

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF PAVEZ PAVEZ V. 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" or "the Court"), 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
Ricardo C. Pérez Manrique, Judge

also present,

Romina I. Sijniensky, Deputy Registrar, **

pursuant to 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 "the Rules"), delivers this judgment:

* This Judgment was delivered during the 146th regular session of the Court. In accordance with 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 serve until the end of their terms. Nevertheless, they shall continue to hear the cases they have begun to hear and those that are still pending." Accordingly, and by order of the Plenary, the composition of the Court, including its directors, which participated in the deliberation and signing of this judgment, is the one that heard 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 Court's Rules of Procedure.

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

CASE PAVEZ PAVEZ V. CHILE

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I
INTRODUCTION OF THE CASE AND CAUSE OF THE ACTION

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 Inter-American Court the *Case of Sandra Cecilia Pavez Pavez* against the Republic of Chile (hereinafter “the State” or “Chile”). According to the Commission, the case concerns the alleged international responsibility of the State for the disqualification of Ms. Sandra Cecilia Pavez Pavez, owing to her sexual orientation, from teaching the subject of Catholic religion in a public educational establishment. The Commission indicated that the disqualification occurred on July 25, 2007, after the Office of the Vicar for Education of the Diocese of San Bernardo (hereinafter “the Vicariate for Education” or “the Vicariate of San Bernardo”) revoked her certificate of suitability. This document is a requirement of the Ministry of Education, pursuant to Decree 924 of 1983, for teachers to be able to work as Catholic religion teachers. According to the Commission, the certificate was withdrawn based on Ms. Pavez’s sexual orientation, and thus she was disqualified from holding the position of Catholic religion teacher. The Commission found that in this case the alleged victim was subjected to a difference in treatment based on her sexual orientation, without any justification that would pass a minimum scrutiny of objectivity and reasonableness, and was attributable to the State owing to a regulation that granted the religious authorities absolute powers in this matter. Therefore, the Commission concluded that the State of Chile “is responsible for violating [the right to] privacy and autonomy, the principle of equality and non-discrimination, access to public service under conditions of equality, the right to work, the right to obtain reasoned decisions and to 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 thereof, to the detriment of Sandra Pavez.”

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

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

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

c. *Notification to the State.* On March 11, 2019, the Commission notified the Merits Report to the State and indicated its willingness to assist the parties in reaching a friendly settlement, granting them the regulatory period to present their observations.

d. *Friendly settlement process.* In a brief dated November 7, 2016, the State expressed its willingness to initiate a friendly settlement process. The petitioners did not respond to this request.

3. *Submission to the Court.* On September 11, 2019, the Commission submitted to the Court all the facts and human rights violations described in the Merits Report, “given the need to obtain justice for the [alleged] victim in this case.”

4. *Requests of the Commission.* Based on the foregoing, the Inter-American Commission asked the Court to find and declare the international responsibility of the State for the violation of the rights described in the Merits Report and to order the measures of reparation contained in said report. This Court notes, with deep concern that almost eleven years have elapsed between the presentation of the initial petition before the Commission and the submission of the case before the Court.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and the representatives.*¹ The submission of the case was notified the State and to the representatives in a communication dated December 4, 2019.

6. *Brief with pleadings, motions and evidence.* On February 7 and 27, 2010, the representatives submitted their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”), pursuant to Articles 25 and 40 of the Court’s Rules of Procedure. The representatives agreed with the Commission’s arguments, complemented its line of reasoning and proposed specific reparations.

7. *Extemporaneous submission of the answering brief.*² On July 20, 2020, Chile submitted its response to the submission of the case and its observations to the pleadings and motions brief (hereinafter “answering brief”) extemporaneously. Consequently, said brief and its annexes were declared inadmissible.³

8. *Public hearing.* In an order of March 3, 2021,⁴ the President of the Court called the parties and the Commission to a public hearing which was held on May 12 and 13, 2021, during the Court’s 141st regular session, via videoconference.⁵

9. *Ex officio evidence.* By order of the President of the Court of March 3, 2021, (*supra* para. 8), and by order of the Court of March 26, 2021,⁶ pursuant to Article 58(a) of the Court’s Rules of Procedure, the Court decided to summon *ex officio* the expert witnesses Gerhard Robbers, José Luis Lara and Paolo Carozza to testify before a notary public in the context of the present case.

10. *Amici curiae.* The Court received thirty-five *amicus curiae* briefs presented by: 1) the National Association of Evangelical Jurists;⁷ 2) Álