12 of the Convention, the right to freedom of conscience and religion allows individuals to maintain, change, profess and disseminate their religion or beliefs, and that this right is one of the foundations of democratic society. Similarly, the Court understood that this right in its religious dimension "constitutes a transcendental element in the protection of the convictions of believers and their way of life".¹¹⁶ It is clear from the wording of Article 12 that this right has an individual and a collective dimension and that this right also includes the right to religious education. In turn, as mentioned *above*, the Political Constitution of Chile recognizes freedom of conscience, and the right to the manifestation of all beliefs and the free exercise of all religions that are not contrary to morals, good customs or public order (*supra* para. 16).

76. Similarly, Law No. 19,638, which establishes rules on the legal constitution of churches and religious organizations, guarantees freedom of religion and worship and states that no person may be discriminated against by virtue of their religious beliefs, nor may these be invoked as a reason to suppress, restrict or affect the equality enshrined in the Constitution and the law. Likewise, Article 6 of this Law indicates that freedom of religion and worship, "with the

¹¹⁴ The Protocol of San Salvador was not ratified by Chile. It is mentioned here for illustrative purposes.

¹¹⁵ The Court has jurisdiction to decide on contentious cases concerning the right to education by virtue of Article 19(6) of the Protocol of San Salvador. This allows the application of the system of individual petitions regulated by Articles 44 to 51 and 61 to 69 of the American Convention on Human Rights if there is a violation of Article 8, paragraph a) (Trade Union Rights) and 13 (Right to education) of the Protocol. *Cf. Case of Garzón Guzmán et al. v. Ecuador. Merits, Reparations and Costs, supra*, para. 117, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 234 and footnote 263.

¹¹⁶ *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 79, and *Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 4, 2012. Series C No. 250, para. 154.

The corresponding autonomy and immunity from coercion, mean for every person, at least, the faculties of: [...] (d) To receive and impart religious instruction or information by any means; to choose for himself - and parents for unemancipated minors and guardians for incapable persons under their guardianship and care - the religious and moral education that is in accordance with his own convictions."

77. Finally, Article 7 of said Law establishes that, "by virtue of religious freedom" and freedom of worship "religious entities are recognized as having full autonomy for the development of their own purposes and, among others, the following faculties [....a) To freely exercise their own ministry, to worship, to hold meetings of a religious nature and to establish and maintain places for such purposes; b) To establish their own internal organization and hierarchy; to train, appoint, elect and designate the appropriate persons to positions and hierarchies and to determine their denominations, c) To express, communicate and disseminate, by word, in writing or by any means, their own creed and to manifest their doctrine".

78. At the OAS level, both the American Declaration and the OAS Charter contain norms on the right to religious freedom and religious education. Thus, Article III of the American Declaration establishes that every person "has the right to freely profess a religious belief and to manifest and practice it in public", and Article 45.a) of the OAS Charter indicates that all "human beings, without distinction as to race, sex, nationality, creed or social condition, have the right to material well-being and spiritual development, in conditions of freedom, dignity, equality of opportunity and economic security". In turn, the Protocol of San Salvador¹¹⁷, which includes a provision on non-discrimination on religious grounds in Article 3, refers in Article 13 to the importance of guiding education to promote understanding, tolerance and friendship among all religious groups. Similarly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women specifies that all women are entitled to the recognition, enjoyment, exercise and protection of all human rights and freedoms enshrined in regional and international human rights instruments, which include, among others, "the right to freedom to profess one's religion and beliefs within the law.

79. Moreover, within the framework of the Universal Human Rights System, the Universal Declaration of Human Rights refers in Article 18 to freedom of religion which "includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. Similarly, in Article 26.2, the Declaration stipulates in a manner similar to the American Declaration that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance, and friendship among all nations, racial or religious groups".

80. In the same vein, Article 18 of the International Covenant on Civil and Political Rights recognizes this right in similar terms to Article 12 of the American Convention, including Article 18.4 in which the States Parties to the Covenant undertake to respect the liberty of parents and, when applicable, legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions. Article 27 of the same instrument establishes that in States where "ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language".

81. Similar to the provisions of the American Convention and the International Covenant on Civil and Political Rights, Article 13.3 of the International Covenant on Economic, Social and Cultural Rights establishes that the States Parties undertake to respect "the liberty of parents and,

¹¹⁷ The Protocol of San Salvador has not been ratified by Chile, so it is mentioned here for illustrative purposes.

¹¹⁸Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, article 4.i.

Where appropriate, of the legal guardians, to choose for their children or wards schools other than those established by the public authorities, provided that such schools meet the minimum educational standards prescribed or approved by the State, and to ensure that their children or wards receive such religious or moral education as is in accord with their own convictions".

82. For its part, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of November 25, 1981, refers to the right to religion, and establishes in particular in Article 5.2 that every "child shall have the right of access to education in religion or belief in accordance with the wishes of his or her parents or, when applicable, legal guardians, and shall not be compelled to follow a religion or belief against the wishes of his or her parents or legal guardians, the best interests of the child being a guiding principle". This declaration also specifies that the "child shall be protected from any form of discrimination on the grounds of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for the freedom of religion or belief of others, and in the full awareness that his energy and talents should be devoted to the service of humanity." Finally, Article 6.e) recognizes that the right to freedom of religion includes, among others, the freedom "to teach religion or belief in places suitable for these purposes".

83. Similarly, Article 4 of Additional Protocol II to the Geneva Conventions states: "children shall be provided with the care and assistance they require and, in particular: a) shall receive an education, including religious or moral education, in accordance with the wishes of their parents or, in the absence of parents, of the persons having the care of them". In this regard, the International Committee of the Red Cross indicated that: "By using the time to be *provided* and *received*, the article establishes the legal obligation of States and non-State parties to ensure the continuity of education in the territory under their control and to take concrete measures to that end. Article 4(3)(a) specifies that the education children receive shall be in accordance with the wishes of their parents or guardians. It thus delinks educational content from the preferences of the parties to an armed conflict. The article also recognizes the importance of education for the maintenance of cultural ties: at the time of its drafting, Article 4(3)(a) was submitted by a transregional and multi-confessional group of States in order to ensure the continuity of children's cultural and moral ties with their homes "¹¹⁹.

84. On the other hand, the United Nations Special Rapporteur on freedom of religion or belief stated that the objective of the right to freedom of religion "is not to protect beliefs per se (religious or otherwise), but believers and their freedom to profess and express their beliefs, individually or in community with others, in order to define their lives in conformity with their own convictions."¹²⁰ Likewise, the UN Special Rapporteur on the Right to Education referred to religious education, and stressed that Article 13 of the International Covenant on Economic, Social and Cultural Rights "recognizes the liberty of parents to ensure the moral and religious education of their children in conformity with their own convictions and to choose for their children schools, other than those established by the public authorities, and the freedom to establish and direct educational institutions:

c) On the right to equal access to the civil service

¹¹⁹ International Committee of the Red Cross. Report. *International humanitarian law and the challenges of contemporary armed conflict*, Geneva, 2015, page 66.

¹²⁰ United Nations, General Assembly, Human Rights Council. Report of the Special Rapporteur on freedom of religion or belief. A/HRC/34/50, January 17, 2017, para. 24.

¹²¹ Cf. United Nations, General Assembly, Human Rights Council, Right to education: the cultural dimensions of the right to education or the right to education as a cultural right, Report of the United Nations Special Rapporteur on the Right to Education. A/HRC/47/32, 16 April 2021, para. 24.

85. Article 23(1)(c) of the American Convention establishes the right to access public functions under general conditions of equality. In this regard, this Court has interpreted that access under conditions of equality is an insufficient guarantee if it is not accompanied by the effective protection of permanence in that which is accessed¹²², which indicates that the procedures for appointment, promotion, suspension and dismissal of public officials must be objective and reasonable, that is, they must respect the applicable guarantees of due process¹²³.

86. Similarly, this Court has indicated that the right to have access to public functions under general conditions of equality protects access to a direct form of participation in the design, implementation, development and execution of state political guidelines through public functions. Therefore, it is indispensable that the State generates the optimal conditions and mechanisms so that such political rights can be effectively exercised, respecting the principle of equality and non-discrimination¹²⁴.

d) On the right to work

87. The Court recalls that the right to work has been recognized and protected through Article 26 of the Convention in different precedents¹²⁵. With regard to the specific labor rights protected by the aforementioned Article 26, the Court has pointed out that the terms of the aforementioned precept indicate that they are those rights that derive from the economic, social, educational, scientific and cultural standards contained in the OAS Charter¹²⁶. In this sense, Articles 45.b and c¹²⁷, 46¹²⁸ and 34.g¹²⁹ of the Charter establish norms that refer to the right to work. In addition, the Court has indicated in its Advisory Opinion OC-10/89, that the Member States have understood that the American Declaration contains and defines those essential human rights

¹²² *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 138, and *Case of Cuya Lavy et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 28, 2021. Series C No. 438, para. 159.

¹²³ *Cf. Case of Cuya Lavy et al. v. Peru, supra*, para. 159, and *Case of Moya Solís v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 3, 2021. Series C No. 425, para. 108.

¹²⁴ *Cf. Case of Reverón Trujillo v. Venezuela, supra*, para. 139, and *Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010. Series C No. 212, footnote 120.

¹²⁵ *Cf. Case of Lagos del Campo v. Peru, supra*, paras. 142 and 145. In a similar sense: *Case of Dismissed Workers of Petroperú et al. v. Peru, supra*, paras. 142 and 143; *Case of San Miguel Sosa et al. v. Venezuela, supra*, para. 220; *Case of Spoltore v. Argentina, supra*, para. 84, and *Case of Employees of the Fire Factory in Santo Antônio de Jesus and their next of kin v. Brazil, supra*, para. 155.

¹²⁶ *Cf. Case of Lagos del Campo v. Peru, supra*, para. 143, and *Case of Employees of the Fire Factory in Santo Antônio de Jesus and their next of kin v. Brazil, supra*, para. 155.

¹²⁷ Article 45 of the OAS Charter. - The member states, convinced that man can only achieve the full realization of his aspirations within a just social order, accompanied by economic development and true peace, agree to devote their utmost efforts to the application of the following principles and mechanisms: [...b) Work is a right and a social duty, it confers dignity on those who perform it and must be provided under conditions which, including a system of fair wages, ensure life, health and a decent economic level for the worker and his family, both in their working years and in their old age, or when any circumstance deprives them of the possibility of working; c) Employers and workers, both rural and urban, have the right to associate freely for the defense and promotion of their interests, including the right of collective bargaining and the right to strike on the part of workers, the recognition of the legal personality of associations and the protection of their freedom and independence, all in accordance with the respective legislation [....].

¹²⁸ Article 46 of the OAS Charter. - The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of developing countries, especially in the field of labor and social security, so that the rights of workers are equally protected, and agree to make every effort to achieve this end.

¹²⁹ Article 34.g of the OAS Charter. - The member states agree that equality of opportunity, the elimination of extreme poverty, and the equitable distribution of wealth and income, as well as the full participation of their peoples in decisions relating to their own development, are, inter alia, basic objectives of integral development. To achieve them, they also agree to devote their utmost efforts to the attainment of the following basic goals: [...]

g) Fair wages, employment opportunities and acceptable working conditions for all.

to which the Charter refers, so that the Charter of the Organization cannot be interpreted and applied in the area of human rights without integrating the relevant norms of the Charter with the corresponding provisions of the Declaration, as is the practice followed by the organs of the OAS.¹³⁰ In this regard, Article XIV of the Declaration provides that "[e]very person has the right to work in decent conditions and to freely pursue his vocation [...]". Likewise, Article 29.d of the American Convention expressly provides that "[n]o provision of this Convention may be interpreted as meaning that: [...] d) exclude or limit the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may produce". Furthermore, the Court indicated that the international *corpus iuris*¹³¹ establishes the aforementioned right¹³².

88. The Court has specified that labor stability does not consist of an unrestricted permanence in the job, but of respecting this right, among other measures, granting protection to the worker so that, in case of dismissal or arbitrary separation, it is done under justified causes, which implies that the employer accredits sufficient reasons for it with the due guarantees, and against which the worker can appeal such decision before the internal authorities, who must verify that the imputed causes are not arbitrary or contrary to law¹³³. Likewise, the Court considers that the right to labor stability protects the worker from being deprived of his job by direct or indirect interference of the public authorities, since this affects the freedom of individuals to earn a living through the work of their choice, and their right to remain in employment, as long as there are no justified causes for its termination.

89. Regarding its content and for the purposes of the present case, it should be noted that the Committee on Economic, Social and Cultural Rights, in its *General Comment No. 18 on the right to work*, stated that States Parties have immediate obligations in relation to the right to work, such as the obligation to "ensure" that this right is exercised *without discrimination of any kind* "¹³⁴. In turn, the ILO Discrimination (Employment and Occupation) Convention¹³⁵, ratified by Chile in 1971, establishes in its Article 2, that each "Member for which this Convention is in force undertakes to formulate and carry out a national policy to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof". Similarly, this Convention provides that each Member for which this Convention is in force undertakes "to carry out such a policy in respect of employment under the direct control of a national authority.

90. In turn, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up states that "all Members have a commitment [...] to respect, promote and realize, in good faith and in accordance with the Constitution, the principles relating to the fundamental principles and rights at work, and to promote and realize, in good faith and in conformity with the Constitution, the principles set forth in the Declaration...".

¹³⁰ *Interpretation of the American Declaration of the Rights and Duties of Man in the framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 43, and *Case of Extra-workers of the Judiciary v. Guatemala. Preliminary Objections, Merits and Reparations*. Judgment of November 17, 2021. Series C No. 445, para. 102.

¹³¹ For example: Article 6 of the International Covenant on Economic, Social and Cultural Rights, Article 23 of the Universal Declaration of Human Rights, Articles 7 and 8 of the Social Charter of the Americas, Articles 6 and 7 of the Additional Protocol to the American Convention on Economic, Social and Cultural Rights, Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women, Article 32.1 of the Convention on the Rights of the Child, as well as Article 1 of the European Social Charter and Article 15 of the African Charter on Human and Peoples' Rights.

¹³² Cf. *Case of Lagos del Campo v. Peru*, *supra*, para. 145.

¹³³ Cf. *Case of Lagos del Campo v. Peru*, *supra*, para. 150, and *Case of Casa Nina v. Peru*, *supra*, para. 107.

¹³⁴ United Nations. Committee on Economic, Social and Cultural Rights, General Comment No. 18: *The right to work*, U.N. Doc. E/C.12/GC/18, 24 November 2005.

¹³⁵ ILO. C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

¹³⁶ ILO. C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Article 3 (b)

(d) the elimination of discrimination in respect of employment and occupation".¹³⁷ Likewise, the Court emphasizes that, as pointed out by the ILO in the 1999 Report of the Director General, "decent work" constitutes the convergence of four strategic objectives in labor matters: the promotion of fundamental labor rights; employment; social protection; and social dialogue.¹³⁸ The Court also notes that, among the Sustainable Development Goals, adopted by the United Nations General Assembly in the resolution "Transforming our World: Towards a New Paradigm for Social Justice", the ILO has adopted the following objectives: (a) the promotion of the right to work; (b) the elimination of discrimination in the field of employment and occupation; and (c) the elimination of discrimination in the field of employment and occupation. Furthermore, it is opportune to recall that, among the Sustainable Development Goals, adopted by the United Nations General Assembly in the resolution "Transforming our world: The 2030 Agenda for Sustainable Development", include promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (Goal 8), some of whose targets are to achieve, "[b]y 2030, full and productive employment and decent work for all women and men, including young people and persons with disabilities, and equal pay for work of equal value "¹³⁹.

B.2. About Decree 924

91. The Commission and the representatives alleged that Decree 924 is not in accordance with the content of the American Convention and that it violates the right to equality and the obligation to adopt provisions of domestic law (Articles 24 and 2 of the Convention) insofar as it does not establish safeguards to prevent the granting of the certificate of suitability to teach religion classes in a manner that is arbitrary or violates fundamental rights.

92. As mentioned *above*, Decree 924 regulates religion classes in public and private educational establishments and, in particular, establishes that the religion teacher, in order to teach religion, must "be in possession of a certificate of suitability granted by the corresponding religious authority, whose validity will last as long as the latter does not revoke it, and also accredit the studies carried out to serve in said position". In this regard, the Court notes that Sandra Pavez Pavez taught the Catholic religion class in a public educational establishment.

93. In accordance with the foregoing, it is therefore necessary to examine the aforementioned decree and determine whether it is contrary to the right to equality. To this end, the conventionality of said norm will be examined. First, it will be sought to define whether there is a difference in treatment that may be discriminatory between different religions. Secondly, we will seek to determine whether the power of religious communities to grant certificates of suitability, and more generally, to appoint religious teachers who teach in public schools, is in accordance with the American Convention. Third, it will be analyzed whether the Decree establishes any difference in treatment between persons based on the categories protected by Article 1(1) of the American Convention, which may be discriminatory. Finally, it will be analyzed whether Decree 924 establishes procedures to protect and safeguard the rights of persons against discriminatory or arbitrary acts contrary to the Convention.

94. In relation to the first point, this Court notes that the content of this norm does not establish differences in treatment between different religious dogmas or provisions for teaching about a particular religious creed. To that extent, the Decree treats all religions equally. Regarding the second point, it is important to recall that this Court has found that, according to Article 12 of the American Convention, as well as in the international *corpus iuris* (*supra* paras. 73 to 83), the right to freedom of religion is a right with an individual and a collective dimension, which includes several guarantees, one of which is that

¹³⁷ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.

¹³⁸ Cf. International Labor Conference, Report of the Director General: Decent Work. ILO, 1999.

¹³⁹United Nations. Resolution 70/01. Transforming our world: the 2030 agenda for Sustainable Development, adopted by the General Assembly on September 25, 2015, Goal 8.

consists of the right of parents and, where appropriate, guardians, to ensure that their children or wards receive a religious and moral education in accordance with their own convictions (Article 12.4).

95. With respect to the above, expert witness Paolo Carozza referred precisely to the various legal systems and legal traditions that offer very different constitutional models with respect to the relationship between religion and the State. In particular, he indicated that:

the various legal systems and legal traditions of the States in the Inter-American sphere offer very different constitutional models regarding the relationship between religion and the State [...].

This will necessarily have an impact on how the state would fulfill its obligations under Article 12.4; in some states, such as Peru or Chile, it might mean the active provision of religious instruction in public schools, while in others, such as Mexico or the United States, it would be constitutionally impermissible and the state's obligation should be understood as having a rather indirect and passive content. However, and despite reasonable differences on the question of how the state should fulfill its affirmative obligations under ACHR 12.4 [*sic*], it is clear that the American Convention (consistent with other international human rights norms) allows states to fulfill their obligations by supporting the direct teaching of religion in public schools¹⁴⁰.

96. The existence of this right derived from Article 12(4) was also recognized by expert witnesses Estefanía Esparza¹⁴¹ and Rodrigo Uprimny.¹⁴² On this point, expert witness Rodrigo Uprimny considered that the inclusion of optional religious classes in public schools could constitute a way of complying with the obligation contained in Article 12(4) of the American Convention. In this sense, he considered that the requirement of certification of suitability by the religious authorities and the possibility that the religious authorities are the ones who select the persons who teach this religious education, would not be practices that in themselves are contrary to the American Convention and the principle of equality and non-discrimination.

97. In accordance with what has been expressed, in relation to the second point under analysis, this Court understands that one of the guarantees of religious freedom, namely, the right of parents and, where appropriate, guardians, that their children or wards receive the religious and moral education that is in accordance with their own convictions, may imply, according to the regulatory design of each State, that the religious authorities have the possibility of selecting the teachers of religion who teach classes on their doctrine. This authorization could be materialized through certificates of suitability, as is the case in Chile. In this sense, the validity of Decree 924 is not *per se* contrary to the Convention, and may even constitute one of the various ways of incorporating into domestic law the provisions of Article 12.4 of the Convention.

98. Third, the Court finds that the content of Decree 924 does not establish differences in treatment between persons on the basis of their sexual orientation or on the basis of any of the other categories especially protected by Article 1(1) of the American Convention. On the other hand, this Court observes that it is neither alleged nor proven that this norm constitutes a form of indirect discrimination¹⁴³.

99. However, the Court notes that the aforementioned Decree does not expressly establish any means by which the decision to grant or not a certificate of suitability by the religious authorities may be subject to subsequent control by the administrative authorities or to suitable and effective remedies before the jurisdictional authorities to protect the rights of persons against discriminatory or arbitrary acts contrary to the Convention (*supra* para. 17).

100. With respect to the foregoing, it should be recalled that in a State governed by the rule of law there cannot be decisions that affect human rights that are outside the control of legitimacy by

¹⁴⁰ Declaration before a notary public of Paolo Carozza (evidence file, folio 873).

¹⁴¹ Statement by Estefanía Esparza during the public hearing.

¹⁴² Statement by Rodrigo Uprimny during the public hearing.

¹⁴³ Cf. *Case of Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, *supra*, para. 286, and *Case of Manuela et al. v. El Salvador*, *supra*, para. 251.

by state authorities. In this order of ideas, although there is no doubt that religious communities can designate those who will teach their own creed, when this takes place in public establishments, the State must enable access for persons whose rights may be harmed to an administrative or jurisdictional channel that allows for the review of these decisions in terms of authorization to teach. In these areas, these decisions must be subject to due state control and must respect the principles and guarantees established in domestic law and the American Convention.

101. In the present case, the Court noted that the decree makes an unconditional delegation of the power to grant certificates of suitability to persons to exercise religious teaching in public establishments without there being a clear way to challenge this type of decision (*supra* para. 98). In these situations, the State cannot relinquish its control function and has the obligation to establish clear and effective rules for the protection of the rights that may be affected by these delegated acts. In the chapter on guarantees and judicial protection, the Court will analyze the availability and effectiveness of remedies and judicial review in the case *sub judice* (*infra* paras. 157-159).

B.3. Alleged discrimination and alleged violation of Sandra Pavez Pavez's rights to privacy and autonomy, to access to public service and to work.

102. The allegations presented by the parties and the Commission address aspects related to the attribution of State responsibility, the autonomy of religious freedom, and the existence of a tension of rights (between religious freedom and the rights to privacy and autonomy, to equal access to public service and to work). In accordance with the foregoing, the Court will now address the allegations regarding the alleged discrimination suffered by Sandra Pavez Pavez and the alleged violations of the rights to personal liberty, to privacy, to equal access to public service, and to work. For such purposes, an analysis will be made in accordance with the following order: a) the attribution of the facts to the State in this case; b) the selection of religious teachers by the religious authorities and the autonomous nature of their decisions; c) the alleged restrictions to the rights to private life and autonomy, to equal access to public service and to work to the detriment of Sandra Pavez Pavez, and d) conclusion.

a) Attribution of the facts to the State in the present case

103. In the present case, the Commission and the representatives indicated that the facts of the case were attributable to the State in two different ways: 1) due to a breach of the duty to respect as a result of the revocation of the certificate of suitability by a third party empowered by the State to exercise public authority, and 2) due to a breach of the duty to guarantee that would arise from the lack of subsequent control of this revocation by the public authorities of Chile (the competent authorities in the field of education and those of the Judiciary).

104. With regard to the responsibility of the State for an international wrongful act, it should be recalled that, since its first judgment in a contentious case, the Inter-American Court has indicated that Article 1(1) is fundamental to determine whether a violation of the human rights recognized by the Convention can be attributed to a State Party. In effect, this article places upon the States Parties the fundamental duties of respect and guarantee, in such a way that any impairment of the human rights recognized in the Convention that can be attributed, according to the rules of international law, to the action or omission of any public authority, constitutes an act attributable to the State that engages its responsibility under the terms of the Convention itself¹⁴⁴.

¹⁴⁴ *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 164, and *Case of Isaza Uribe et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 20, 2018. Series C No. 363, footnote 63.

105. Thus, this Court has indicated that the international responsibility of the State may be based on acts or omissions of any power or organ of the State that violate the American Convention, and is generated immediately with the international wrong attributed¹⁴⁵. In turn, this Court has indicated that an internationally wrongful act exists when conduct consisting of an action or omission: a) is attributable to the State under international law, and b) constitutes a breach of an international obligation of the State¹⁴⁶.

106. Regarding the content of the obligations to respect under Article 1(1) of the Convention, this Court indicated that "under Article 1(1), any form of exercise of public authority that violates the rights recognized by the Convention is unlawful. In this sense, in any circumstance in which an organ or official of the State or of an institution of a public nature unduly injures one of such rights, there is a failure to comply with the duty of respect enshrined in that article "¹⁴⁷. This conclusion is independent of whether the organ or official has acted in contravention of provisions of domestic law or exceeded the limits of its own competence, since it is a principle of international law that the State is responsible for the acts of its agents carried out in their official capacity and for their omissions even if they act outside the limits of their competence or in violation of domestic law¹⁴⁸. Similarly, according to the articles on State responsibility, conduct of a person or entity exercising elements of public authority is attributable to the State, provided that, in the case in question, the person or entity is acting in that capacity¹⁴⁹.

107. In the same vein, this Court has indicated that, as a general rule, and in accordance with Article 7 of the International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts, any conduct, including *ultra vires* acts, of an organ of the State or of a person or entity empowered to exercise elements of governmental authority shall be considered an act of the State. This rule has only one exception, and that is when that organ or person is not acting in that capacity, i.e., when the person acts within its capacity as a private entity¹⁵⁰. Likewise, the most widely accepted criterion in international law to determine to what extent an act of an organ of the State or a person or entity empowered to exercise attributes of public power can be attributed to the State, requires that it be established whether the said act was executed as an exercise of authority or as an apparent exercise of State authority¹⁵¹.

¹⁴⁵ Cf. *Case of González Medina and family members v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 27, 2012, Series C No. 240, para. 133; *Case of the Pueblo Bello Massacre v. Colombia, Judgment of January 31, 2006*, Series C No. 140, para. 112, and *Case of Bedoya Lima et al. v. Colombia. Merits, Reparations and Costs*. Judgment of August 26, 2021. Series C No. 431, para. 88.

¹⁴⁶ *Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 134, and *Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 27, 2012. Series C No. 256, footnote 51. Similarly, United Nations, General Assembly, Responsibility of States for internationally wrongful acts, A/RES/56/83, January 28, 2002, Article 2.

¹⁴⁷ *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 169, and *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 108.

¹⁴⁸ *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 170, and *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 329, para. 222.

¹⁴⁹ *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 371, footnote 237, and *Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 142. Article 7 of the ILC Articles on State Responsibility. See also, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986.

¹⁵⁰ Cf. *Case of Villamizar Durán et al. v. Colombia, supra*, para. 139, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico, supra*, para. 165.

¹⁵¹ *Case of Villamizar Durán et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 140 and Articles on Responsibility of States for internationally wrongful acts, commentary to Article 7, UN Doc. A/56/10 (2001), para. 8.

108. Similarly, it should be reiterated that a violation of the human rights protected by the Convention may engage the international responsibility of a State party for a breach of the duty of respect contained in Article 1(1) of the Convention either because the violation is perpetrated by its own agents or -although in principle they are not directly attributable to the State because they are committed by a private individual- when the unlawful act was committed with the participation, support or tolerance of State agents.

109. Regarding the contents of the obligation to guarantee under Article 1(1) of the Convention, the Court pointed out that it implies the duty of the States Parties to organize the entire governmental apparatus and, in general, all the structures through which the exercise of public power is manifested, in such a way that they are capable of legally ensuring the free and full exercise of human rights. As a consequence of this obligation, States must prevent any violation of the rights recognized by the Convention and, in addition, seek the reestablishment, if possible, of the right violated and, where appropriate, reparation for the damage caused by the violation of human rights¹⁵².

110. These obligations are also applicable to possible acts of non-State actors. Specifically, the Court has indicated that the international responsibility of the State may arise from the attribution to it of acts that violate human rights committed by third parties or individuals¹⁵³. The *erga omnes* obligations of States to respect and guarantee the norms of protection, and to ensure the effectiveness of rights, project their effects beyond the relationship between their agents and the persons subject to their jurisdiction, since they are manifested in the positive obligation of the State to adopt the necessary measures to ensure the effective protection of human rights in inter-individual relations¹⁵⁴.

111. In sum, and in accordance with the foregoing, in order to establish the international responsibility of the State, what is decisive is to determine whether a given violation of the human rights recognized by the Convention has taken place with the support or tolerance of the public authority or whether the latter has acted in such a way that the transgression has been carried out in the absence of any prevention. In short, the question is to determine whether the violation of human rights is the result of a State's failure to comply with its duty to respect and guarantee those rights, as imposed by Article 1(1) of the Convention¹⁵⁵.

112. In the present case, the State of Chile considered that the act of the Vicariate by which the certificate of suitability of Sandra Pavez Pavez was revoked was not attributable to the State insofar as it did not delegate the certification of the suitability of teachers of confessional religion. In effect, he pointed out that there is no form of attribution of public power because the religious suitability of teachers of confessional religion is not a mandate of the State and that, on the contrary, it is a power of the religious communities or their authorities.

113. In this regard, it should be recalled, first of all, that Article 12(4) of the American Convention does not provide that religious authorities have the exclusive and natural power to select teachers of religion or to establish their suitability. The aforementioned article only

¹⁵² *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 166, *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of February 5, 2018. Series C No. 346, para. 121, and *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of September 26, 2018. Series C No. 362, para. 147.

¹⁵³ *Cf. Case of the Pueblo Bello Massacre.* Judgment of January 31, 2006. Series C No. 140, para. 113, and *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2013. Series C No. 270, para. 224.

¹⁵⁴ *Cf. Case of the "Mapiripán Massacre".* Judgment of September 15, 2005. Series C No. 134, para. 111, and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 6, 2019. Series C No. 375, footnote 148.

¹⁵⁵ *Cf. Case of Velásquez Rodríguez v. Honduras, Merits,* para. 173, and *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of September 26, 2018. Series C No. 362, para. 198.

mentions parents and, where appropriate, guardians, who have the right to have their children or wards receive the religious and moral education that is in accordance with their own convictions.

114. In addition, as mentioned in the previous section, the possibility that the religious authorities may select the teachers of religion who teach classes on their own doctrine is one of the ways in which the right contained in Article 12.4 for parents and, where appropriate, guardians, to have their children or wards receive the religious and moral education that is in accordance with their own convictions, can be materialized. However, this is not the only way and, depending on the internal regulations of each State, this right can be implemented in various ways¹⁵⁶.

115. In accordance with the above, the possibility that religious institutions have to determine the suitability of teachers of religion, far from constituting an inherent faculty contemplated in international law, depends on the internal design established by each State. Thus, in accordance with Chilean internal regulations, and in particular Decree 924, the religious authorities of Chile have the possibility of issuing certificates of suitability that qualify religious teachers who will teach classes on their doctrine. However, as expert witness Carozza points out, this is a consequence of the constitutional model of that country, and not a power inherent in or derived from freedom of religion. Accordingly, it is the Chilean internal norms that delegated to third parties, in this case to the religious authorities, the power to issue certificates of suitability. Moreover, as indicated, the certificate of suitability is required to teach religion in public educational establishments and, therefore, to be a teacher in a public educational establishment.

116. Consequently, in accordance with the foregoing, this Court understands that Decree 924 conferred attributes of public power to the religious authorities, and as such, when issuing the certificate of suitability to religious teachers, they exercise an act that is directly attributable to the State.

117. With regard to the attribution of liability for breach of the duty of guarantee, this Court understands that the attribution of liability to the State may also be configured by the actions of the judiciary in charge of hearing appeals related to the revocation of the certificate of suitability (*infra* chapter VII).

b) On the selection of teachers of religion by religious authorities and the autonomous nature of their decisions

118. According to the State's argument, the certificate of suitability required by Decree 924 to teach the subject of religion constitutes a guarantee of the autonomy of religious entities to develop their fundamental activities, including the selection of their teachers. It added that the fact of requiring this particular qualification for the performance of the specific function of representing the religious community in teaching, guarantees that it will be faithfully taught by who, in fact, represents that community according to its criteria. Likewise, the State affirmed that it is compelled "by respect for the autonomy of religious entities to recognize and not question the decision adopted, when faced with the question of whether the teacher is religiously suitable, since the contrary would necessarily imply pronouncing on religious matters, infringing on religious autonomy, in a matter that is at the core of said freedom -the

¹⁵⁶ On this point, it should be recalled that Mr. Paolo Carozza, expert witness proposed by the State, indicated that with respect to the right to receive education in accordance with the convictions of the parents that "the various legal systems and legal traditions of the States in the Inter-American sphere offer very different constitutional models regarding the relationship between religion and the State [...] which will necessarily have an impact on how the State would fulfill its obligations contained in Article 12.4 [...] in some States, such as Peru or Chile, this could mean the active provision of religious instruction in public schools, while in others, such as Mexico or the United States, this would be constitutionally impermissible and the state's obligation should be understood as having a rather indirect and passive content. However, and despite reasonable differences on the question of how the State should comply with affirmative obligations under ACHR 12.4". Declaration before a notary public of Paolo Carozza (evidence file, folio 873).

possibility of designating those who teach the doctrine - and would flagrantly violate the principle of separation of church and state".

119. Regarding the State's allegation related to the autonomy of the decisions made by the religious authorities when selecting the persons who are suitable to teach religion classes, this Court first notes that in the present case there is no discussion about the fact that, in accordance with the right to freedom of conscience and religion, religious communities must be free from any arbitrary interference by the State in the areas related to religious beliefs and the organizational life of the community and, in particular, in matters concerning its internal organization. Notwithstanding the foregoing, for this Court, the central point of the discussion lies in determining whether the selection by a religious authority or community of the persons in charge of teaching classes of a religious creed in a public educational establishment is included within the sphere of autonomy inherent to the right to religious freedom.

120. On this point, expert witness Rodrigo Uprimny stated, during the public hearing in this case, that "the State cannot interfere in the internal organization of the churches, nor determine who their faithful are, nor their authorities or religious ministers; therefore, in accordance with respect for the organizational freedom of religions, the State cannot invalidate the appointments of these religious ministers "¹⁵⁷. ¹⁵⁷ However, he added that "the counterpart of this respect for the autonomy of religions is the autonomy of the public sphere of the State, which must be strictly governed by human rights obligations. Accordingly, neither can the State invoke religious beliefs, even if they are in the majority, to justify discriminatory decisions on the basis of any of the criteria prohibited by international human rights law, including sexual orientation".

121. With respect to this point, the expert added on the figure of the "ministerial exception " ¹⁵⁹ that the same:

it operates in the ministerial [...] in seeing who are the members of that church, who are its ministers, what are its hierarchies, [...] but when this ministerial exception is projected in other spheres it weakens [...] this idea that education teachers are covered by the exception is far from generating consensus [...], one thing is the catechists in the case of the Catholic religion [...] but it is not when it is applied in the sphere of education [...].one thing is the catechists in the case of the Catholic religion, I believe that there one can suddenly apply the ministerial exception [...] but it is not when it is applied in the field of education [...] the principles of education must be respected in accordance with the human rights treaties and the universal declaration, to train children in the respect for human rights, fundamental freedoms and tolerance.

122. In relation to the foregoing, it should be recalled that Article 26.2 of the Universal Declaration of Human Rights stipulates, similarly to the American Declaration, that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance, and friendship among all nations, racial or religious groups. Similarly, Article 13.1 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to education, which "shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace".

123. Likewise, this Court has indicated that "among the special measures for the protection of children and among the rights recognized to them in Article 19 of the American Convention, the following is included

¹⁵⁷ Statement by Rodrigo Uprimny during the public hearing.

¹⁵⁸ Statement by Rodrigo Uprimny during the public hearing.

¹⁵⁹ This figure of U.S. Supreme Court jurisprudence prohibits the application of anti-discrimination laws to the employment relationships of religious institutions with their "ministers". Cf. U.S. Supreme Court, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*. Case cited by the State in its final written arguments, and by expert witness Paolo Carozza (evidence file, folios 885 and 886).

This Court has explained that this right, with respect to girls and boys, arises from the aforementioned provision interpreted in accordance with the Convention on the Rights of the Child, Article 26 of the American Convention and the Protocol of San Salvador¹⁶¹.

124. In accordance with the foregoing, this Court has affirmed that an education that is provided in violation of human rights does not allow the fulfillment of the aforementioned goals, is directly contrary to them and, therefore, violates the right to education. States must adopt adequate actions to prevent human rights violations in the course of the educational process of girls and boys¹⁶². In fulfilling these duties, States must take into consideration the seriousness and specificities of gender-based violence, sexual violence and violence against women, all of which are forms of discrimination. Moreover, as indicated by the Committee on ESC rights, education must be "accessible" to all persons, "especially to the most vulnerable groups in law and in fact, without discrimination on any of the prohibited grounds. The Committee also emphasized that the prohibition of discrimination in education "applies fully and immediately to all aspects of education and covers all internationally rejected grounds of discrimination".

125. For this Court, these principles are in accordance with what is established in the recitals of Decree 924, in which mention is made of education, which "has as one of its fundamental objectives to achieve the development of man (*sic*) in fullness" (*supra* para. 17).

126. The facts of the present case refer to the revocation of a certificate of suitability by the Vicariate for Education of San Bernardo to a Catholic religion teacher to teach classes on that religious creed. The Catholic religion classes were held at the "Cardenal Antonio Samoré" School, which is a public education establishment, in compliance with the provisions of Decree 924 which "regulates religion classes in educational establishments". Said Decree refers in its recitals to the "moral and spiritual values proper to our western humanist cultural tradition" and indicates that "education has as one of its fundamental objectives to achieve the development of man in fullness". Similarly, Decree 924 stipulates in its Article 1 that the "curricula of the different courses of education

¹⁶⁰ *Juridical Condition and Human Rights of the Child. Advisory Opinion OC 17/02*, para. 84, and *Case of Guzmán Albarracín et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of June 24, 2020. Series C No. 405, para. 117.

¹⁶¹ *Case of Guzmán Albarracín et al. v. Ecuador*, *supra*, para. 117. Also, *Case of the Yean and Bosico girls v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, para. 185. Although in that case this Court referred to "primary" education, it understands that what was affirmed is related to the right to education in its various aspects. On the other hand, with respect to the reference to Article 26 of the American Convention, the Court has pointed out that Article 49 of the Charter of the Organization of American States, to whose provisions Article 26 refers, contemplates the right to education in its Article 49 (see *Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No. 298, para. 234 and footnote 264).

¹⁶² *Case of Garzón Guzmán et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of September 1, 2021. Series C No. 434, para. 119. The Committee on the Rights of the Child has indicated that, without prejudice to other more specific actions, prevention measures to be adopted by States include those aimed at "[c]ombating attitudes that perpetuate tolerance and acceptance of violence in all its forms, including gender-based violence, [...] and other power imbalances". Such measures "should help the child to become life-skilled, acquire skills and participate in society, and enhance the capacities of caregivers and professionals working with children" (Committee on the Rights of the Child, General Comment No. 13, paras. 47 and 44, respectively). The United Nations Educational, Scientific and Cultural Organization (UNESCO) and UN Women have referred to relevant "strategic areas" to achieve a "forceful response to gender-based violence in the school environment", without prejudice to the need to analyze "each context". Among them, they highlighted the relevance and importance of the existence of curricula to prevent it and to promote gender equality, as well as "training for educational personnel to provide tools to prevent and respond to gender-based violence in the school environment" (UNESCO and UN Women, *International Guidelines: Gender-based violence in the school environment*, 2019, pp. 14 and 15).

¹⁶³ Cf. *Case of Garzón Guzmán et al. v. Ecuador*, *supra*, para. 119. Also, Committee on Economic, Social and Cultural Rights, General Comment No. 13, *The Right to Education (Article 13 of the International Covenant on Economic, Social and Cultural Rights)*. December 1999, Doc. E/C.12/1999/108, paras. 6 and 31. The Committee clarified that the obligation of non-discrimination "is not conditional either on progressive realization or on the availability of resources".

Article 2 states that religion classes "shall be taught during the official weekly schedule of the educational establishment". In addition, Article 3 of this norm clarifies that religion classes must be offered in "all educational establishments in the country, as an option for the student and the family" (*supra* para. 17).

127. In accordance with the foregoing, for this Court there is no doubt that the subject of religion class established in Decree 924 was intended to realize the right to education of students in general, and that, although it is true that this subject is optional, it is integrated into the educational program of boys and girls.

128. This Court understands with respect to the so-called "ministerial exception" that it operates in acts related to the functioning of the religious community, such as the determination of who are the members of that church, who are its ministers, what are its hierarchies. However, with respect to such functioning, when projected in other areas, this ministerial exception is weakened and less robust, particularly in the educational field in public establishments where the principles and values of tolerance, full respect for human rights, fundamental freedoms, and non-discrimination are of imperative compliance by the State.

129. For this Court, although the appointment of teachers of a particular religious creed by the religious communities concerned in accordance with the provisions of Decree 924 could include a certain margin of autonomy, which would be consistent with the right to religious freedom (*supra* paras. 73 to 83), it cannot be absolute. This is because Catholic religious classes as part of a public education plan, in public educational establishments, financed by public funds, are not within the spheres of religious freedom that should be free from any interference by the State, since they are not clearly related to religious beliefs or the organizational life of the communities¹⁶⁴.

130. Accordingly, the Chilean religious authorities have broad autonomy when granting a certificate of suitability to teach religion classes; however, since it is a subject that is part of the education plans for girls and boys, these powers, which derive directly from the right to religious freedom, must be adapted to the other rights and obligations in force in terms of equality and non-discrimination. This competence of the religious authorities is also predicated to revoke the certificate of suitability, as long as the rights and obligations that are of imperative compliance by the State in the field of public education are respected.

131. Taking into account the *above* and having defined that the ministerial exception and the discretionary nature of the decisions of religious communities do not apply in the area of education in public establishments, the Court now analyzes whether in the specific case the rights of Sandra Pavez Pavez were restricted, and whether these restrictions were proportional in light of the rights that are in tension, such as religious freedom.

c) *The alleged restrictions to Sandra Pavez Pavez's rights to personal freedom, to privacy, to equal access to public service and to work.*

132. In the present case, the Commission and the representatives alleged that the revocation of Sandra Pavez Pavez's certificate of eligibility had the direct consequence of affecting her rights to

¹⁶⁴ In this regard, it should be recalled that the European Court of Human Rights indicated in the case of *Fernández Martínez v. Spain* that "it is not sufficient for a religious community to allege the existence of an actual or potential infringement of its autonomy in order to make an interference compatible with the right to privacy. It must indeed demonstrate, in the light of the circumstances of the specific case, that the alleged risk is probable and serious, that the disputed interference with the right to respect for private life does not go beyond what is necessary to avert that risk". ECtHR, *Fernandez Martinez v. Spain* [GS], No. 56030/07. Judgment of 12 June 2014, para. 132.

private life and autonomy, to have access to a public function under conditions of equality and to work (*supra* para. 39).

133. With regard to the right to privacy, recognized by Article 11(2) of the Convention, it was mentioned that the protection of this right is not limited to the right to privacy, as it encompasses a series of factors related to the dignity of the individual, including, for example, the capacity to develop one's own personality, aspirations, determine one's identity and define one's personal relationships. In turn, it was indicated that a central aspect of the recognition of dignity is the possibility of every human being to self-determine and freely choose the options and circumstances that give meaning to his existence, according to his own options and convictions. This right has been recognized by this Court in a broad interpretation of Article 7(1), and in close relation to Article 11, which includes a concept of freedom in a broad sense (*supra* para. 59).

134. For this Court, the rights to personal liberty and privacy of Sandra Pavez Pavez were affected in different ways. First, because the revocation of the certificate of suitability was due precisely to Sandra Pavez Pavez Pavez's sexual orientation (*supra* para. 118). At this point, it should be recalled that sexual orientation and sexual identity are linked to the concept of freedom and the possibility of every human being to self-determine and freely choose the options and circumstances that give meaning to his or her existence, according to his or her own convictions, as well as to the right to protection of privacy (*supra* paras. 58 and 63). The intimate sphere of Sandra Pavez Pavez related to her sexual orientation was exposed in the same resolution of revocation of the certificate of suitability by the Vicariate of San Bernardo (*supra* para. 24).

135. Secondly, her sex life was also the object of interference by the Vicariate, which allegedly urged her to end her homosexual life and made her continued employment as a Catholic religion teacher conditional upon her undergoing medical or psychiatric therapy (*supra* para. 24), conduct that is totally unacceptable from the perspective of a state governed by the rule of law, where human rights must be respected.

136. Regarding the rights to equal access to public service and to work, this Court finds the following: (a) Sandra Pavez Pavez held a teaching position in a public educational establishment, and was remunerated with public funds; (b) the teaching position she held was in a tenured capacity; (c) after the revocation of the certificate of suitability, her position was reassigned in accordance with the provisions of her employment contract and she was appointed acting Inspector General; (d) she has been prevented from teaching Catholic religion classes as a consequence of the revocation of the certificate of suitability; and (e) in 2011 she was tenured in the position of Inspector General (*supra* para. 28).

137. The State disputes her status as a public official due to the fact that the hiring was governed by a private law contract and not a public law contract. However, for this Court, what is relevant is that Sandra Pavez Pavez held a position as a public education teacher, in a public education establishment, and remunerated with public funds. In this sense, the nature of the functions performed by Sandra Pavez Pavez were those of a public official, whose access and permanence ultimately depended on the decision of a state institution, and therefore, she enjoyed the protections established in Article 23(1)(c) of the American Convention, which contains the right to access to public service under conditions of equality.

138. This Court finds that, after the revocation of her certificate of suitability, Sandra Pavez Pavez continued to exercise a public function and that, *a priori*, she did not suffer any deterioration in her employment contract, since her reassignment of functions took the form of a promotion, with higher remuneration and more responsibilities. The change of contract from incumbent to interim, lasted for four years and only referred to the position of Inspector General. According to what was alleged by the State, without being contested by the Commission or the representatives, this was the common regime for the position of Inspector General, for all teachers, and not only for her. Likewise, according to what was reported, she was elevated to the position from the same endowment.

The teacher and commissioned as general inspector, being first and foremost a teacher in her capacity as head of the establishment.

139. In accordance with the foregoing, this Court finds that Sandra Pavez Pavez's right to equal access to public service was not affected, since she did not suffer a dismissal, and that her functional reassignment was made in accordance with the provisions of her employment contract, which did not specify that she had been hired as a Catholic religion teacher, but as a teacher.

140. Notwithstanding the foregoing, and in accordance with the content of the right to work developed above (*supra* paras. 88, 89 and 90), **this Court considers that this right was compromised to the extent that the reassignment of functions suffered by Sandra Pavez Pavez undermined her teaching vocation and constituted a form of demotion. The fact that her employment contract did not specify that she was a teacher of Catholic religion, that it provided for the possibility that she could be reassigned in her functions, and that she could have continued teaching classes of other religions if she had certificates of suitability from religious communities corresponding to those faiths, does not change that conclusion insofar as the new functions that were assigned to her were the result of different treatment based on her sexual orientation and not on objective causes of the need of the service¹⁶⁵. Thus, although she continued to perform activities related to education, she could not continue to do so as a teacher of Catholic religion because she was subjected to discriminatory treatment, and, in this sense, her right to job stability was affected and, therefore, her right to work.**

141. Once it has been determined that there were restrictions to the rights to personal liberty, to privacy and to work, contained in Articles 7(1), 11(2) and 26 of the American Convention, it is necessary to analyze whether they were the result of discriminatory treatment. This judgment will be determined based on the differentiating criterion, so it is appropriate to analyze whether it is proportional in the strict sense.

142. In this regard, it is recalled, as noted *above*, that the criteria of analysis to determine whether there was a violation of the principle of equality and non-discrimination in a particular case may have different intensity, depending on the grounds under which there is a difference in treatment. In this sense, the Court considers that, when it is a matter of a measure establishing differential treatment involving one of these categories protected by Article 1(1) of the Convention, **the Court must apply a strict scrutiny that incorporates particularly demanding elements in the analysis, i.e., that the different treatment must constitute a necessary measure to achieve a conventionally imperative objective. The means chosen must not only be adequate and effectively conducive, but also necessary, i.e., that it cannot be replaced by a less harmful alternative means. In addition, the application of a strict proportionality test is included, according to which the benefits of adopting the measure in question must clearly outweigh the restrictions it imposes on the conventional principles affected by it.**

143. In this case, there is no doubt or controversy about the fact that sexual orientation is a category protected by Article 1(1) of the Convention.

144. This Court considers that the costs of the restrictive measure to the detriment of Sandra Pavez Pavez do not outweigh the advantages obtained in terms of the protection of religious freedom and the protection of parents' right to choose their children's education. Indeed, at no time were the effects that this measure would have on Sandra Pavez Pavez's personal life or on her teaching vocation taken into account. Neither is it clear whether there is an actual or potential violation of the autonomy of the religious community, nor of the right to religion, nor of the right of mothers and fathers to choose their children's education.

¹⁶⁵ During the public hearing, Sandra Pavez Pavez stated that "she was not doing what [she] liked, [...], it was not what [her] being felt like, it was like doing something because you have to do it and because you have to earn money and because you had to survive, but it was not [her] inner essence. (She) felt (she) passed to totally (her) dignity and as a human being".

or guardians that their children or wards receive the religious education that is in accordance with their creeds. On the contrary, the alleged victim stated, without being contested by the State, that she received support in the form of 700 signatures "from students and their parents, who were even parents who spoke to the Bishop on my behalf so that I could continue teaching and from all the teachers who were there at the time this happened in 2007"¹⁶⁶. Finally, with regard to the State's argument related to the congruence between the content of the religious classes and the coherence of life with the religious creed of the person who teaches those classes, this Court understands that it cannot operate in such a way as to justify or legitimize different treatment that is discriminatory based on the categories protected by Article 1(1) of the Convention, in the field of public education.

145. For the foregoing reasons, this Court considers that the decision of the authorities of the "Cardenal Antonio Samoré" (public) School by which Sandra Pavez Pavez was removed from her position and assigned functions other than those of a Catholic religion teacher, which was a consequence of the revocation of the certificate of suitability by the Vicariate for Education of San Bernardo, did not comply with the strict test of equality and violated the principle of equality and non-discrimination to her detriment.

d) Conclusion

146. In accordance with what has been developed, this Court finds that the State is responsible for a violation of the rights to equality and non-discrimination, to personal liberty, to privacy and to work, contained in Articles 1(1) and 24, 7(1), 11(2) and 26 of the American Convention, in relation to Article 1(1).1 of the same instrument, to the detriment of Sandra Pavez Pavez, due to the discriminatory treatment she suffered when she was removed from her position as a Catholic religion teacher, and when she was assigned duties different from those she had, after her certificate of suitability to teach Catholic religion classes was revoked by the Vicariate of San Bernardo. On the other hand, the State is not responsible for a violation of the right of access to public service under conditions of equality, contained in Article 23(1)(c) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Sandra Pavez Pavez.

VI.2

THE RIGHTS TO JUDICIAL GUARANTEES¹⁶⁷ AND TO JUDICIAL PROTECTION¹⁶⁸ IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE AND TO ADOPT DOMESTIC LAW PROVISIONS

A. Arguments of the parties and the Commission

147. The **Commission** and the **representatives** alleged that the Court of Appeals of San Miguel did not analyze whether the revocation of the certificate of suitability violated her constitutional and conventional rights, but limited itself to establishing the legality of the religious authority's action, due to the validity of Decree 924. Furthermore, they indicated that despite the fact that, in her appeal, Sandra Pavez Pavez made explicit reference to the need to evaluate the arbitrariness of the measure in light of her rights, the Supreme Court fully validated the decision of the Court of Appeals of San Miguel without any motivation and without responding to the alleged victim's argument that sought a ruling beyond the legality of the revocation, and to determine whether the revocation had violated her human rights.

¹⁶⁶ Cf. Statement of Sandra Pavez Pavez during the public hearing of this case and Letter of Support from teaching colleagues of the "Cardenal Antonio Samoré" School (evidence file, folios 297 to 301).

¹⁶⁷ Article 8(1) of the American Convention.

¹⁶⁸ Article 25 of the American Convention.

148. The Commission also recalled that Sandra Pavez Pavez went to the Chilean courts because she considered that the revocation of her certification was arbitrary and illegal, that it seriously violated constitutional guarantees since she was prevented from exercising her rights, and that it was discriminatory. In this sense, he concluded that, in addition to the breach of the duty to guarantee the violation of the rights analyzed up to this point, the recourse for protection violated the rights to have duly motivated decisions and to judicial protection.

149. The **State** argued that it should not be concluded that Professor Pavez Pavez's rights to judicial protection were infringed by the State solely because its courts rejected the action filed. He argued that the rejection of the action was due in significant part to the incorrect use of the procedural tool by the representatives of the alleged victim. He recalled that the action was invoked against the then Vicar for Education of the Bishopric of San Bernardo, and in the framework of that action, only the facts related to the revocation of the certificate of suitability granted by the Vicarage were invoked. The State asserted that Sandra Pavez Pavez never resorted to a judicial mechanism aimed at questioning the actions of the public authorities or, failing that, of the authorities of the school establishment. It indicated, in particular, that the allegations that are the subject of analysis before this Court were never submitted to controversy through the domestic mechanisms contemplated in Chile: (i) the alleged unconstitutionality of Supreme Decree No. 924 of 1983 and (ii) the alleged violation of labor rights or access to public service (by actions taken by national authorities or members of the educational establishment, among others)¹⁶⁹. In this sense, it considered that it is not appropriate to demand international responsibility from the State when the domestic jurisdiction has not been given the opportunity to resolve a dispute or remedy an alleged human rights violation.

150. The State also argued that it is not internationally responsible for violating the right to due motivation. In this regard, it considered that the Court of Appeals of San Miguel guaranteed the right to due motivation insofar as it presented different elements that show the incorporation and materialization of this right. It considered, therefore, that the decision was related to the nature of the appeal and the nature of the controversies raised. Regarding the decision of the Supreme Court of Chile, he considered that the different considerations put forward by the Court of Appeals of San Miguel were accurately taken up again and that the expression "seen, the appealed judgment is upheld" is a formula that seeks to signify that the Court, once the background of the case has been assessed, assumes as its own the material considerations made by the court of first instance. He recalled that the basis for this procedure is expressly contemplated in Chilean law and that this rule of the Code of Civil Procedure has not been challenged on the grounds that it is considered unconstitutional or contrary to judicial guarantees or judicial protection¹⁷⁰.

B. Considerations of the Court

151. The Commission and the representatives alleged that the State had violated the rights to judicial guarantees and to judicial protection for two reasons: due to the lack of effectiveness of the appeal filed by Sandra Pavez Pavez and due to a failure to state the reasons for the decision.

152. This Court has reiterated that the judicial guarantees included in Article 8(1) of the Convention are intimately linked to due process of law, which "encompasses the conditions that

¹⁶⁹ He added that the alleged victim did not appeal the legality of the Decree before the Office of the Comptroller General of the Republic, nor did he file a labor lawsuit, nor did he file an appeal for protection against the corporation, nor did he request a review of the legality of the actions of the governing authorities of the educational establishment before the Office of the Comptroller General of the Republic, nor did he file an action for annulment of public law.

¹⁷⁰ In this sense, it considered that if it were decided to accept the criterion expressed by the Commission, the Chilean Supreme Court would be forced to change its practices and pronounce, in the face of any claim of alleged infringement of rights, through long, complex and detailed rulings (as a mere formality) and despite the fact that the lower courts had correctly processed the legal controversies subject to their knowledge, and without the Supreme Court having anything new to contribute, as in fact occurred in the present case.

must be complied with to ensure the adequate defense of those whose rights or obligations are under judicial consideration". Specifically in relation to the duty to give reasons, this Court understood that it corresponds to the externalization of the reasoned justification that allows reaching a conclusion¹⁷¹. The duty to give reasons for decisions is a guarantee linked to the proper administration of justice, which guarantees citizens the right to be judged by the reasons given by law, while providing credibility to judicial decisions in a democratic society¹⁷². By virtue of this, the decisions adopted by the internal organs of the States that may affect human rights must be motivated, otherwise they would be arbitrary decisions¹⁷³.

153. In relation to the right to have duly motivated decisions, the Court has repeatedly stated that the motivation "is the externalization of the reasoned justification that allows reaching a conclusion" and that implies a rational exposition of the reasons that lead the judge to make a decision. The duty to give reasons for decisions is a guarantee arising from Article 8(1) of the Convention, linked to the proper administration of justice, since it protects the right of citizens to be judged by the reasons that the law provides and gives credibility to legal decisions in a democratic society¹⁷⁴.

154. Thus, the reasoning demonstrates to the parties that they have been heard and, in those cases where decisions are subject to appeal, it provides the possibility of criticizing the decision and obtaining a new review before higher instances. Accordingly, the reasoning of a decision and of certain administrative acts must make it possible to know what were the facts, motives and norms on which the authority based its decision, in order to rule out any indication of arbitrariness¹⁷⁵.

155. In relation to Article 25(1) of the Convention, the Court has indicated that this norm contemplates the obligation to guarantee, to all persons under its jurisdiction, an effective judicial recourse against acts that violate their fundamental rights¹⁷⁶. Such effectiveness presupposes that, in addition to the formal existence of the remedies, they provide results or responses to the violations of rights contemplated in the Convention, in the Constitution or in the laws. The Court has established that for an effective remedy to exist, it is not enough that it be formally established. This implies that the remedy must be suitable for combating the violation and that its application by the competent authority must be effective. This does not imply that the effectiveness of a remedy is evaluated in terms of whether it produces a favorable result for the plaintiff¹⁷⁷.

156. On the other hand, this Court has consistently pointed out that the different State authorities have the obligation to exercise *ex officio* a control of conventionality between domestic norms and practices and the American Convention, within the framework of their respective competences and the corresponding procedural regulations. In this task, the internal authorities must take into account

¹⁷¹ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 107, and *Case of Manuela et al. v. El Salvador, supra*, para. 148.

¹⁷² Cf. *Case of Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo") v. Venezuela, supra*, para. 77, and *Case of Hernández v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2019. Series C No. 395, para. 122.

¹⁷³ Cf. *Case of Yatama v. Nicaragua, supra*, para. 152, and *Case of Casa Nina v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2020. Series C No. 419, para. 89.

¹⁷⁴ Cf. *Case of Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo") v. Venezuela, supra*, para. 77, and *Case of Cuya Lavy et al. v. Peru, supra*, para. 136.

¹⁷⁵ *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151, para. 122, and *Case of Manuela et al. v. El Salvador, supra*, para. 150.

¹⁷⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, para. 91, and *Case of Extra-workers of the Judiciary v. Guatemala, supra*, para. 77.

¹⁷⁷ Judicial guarantees in states of emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights). *Advisory*

Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24, Case of Velásquez Rodríguez v. Honduras. Merits, para. 67, and Case of Cordero Bernal v. Peru. Preliminary Objection and Merits. Judgment of February 16, 2021. Series C No. 421, para. 48.

The Court's interpretation of the treaty, as well as that of the Inter-American Court, the ultimate interpreter of the Convention, is also taken into account¹⁷⁸.

157. With specific reference to the effectiveness of the remedy, this Court has held that the meaning of the protection of the article is the real possibility of access to a judicial remedy so that a competent authority capable of issuing a binding decision may determine whether or not there has been a violation of a right that the person claiming the right believes he or she has. Likewise, if a violation is found, the remedy must be useful to restore to the interested party the enjoyment of his right and repair it¹⁷⁹. Remedies that, due to the general conditions of the country or even the particular circumstances of a given case, are illusory¹⁸⁰ cannot be considered effective. This may occur, for example, when their uselessness has been demonstrated by practice, because the means to enforce their decisions are lacking, or because of any other situation that constitutes a denial of justice¹⁸¹.

158. In the present case, as mentioned above, Sandra Pavez Pavez challenged the decision of the Vicaría regarding her Certificate of Suitability by filing an appeal for protection against the same entity. Both the Court of Appeals of San Miguel and the Supreme Court of Justice rejected this recourse indicating that the decisions of the authorities of religious communities could not be subject to external interference by the State (*supra* paras. 30 and 31). In effect, the Court of Appeals of San Miguel rejected the appeal filed by Sandra Pavez Pavez on the understanding that "the legislation applicable in the case in question empowered the corresponding religious body to grant and revoke the authorization to be granted in accordance with its particular religious, moral and philosophical principles, a situation that will depend solely on each one of them, with no interference from the State or any private individual, since the power rests with the creed itself, which has broad authority to establish its own norms and principles" (*supra* para. 30). Likewise, the Supreme Court upheld in all its parts the judgment of the Court of Appeals of San Miguel (*supra* para. 31). The Court of Appeals of San Miguel and then the Supreme Court of Justice declared inadmissible and rejected the appeal "without it being necessary [...] to analyze and refer in detail to the constitutional guarantees invoked by the appellant" (*supra* para. 30).

159. With respect to the above, in Chapter VII.1 it was indicated that the facts of the present case are framed in a public education environment and that, in the same, the activities that affect human rights must be subject to a legitimacy control. Similarly, the Court noted that Decree 924 delegates the power to grant certificates of suitability to persons to exercise religious teaching in public establishments without there being a clear way to challenge this type of decision. **Along these lines, Article 9 of Decree 924 cannot be interpreted in the sense of granting religious authorities the power to deny the certificate of suitability based on discriminatory criteria, which would be clearly contrary to the Convention. For this reason, the decision of whether or not to grant the certificate of suitability by the religious authorities must be subject to subsequent control by the State authorities or to appropriate and adequate remedies.**

¹⁷⁸ Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of Casa Nina v. Peru, supra*, para. 139.

¹⁷⁹ Cf. *Case of Rico v. Argentina. Preliminary Objection and Merits*. Judgment of September 2, 2019. Series C No. 383, para. 88; *Advisory Opinion OC-9/87, supra*, para. 24; *Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 6, 2008. Series C No. 184, para. 100, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations*. Judgment of June 27, 2012. Series C No. 245, para. 261.

¹⁸⁰ *Ivcher Bronstein v. Peru. Merits, Reparations and Costs*. Judgment of February 6, 2001. Series C No. 7, para. 137, and *Case of Ríos Avalos et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of August 19, 2021. Series C No. 429, para. 158.

¹⁸¹ *Case of Las Palmeras v. Colombia. Reparations and Costs*. Judgment of November 26, 2002. Series C No. 96, para. 58; *Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 73, and *Case of Martínez Esquivia v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of October 6, 2020. Series C No. 412, para. 130.

effective before jurisdictional authorities to protect and safeguard the rights of individuals against discriminatory acts contrary to the Convention.

160. In accordance with what has been expressed, for this Court, the State is responsible for the violation of the rights to judicial guarantees and judicial protection, contained in Articles 8(1) and 25 of the Convention, in relation to the obligation to respect established in Article 1.1 of the same instrument, inasmuch as the domestic judicial authorities did not carry out an adequate control of conventionality over the act of the "Cardenal Antonio Samoré" School by which Sandra Pavez Pavez was removed from her position as a Catholic religion teacher, after receiving a communication from the Vicariate for Education of San Bernardo informing about the revocation of her certificate of suitability. Likewise, in the instant case, the rights to judicial guarantees and to judicial protection, in relation to the obligations to respect, to guarantee, and to adopt provisions of domestic law, established in Articles 1.1 and 2 of the same instrument, were violated to the detriment of Sandra Pavez Pavez, inasmuch as she lacked suitable and effective remedies to challenge the effects of the decision to revoke her certificate of suitability to teach Catholic religion classes.

VII REPAIRS¹⁸²

161. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused damage entails the duty to make adequate reparation, and that this provision reflects a customary rule that constitutes one of the fundamental principles of contemporary international law on State responsibility¹⁸³.

162. Reparation of the damage caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of the reestablishment of the previous situation. If this is not feasible, as occurs in most cases of human rights violations, the Court will determine measures to guarantee the violated rights and repair the consequences that the violations produced.¹⁸⁴ Therefore, the Court has considered the need to grant various measures of reparation in order to compensate the damages in an integral manner, and therefore, in addition to pecuniary compensation, the measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition have special relevance for the damages caused¹⁸⁵.

163. In addition, this Court has established that reparations must have a causal link with the facts of the case, the violations declared, the proven damages, as well as the measures requested to repair the respective damages. Therefore, the Court must analyze such concurrence in order to pronounce properly and in accordance with the law¹⁸⁶.

164. Consequently, in accordance with the considerations set forth on the merits and the violations of the Convention declared in this Judgment, the Tribunal will proceed to analyze the claims

¹⁸² Application of Article 63(1) of the American Convention.

¹⁸³ *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25, and *Case of Digna Ochoa and next of kin v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 25, 2021. Series C No. 447, para. 150.

¹⁸⁴ *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, para. 24, and *Case of Digna Ochoa and next of kin v. Mexico, supra*, para. 151.

¹⁸⁵ *Cf. Case of the Massacre of Las Dos Erres v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Digna Ochoa and next of kin v. Mexico, supra*, para. 151.

¹⁸⁶ *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Digna Ochoa and next of kin v. Mexico, supra*, para. 152.

submitted by the Commission and the representatives of the victim, as well as the State's observations thereon, in light of the criteria established in its jurisprudence in relation to the nature and scope of the obligation to make reparations, with the purpose of ordering the measures aimed at repairing the damages caused¹⁸⁷.

A. Part Injured

165. This Court considers injured parties, in the terms of Article 63(1) of the Convention, to be those who have been declared victims of the violation of a right recognized therein. Therefore, this Court considers Sandra Pavez Pavez to be an "injured party" who, as a victim of the violations declared in Chapter VI, shall be considered the beneficiary of the reparations ordered by the Court.

B. Satisfaction measures and rehabilitation

B.1. Measures of satisfaction

a) Publication of the judgment

166. The **Commission** recommended that the State adopt the appropriate measures of satisfaction; however, it did not specifically refer to these measures.

167. The **representatives requested** the publication of the judgment in a newspaper of national circulation and on the websites of the relevant State agencies, especially that it be published on the websites of the Ministry of Education and the Ministry of Foreign Affairs, and also requested that the State be ordered to keep said publication available for a period of one year.

168. The **Court** orders, as it has done in other cases,¹⁸⁸ that the State publish, within six months of notification of this Judgment, in a legible and appropriate font size: (a) the official summary of this Judgment prepared by the Court, once only, in the Official Gazette; (b) the official summary of this Judgment prepared by the Court, once only, in a newspaper of wide national circulation; and (c) this Judgment in its entirety, available for a period of one year, on an official website of the State, in a manner accessible to the public and from the home page of the website. The State shall immediately inform this Court once it proceeds to carry out each of the ordered publications, regardless of the one-year term to submit its first report provided for in operative paragraph 12 of this Judgment.

b) Public act of recognition of international responsibility

169. The **Commission** indicated that the State must adopt the corresponding measures of satisfaction, however, it did not specifically refer to these measures.

170. The **representatives** requested that an act of acknowledgment of international responsibility be ordered, with the participation of all high-ranking State officials, including the President of the Republic, the President of the Senate, the President of the Chamber of Deputies, the President of the Supreme Court and the ministers of State, with special emphasis on the head of the Ministry of Education. They also requested that the modalities of this act be agreed upon with the victim.

¹⁸⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, *supra*, paras. 25 and 26, and *Case of Extra-workers of the Judiciary v. Guatemala*, *supra*, para. 136.

¹⁸⁸ *Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Digna Ochoa and next of kin v. Mexico*, *supra*, para. 167.

171. The **State** argued that the request is inadmissible since the State is not internationally responsible in the present case.

172. The **Court** deems it necessary to order, in order to repair the damage caused to the victim and to prevent the repetition of events such as those in this case, that the State carry out a public act of acknowledgment of international responsibility in relation to the facts of the instant case. Said act must make reference to the human rights violations declared in this Judgment. It should also be carried out through a public ceremony in the presence of high-ranking State officials and of the victim declared in this Judgment, if he so wishes, and his representatives¹⁸⁹.

173. The State, the victim, and/or his representatives, must agree on the modality of the public act, as well as the particularities required, such as the place and date for its realization¹⁹⁰. In addition, it must be guaranteed that the victim has the possibility to attend, for which the State must cover the expenses corresponding to his transportation¹⁹¹. Likewise, as it has done in other cases¹⁹², the Court orders the State to disseminate the event through the media as widely as possible, including radio, television and social networks of the Ministry of Education. The State authorities who must be present or participate in the event must be high-ranking State officials, including the highest authorities of the Ministry of Education. In order to comply with this obligation to carry out the act of acknowledgment of international responsibility, the State has a period of one year from the notification of the present Judgment.

B.2. Rehabilitation measures

174. The **representatives** requested that the State be ordered to provide preferential and comprehensive health care to Mrs. Pavez Pavez.

175. The **Court** has found that Mrs. Sandra Pavez Pavez suffered violations of her personal liberty and her right to privacy as a result of the facts of the instant case and the discrimination she was subjected to on account of her sexual orientation (*supra* Chapter VI.1). Therefore, the Court considers that it is necessary to order a measure of reparation that provides adequate attention to the suffering suffered by the victim as a result of the facts of the instant case, taking into account her specificities and background¹⁹³. Consequently, this Court orders the State to pay a sum of money so that Mrs. Sandra Pavez Pavez can cover the costs of the psychological and/or psychiatric treatment that may be necessary. The amount will be defined in the section on non-pecuniary damage (*infra* para. 198).

C. Guarantees of non-repetition

C.1. Training measures

176. The **Commission** requested that the State be ordered to train the persons in charge of evaluating the suitability of teaching staff and judicial officials, at all levels, who are called upon to hear appeals for the protection of fundamental rights, on the scope and content of

¹⁸⁹ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, *supra*, para. 81, and *Case of Manuela et al. v. El Salvador*, *supra*, para. 276.

¹⁹⁰ *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 353, and *Case of Manuela et al. v. El Salvador*, *supra*, para. 277.

¹⁹¹ Sandra Pavez Pavez stated that she lived in the community of El Bosque.

¹⁹² See, for example, *Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs*. Judgment of November 25, 2006. Series C No. 160, para. 445, and *Case of Manuela et al. v. El Salvador*, *supra*, para. 276.

¹⁹³ Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*, *supra*, para. 42 and 45, and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of March 26, 2021. Series C No. 423, para. 234.

of the right to equality and non-discrimination, including the prohibition of discrimination based on sexual orientation.

177. The **representatives** stated that they agreed with all the points made by the Commission in the Report on the Merits.

178. The **State**, in its final written arguments, stated that it has already advanced training processes for judicial authorities in relation to the right to equality and the principle of non-discrimination, for which reason it argued that the requested measure, in addition to being unrelated to the present case, is unnecessary.

179. As it has done in other cases, the **Court** considers it pertinent to order the State to create and implement, within two years, a training plan for the persons in charge of evaluating the suitability of teachers in public educational establishments on the scope and content of the right to equality and non-discrimination, including the prohibition of discrimination based on sexual orientation. This training plan should include indicators that can be verified to evaluate the progress made during its implementation.

C.2. Necessary measures to ensure due administrative control and judicial control.

180. The **Commission requested** that the State be ordered to: i) adapt domestic legislation, including Decree 924, in order to ensure that it does not promote acts of discrimination based on sexual orientation at the time of its application, and ii) adopt the necessary measures to ensure due administrative and judicial control of possible discriminatory situations in the context of the application of the law.

181. The **representatives** requested the repeal of Decree 924, and that it be replaced by a regulatory framework that ensures objective and non-discriminatory criteria so that teachers of religion, in any public or private establishment, can teach classes "without intimidation or repression because of their sexual orientation or other prohibited category of discrimination". Likewise, in their final written arguments, they requested that the State be ordered to adapt the anti-discrimination regulations, Law 2.609 of 2012, to "effectively guarantee the non-occurrence of cases similar to the present one in the future".

182. In this regard, the **State** stated that Decree 924 is "completely compatible with the American Convention", and is a "direct development of Article 12 of the Convention", for which reason, according to the State, there are no reasons to order its adaptation or repeal.

183. In the present Judgment, the Court found the State responsible for the violation of the rights to judicial guarantees and judicial protection contained in Articles 8(1) and 25 of the Convention, in relation to the obligations to respect, to guarantee, and to adopt provisions of domestic law, established in Articles 1.1 and 2 of the same instrument, to the detriment of Sandra Pavez Pavez inasmuch as she lacked suitable and effective remedies to challenge the effects of the decision of revocation of her certificate of suitability to teach Catholic religion classes by the Vicariate of San Bernardo (*supra* Chapter VI.2). Likewise, the Court considered that the State cannot renounce its function of controlling the acts of private individuals that may affect human rights (*supra* para. 158). In accordance with the foregoing, and in accordance with the State's obligation to adapt the provisions of domestic law contained in Article 2 of the American Convention, the necessary regulatory adjustments must be made so that the decisions taken pursuant to Decree 924 are in accordance with the rights and principles contained in the Convention and so that the State's control over those acts is established in a clear and objective manner.

184. By virtue of what is expressed in the preceding paragraph, and as it has done in other cases¹⁹⁴, this Court considers it necessary to order the State to specify or regulate, within two years from the notification of this Judgment, clearly, through legislative or other measures

¹⁹⁴ See, for example, *Case of Former Workers of the Judiciary v. Guatemala*, *supra*, para. 144.

In the framework of these appeals, the authorities must have the power to carry out an adequate control of the conventionality of the decisions of public educational establishments regarding the appointment or removal of teachers of religion as a consequence of the issuance or revocation of a certificate of suitability by a religious authority under the provisions of Article 9 of Decree 924 of 1983. Within the framework of these remedies, the authorities must have the powers to carry out an adequate control of conventionality on the referred decisions of public educational establishments regarding the appointment or removal of teachers of religion as a consequence of the issuance or revocation of a certificate of suitability.

D. Other measures requested

185. The **Commission** requested that the State be ordered to reinstate Sandra Pavez Pavez to the position she held as a teacher in a public institution, clarifying that this should she so wish and that it be done in consultation with her.

186. The **representatives** stated that they agreed with all the points made by the Commission in the Report on the Merits.

187. In this regard, in its final written arguments, the **State** stated that the specific measure requested, as well as its scope, is not clear. In addition, it stated that the measure was inadmissible since, it affirmed, Mrs. Pavez was never dismissed as a teacher, and that the requested measure would imply the imposition of a teacher of the Catholic religion, who "does not have the confidence and, in the opinion of the religious authorities, does not represent said faith", which, in turn, would be a violation of religious freedom and a discriminatory measure based on religious grounds.

188. The **Court** considers that the issuance of this Judgment and the reparations ordered in this chapter are sufficient and adequate to remedy the violations suffered by the victim, and therefore does not deem it necessary to order additional measures.

E. Indemnifications compensatory

E.1. Material Damage

189. The **Commission** requested that the State be ordered to make full reparation for the human rights violations declared in its merits report in the material aspect. In addition, it added that the material aspect should take into account the differences in the economic salary amounts and social benefits that he had received as a teacher, and that the State should adopt the corresponding compensation measures.

190. The **representatives** requested that the State be ordered to pay, as part of the material damage, the costs of the psychiatric and psychological therapies that the victim had to assume since 2007.

191. The **State**, in its final written arguments, argued that the Commission's request was inadmissible inasmuch as the victim did not suffer a direct or indirect economic loss due to the reassignment of his functions, nor did he lose wages and benefits as a teacher. Regarding the request of the representatives, the State denied that it was the cause of the "alleged damages" sought to be redressed, and therefore the request would be inadmissible. In addition, it alleged that the victim could avail herself of the State's medical and mental health services, through Chile's social security system.

192. This *Court* has developed in its jurisprudence that material damage implies the loss or detriment of the victims' income, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal link with the facts of the case¹⁹⁵.

193. By virtue of the circumstances of this case, the Court considers it reasonable to order the State to pay compensation for consequential damages in favor of Sandra Pavez Pavez, such as the psychological therapies she had to undergo as a consequence of the facts of the case. Taking into account that the information provided by the representatives does not allow to establish with certainty the amount of the material damage caused by the facts examined in this case, this Court fixes in equity the amount of USD\$ 5,000.00 (five thousand United States dollars) in favor of Sandra Pavez Pavez.

E.2. Immaterial Damage

194. The **Commission** requested that the State be ordered to make full reparation for the human rights violations declared in its merits report in the material aspect, requesting, in addition, that the State be ordered to adopt the corresponding compensation measures.

195. The **representatives** requested that the State be ordered to compensate the victim for the suffering she had to face as a result of the discrimination to which she was subjected, exposing her private life and harming her employment. Likewise, in their final written arguments, they expanded that the facts caused Ms. Pavez severe trauma for years to come, as well as the fact that since 2007 she has held the position of Inspector General on an interim basis, "essentially precarious and unstable". By virtue of the above, they proposed an award of USD\$30,000.00, alleging the similarity of the present case with Atala Riffo and Girls v. Chile.

196. The **State**, in its final written arguments, argued that the request is inadmissible since the State is not internationally responsible in the present case.

197. The Court has established in its jurisprudence that non-pecuniary damage may include both the suffering and affliction caused by the violation and the impairment of values that are very significant for the persons and any alteration, of a non-pecuniary nature, in the conditions of existence of the victims or their family¹⁸⁶. On the other hand, since it is not possible to assign a precise monetary equivalent to the non-pecuniary damage, it can only be compensated, for the purposes of full reparation to the victims, through the payment of a sum of money or the delivery of goods or services appreciable in money, as determined by the Court in reasonable application of judicial discretion and in terms of equity¹⁹⁶.

198. In view of the circumstances of the instant case, the nature and gravity of the violations committed, the suffering caused to the victim¹⁹⁷, and the time that has elapsed since the time of the facts, the **Court** considers it appropriate to order the payment of compensation for non-pecuniary damage in favor of Sandra Pavez Pavez. Consequently, the Court orders, in equity, that the State should award, for non-pecuniary damage, compensation in the amount of USD\$ 30,000.00 (thirty thousand United States dollars) in favor of Sandra Pavez Pavez. This amount includes

¹⁹⁵ *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002, Series C No. 91, para. 43, and *Case of Digna Ochoa and next of kin v. Mexico, supra*, para. 181.

¹⁹⁶ *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs, supra*, para. 84, and *Case of Cuya Lavy et al. v. Peru, supra*, para. 223.

¹⁹⁷ During the public hearing, Sandra Pavez Pavez stated that she lived "with a tremendous depression when all this happened, it also affected the fears that one has to go out publicly, to run the risk of being hurt by anyone in the street". He also indicated that he was affected by "having lost (his...) right to educate, (...or), what the media says". Similarly, with respect to her position as inspector, she indicated that she felt that "she was not doing what she [...] liked, [...], that it was not what (her...) self felt, it was like doing something because you have to do it and because you have to earn money and because you had to survive, but it was not the inner essence (of her). (She) felt (she) passed to totally (her) dignity and as a human being".

The amount of money included for Sandra Pavez Pavez to cover the costs of the necessary psychological treatment (*infra* para. 175).

F. Expenses and costs

199. The **representatives** requested that the State be ordered to reimburse the expenses incurred by them as a result of the case. Likewise, in their final arguments, they requested that the State be ordered to pay the expenses incurred in lodging the victim in a hotel in Santiago, Chile, on May 13 and 14, 2021, so that she could appear at the public hearing. The aforementioned, according to them, because the victim resides in a rural area south of Santiago, so for the purpose of appearing he had to stay in the city. They stated that this expense amounted to \$137,088.00 Chilean pesos, for which they attached two payment vouchers.

200. The **Court** recalls that, in accordance with its jurisprudence, costs and expenses are part of the concept of reparation, since the activity carried out by the victims in order to obtain justice, both at the national and international level, implies expenditures that must be compensated when the international responsibility of the State is declared by means of a condemnatory judgment. Regarding the reimbursement of costs and expenses, it is up to the Court to prudently assess its scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those generated in the course of the proceedings before the Inter-American System, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that the amount is reasonable¹⁹⁸.

201. This Court has indicated that "the claims of the victims or their representatives regarding costs and expenses, and the evidence supporting them, must be submitted to the Court at the first procedural moment granted to them, that is, in the pleadings and motions brief, without prejudice to such claims being updated at a later time, in accordance with the new costs and expenses incurred during the proceedings before this Court "¹⁹⁹. Likewise, the Court reiterates that the submission of evidentiary documents is not sufficient, but that it is required that the parties make an argument that relates the evidence to the fact that is considered represented, and that, in the case of alleged economic disbursements, the items and their justification be clearly established²⁰⁰.

202. Taking into account the amounts requested by the representatives and the proof of expenses submitted, the Court orders in equity the payment of USD\$30,000.00 (thirty thousand United States dollars) for costs and expenses. Said amount shall be paid directly to the representatives. During the stage of supervision of compliance with this Judgment, the Court may order the State to reimburse the victims or their representatives for the reasonable expenses incurred during this procedural stage²⁰¹.

G. Method of compliance with the payments ordered

203. The State shall pay the compensation for material and non-material damages and the reimbursement of costs and expenses established in this Judgment directly to the persons indicated therein, within a period of one year from the date of notification of the Judgment.

¹⁹⁸ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, paras. 82 and 244, and *Case of Manuela et al. v. El Salvador, supra*, para. 317.

¹⁹⁹ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs, supra*, para. 79, and *Case of Extra-workers of the Judiciary v. Guatemala, supra*, para. 160.

²⁰⁰ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of Manuela et al. v. El Salvador, supra*, para. 318.

²⁰¹ *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Digna Ochoa and next of kin v. Mexico, supra*, para. 193.

This judgment, without prejudice to the possibility of advancing the full payment in a shorter term, in accordance with the terms of the following paragraphs.

204. In the event that the beneficiary has died or dies before the respective amount is delivered to her, it will be delivered directly to her beneficiaries, in accordance with applicable domestic law.

205. The State shall comply with the monetary obligations by payment in United States dollars or its equivalent in local currency, using for the respective calculation the market exchange rate published or calculated by a relevant banking or financial authority, as of the date closest to the day of payment.

206. If, for causes attributable to the beneficiary of the indemnities or to her beneficiaries, it is not possible to pay the amounts determined within the period indicated, the State shall deposit such amounts in her favor in an account or certificate of deposit in a solvent Chilean financial institution, in dollars of the United States of America, and under the most favorable financial conditions permitted by law and banking practice. If the corresponding compensation is not claimed after ten years have elapsed, the amounts shall be returned to the State with accrued interest.

207. The amounts assigned in this Judgment as compensation for material and non-material damages, and as reimbursement of expenses and costs, shall be delivered to the indicated persons in full, in accordance with the provisions of this Judgment, without reductions derived from possible tax burdens.

208. In the event that the State incurs in default, it shall pay interest on the amount owed corresponding to the bank interest in arrears in Chile.

VIII RESOLUTIVE POINTS

209. NOW,

THEREFORE,

THE COURT

DECLARES,

Unanimously, that:

1. The State is responsible for the violation of the right to equality and non-discrimination, contained in Articles 1.1 and 24 of the American Convention on Human Rights, the latter in relation to the obligations of respect and guarantee established in the aforementioned article.

1.1 of the same instrument, to the detriment of Sandra Pavez Pavez, in the terms of paragraphs 57 to 146 of this Judgment.

2. The State is responsible for the violation of the rights to personal liberty, to privacy and to work contained in Articles 7(1), 11(2) and 26 of the American Convention on Human Rights, in relation to the obligations to respect and guarantee, established in Article 1(1) of the same instrument, to the detriment of Sandra Pavez Pavez, in the terms of paragraphs 57 to 146 of this Judgment.

3. The State is responsible for the violation of the rights to judicial guarantees and judicial protection, contained in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to the obligations to respect, to guarantee, and to adopt provisions of domestic law, established in Articles 1(1) and 2 of the same instrument, to the detriment of Sandra Pavez Pavez, in the terms of paragraphs 151 to 160 of this Judgment.

4. The State is not responsible for the violation of the right of access to public service under conditions of equality, contained in Article 23(1)(c) of the American Convention on Human Rights, to the detriment of Sandra Pavez Pavez, in the terms of paragraphs 137 to 139, and 146 of this Judgment.

AND PROVIDED:

Unanimously, that:

5. This judgment constitutes in itself a form of reparation.

6. The State shall carry out the publications indicated in paragraph 168 of this Judgment, within six months from the notification of the Judgment.

7. The State shall make a public act of acknowledgment of international responsibility, in relation to the facts of this case, in the terms of paragraphs 172 and 173 of this Judgment.

8. The State shall create and implement a permanent training plan for the persons in charge of evaluating the suitability of the teaching staff, in the terms of paragraph 179 of this Judgment.

9. The State must adapt its regulations on the remedy, procedure and judicial competence for challenging the decisions of public educational establishments regarding the appointment or removal of teachers of religion as a consequence of the issuance or revocation of a certificate of suitability, in the terms of paragraphs 183 and 184 of this Judgment.

10. The State shall pay the amounts set forth in paragraphs 193, 198 and 202 of this Judgment for material and non-material damages, and for the reimbursement of costs and expenses, in the terms of paragraphs 203 to 208 of this Judgment.

11. The State shall pay the amount intended to provide psychological and/or psychiatric treatment to the victim, in the terms of paragraphs 175 and 198 of this Judgment.


12. The State shall submit a report to the Court, within one year of notification of the Judgment, on the measures adopted to comply with the Judgment.

13. The Court will supervise full compliance with the Judgment, in exercise of its powers and in fulfillment of its duties under the American Convention on Human Rights, and will close the present case once the State has fully complied with the provisions of the Judgment.

Judge Humberto Antonio Sierra Porto announced his individual concurring vote. Drafted

in Spanish in San José, Costa Rica, on February 4, 2022.

IACHR Court. *Case of Pavez Pavez v. Chile*. Merits, Reparations and Costs. Judgment of February 4, 2022. Judgment adopted in San José, Costa Rica.



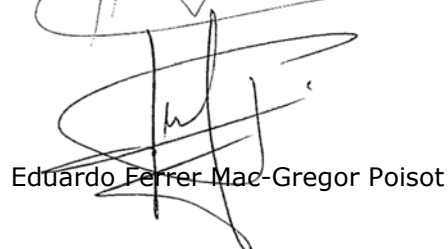
Elizabeth Odio Benito
President



L. Patricio Pazmiño Freire



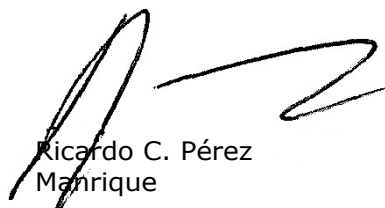
Humberto Antonio Sierra Porto



Eduardo Ferrer Mac-Gregor Poisot



Eugenio Raúl Zaffaroni



Ricardo C. Pérez Manrique



Romina I. Sijniensky
Assistant Secretary

Communicate and execute,



Elizabeth Odio Benito
Presidenta



Romina I. Sijniensky
Assistant Secretary

**CONCURRING VOTE OF
JUDGE HUMBERTO ANTONIO SIERRA PORTO**

INTER-AMERICAN COURT OF HUMAN RIGHTS

PAVEZ PAVEZ VS. CHILE

JUDGMENT OF FEBRUARY 4, 2022

(Merits, Reparations and Costs)

1. With the customary respect for the majority decisions of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Tribunal"), the purpose of this opinion is to explain my dissent to operative paragraph 2, which declared the international responsibility of the State of Chile (hereinafter "the State" or "Chile") for the violation of the rights to personal liberty, to privacy, and to work, to the detriment of Sandra Pavez Pavez. The vote complements the position already expressed in my partially dissenting votes in the cases of *Lagos del Campo v. Peru*¹, *Trabajadores Cesados de Petroperú et al. v. Peru*², *San Miguel Sosa et al. v. Venezuela*³, *Cuscul Pivaral et al. v. Guatemala*⁴, *Muelle Flores v. Peru*⁵, *Asociación Nacional de Cesantes y Jubilados de la Superintendencia Nacional de Administración*

¹Cf. . *Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 340. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

²Cf. . *Case of the Dismissed Workers of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2017. Series C No. 344. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

³Cf. . *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of February 8, 2018. Series C No. 348. Partially dissenting vote of Judge Humberto Antonio Sierra Porto.

⁴Cf. . *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2018. Series C No. 359. Partially dissenting vote of Judge Humberto Antonio Sierra Porto.

⁵Cf. . *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

*Tributaria (ANCEJUB-SUNAT) v. Peru*⁶, *Hernández v. Argentina*⁷, *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina*⁸, *Guachalá Chimbo and others v. Ecuador*⁹; as well as in my concurring votes in the cases of *Gonzales Lluy and others v. Ecuador*¹⁰, *Poblete Vilches and others v. Chile*¹¹, *Casa Nina v. Peru*¹², *Buzos Miskitos v. Honduras*¹³, *Vera Rojas and others v. Chile*¹⁴, *Manuela and others v. El Salvador*¹⁵, *Case of Extradabajadores de la Organismo Judicial v. Guatemala*¹⁶ in relation to the justiciability of economic, social and cultural rights. *Honduras*¹³, *Vera Rojas et al. v. Chile*¹⁴, *Manuela et al. v. El Salvador*¹⁵, *Case of Extra-workers of the Judiciary v. Guatemala*¹⁶ in relation to the justiciability of economic, social, cultural and environmental rights (hereinafter "ESCR") through Article 26 of the American Convention on Human Rights (hereinafter "the Convention" or "ACHR").

2. In previous separate opinions I have expressed in detail multiple arguments that demonstrate the logical and legal contradictions and inconsistencies of the theory of the direct and autonomous justiciability of ESCR. I have pointed out that Article 26 of the Convention contains the obligation of progressive development and its consequent duty of non-regression in relation to the rights that may derive from the OAS Charter. Thus, by virtue of this provision, the Court can declare the international responsibility of the State for non-compliance with the obligations of progressive development and non-regression, not of the ESCR in their individual dimension.

⁶Cf. . *Case of Asociación Nacional de Cesantes y Jubilados de la Superintendencia Nacional de Administración Tributaria (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2019. Series C No. 394. Partially dissenting vote of Judge Humberto Antonio Sierra Porto.

⁷Cf. . *Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 22, 2019. Series C No. 395. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

⁸Cf. . *Case of Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina. Merits, Reparations and Costs*. Judgment of February 6, 2020. Series C No. 400. Partially dissenting vote of Judge Humberto Antonio Sierra Porto.

⁹Cf. . *Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of March 26, 2021. Series C No. 423. Partially dissenting vote of Judge Humberto Antonio Sierra Porto.

¹⁰Cf. . *Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No. 298. Concurring vote of Judge Humberto Antonio Sierra Porto.

¹¹Cf. . *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 349. Concurring Vote of Judge Humberto Antonio Sierra Porto.

¹²Cf. . *Case of Casa Nina v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2020. Concurring and partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

¹³Cf. . *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*. Judgment of August 31, 2021. Series C No. 432.

¹⁴Cf. . *Case of Vera Rojas et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 1, 2021. Series C No. 439.

¹⁵Cf. . *Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 2, 2021. Series C No. 441.

¹⁶Cf. . *Case of Former Workers of the Judiciary v. Guatemala. Preliminary Objections, Merits and*

Reparations. Judgment of November 17, 2021. Series C No. 445.

3. On this occasion, I would like to reiterate that the position taken by the majority of the judges of the Court since the *Lagos del Campo Vs. Peru* case ignores the scope of Article 26 determined on the basis of the rules of interpretation of the Vienna Convention on the Rights of Treaties (literal, systematic and teleological interpretation)¹⁷; modifies the nature of the obligation of progressiveness enshrined with absolute clarity in Article 26¹⁸; ignores the will of the States embodied in Article 19 of the Protocol of San Salvador¹⁹ and undermines the legitimacy of the Tribunal in the regional sphere²⁰; just to mention a few arguments.

4. Likewise, I must recall that the position I have taken does not deny the interdependence and indivisibility of civil, political, economic, social, cultural and environmental rights, nor does it ignore the individual dimension of ESCR. In my opinion, the justiciability of all rights must be advanced through the channels that each of the normative orders has established. Thus, the direct protection of ESCR can be achieved in the sphere of domestic jurisdictions, and before this Court by means of connection, as was done in other cases prior to the *Lagos del Campo* case. This makes it possible to achieve the same degree of protection that is now achieved with the majority jurisprudential position and, at the same time, to respect the normative framework that grants jurisdiction to the Inter-American Court, and to protect its activity as one of the highest authorities of the Inter-American System for the Protection of Human Rights.

5. In the Judgment, the Court declared the responsibility of the State by considering that the revocation of the certificate of suitability to teach Catholic religion classes because of the sexual orientation of Mrs. Sandra Pavez violated her rights to equality and non-discrimination, to personal freedom, to private life, and to work in relation to the obligations of respect and guarantee. The Court also found the State responsible for failing to provide effective remedies for the protection of her rights, in particular to challenge the decision of the religious authority which, by provision of domestic law, was given legal effect. I must say that I agree with all the considerations set forth in the body of the decision, with the exception of those referring to the direct violation of the right to work (Article 26 ACHR), which do not have sufficient legal grounds.

6. As a starting point, I must point out that, in the Judgment, prior to the analysis of the alleged violation of the right to work, the Court studied the alleged violation of the right of access to public service under conditions of equality (Article 23 ACHR). The Court considered that this right was not affected since, after the revocation of the certificate of suitability required to teach the Catholic religion class, Mrs. Pavez continued to exercise a public function as general inspector of the educational institution where she worked. Likewise, it found that this change did not constitute a demotion, but rather a reassignment of duties as established in her contract, which materialized in

¹⁷Cf. . *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 6, 2019. Series C No. 375.

¹⁸Cf. . *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 23, 2018. Series C No. 359.

¹⁹Cf. . *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 349.

²⁰Cf. . *Case of Dismissed Workers of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2017. Series C No. 344.

a promotion, with higher remuneration and more responsibilities²¹. Thus, the Court studied the concept of demotion, although it did not specify its scope and content within the framework of Article 23 of the Convention. In spite of the above, and without further explanation, the Court resumes the analysis of the alleged labor demotion in relation to Article 26 ACHR, taking into account two different elements.

7. Indeed, the Court found that the violation of the right to work was proven when it considered that, "[...] **the reassignment of functions suffered by Sandra Pavez Pavez [...] undermined her teaching vocation and constituted a form of job demotion.** The fact that her employment contract did not specify that she was a Catholic religion teacher, that it foresaw the possibility that she could be reassigned in her functions, or that in case she had certificates of suitability from religious communities corresponding to other faiths, and that she could have continued teaching religion classes, does not change that conclusion insofar **as the new functions that were assigned to her were the consequence of a different treatment that was based on her sexual orientation and not on objective causes of the need of the service**"²² (emphasis outside the text). This statement is not very precise and lacks legal basis as I will explain below.

8. From the conclusions set forth in paragraphs 138 to 140, it seems to be understood that the change of working conditions to the detriment of the worker, not only refers to a reduction in remuneration, in the stability offered by the contract or in the hierarchy of the position, but also to the impossibility of performing the work that corresponds to the worker's vocation, and to the variations of position based on discriminatory criteria. In order to reach this conclusion, the Judgment does not provide a solid basis in light of the inter-American *corpus iuris*, blurs the content of Article 23 of the Convention and reiterates the analysis of paragraph 1 of the merits of the Judgment.

9. In the first place, with regard to vocation as the scope of protection of the right to work, the Court's failure to substantiate it is evident. The Judgment does not explain what this concept refers to, whether it is associated to the profession in general or to the scope of a specific contract, nor does it indicate the scope of this obligation for the State, nor what its limits are in relation to the contract or the need for the service. Even more serious, the Court does not state which are the provisions that directly or indirectly recognize vocation as part of the right to work in international human rights law. More precisely, through which criteria of interpretation is it possible to conclude that Article 26, in relation to Articles 45.b and c, 46 and 34.g of the OAS Charter²³ and with the precedents of the cases *Lagos del Campo Vs. Peru*, *Trabajadores Cesados de Petroperú et al. v. Peru*, *San Miguel Sosa et al. v. Venezuela*, *Spoltore v. Argentina* and *Employees of the Fire Factory in Santo Antônio de Jesus and their families v. Brazil*, protects vocation as part of the right to work. On the contrary, in order to provide a normative basis for the violation of Article 26, the Court refers to paragraphs 88 to 90 of the decision, in which it only mentions the prohibition of discrimination in labor matters, leaving its position without legal support.

10. Second, the Court blurs the content of Article 23 of the Convention. As explained, the Judgment mentioned the notion of degrading

²¹Case *Pavez Pavez v. Chile. Merits, Reparations and Costs*. Judgment of February 4, 2022. Para. 138.

²²Case *Pavez Pavez v. Chile. Merits, Reparations and Costs*. Judgment of February 4, 2022. Para. 140.

²³It should be recalled

that the State of Chile did not ratify the Protocol of San Salvador.


However, in relation to the latter, the Court contemplated two additional elements of analysis: the vocation and the prohibition of discrimination. As explained, the vocation lacks any basis in the judgment, but there is no reason to exclude the prohibition of discrimination in the labor sphere from the content of Article 23. Thus, if the Court considered it necessary to make this mention, it should have done so in relation to the right of access to public service under conditions of equality, since the direct justiciability of this right is not questioned and, consequently, the judgment would have been decided unanimously. In this sense, I reiterate the position according to which the evolutionary and pro-person interpretation should be preferred, which allows to fill with content the conventional rights, against which the Court does have competence to pronounce in the framework of contentious cases.

11. Finally, I must emphasize, as I have done in other votes, that the Court does not determine the violation of the ESCR other than by reiterating the facts and arguments on the basis of which it declares the violation of other rights in the Judgment. In this case, in addition to the imprecise mention of vocation, the basis for the violation of the right to work is the disregard of the prohibition of discrimination. This was explained in detail in the initial section as a basis for the declaration of responsibility for the violation of Articles 1.1 and 24 of the Convention. Therefore, the scope of protection of both rights in practice was the same, and therefore it was unnecessary to mention Article 26, affecting the legitimacy of the Judgment and calling into question the rigorousness of the Court's legal analysis.

12. The above is an indication that the majority composition of the Court intended to reiterate its position in relation to the justiciability of ESCR, with that mere intention and despite having no effect on the specific case. This not only shows the lack of solidity of this jurisprudential position, and its little practical relevance in the cases that come to the attention of the Court in general, and in the case of Mrs. Pavez in particular; but above all, the lack of rigor in the analysis and determination of the standards in the matter, which contrary to consolidating a clear scope of protection for each of the rights, weakens its borders and empties its content.



Humberto Antonio Sierra Porto
Judge



Romina I. Sijniensky
Assistant Secretary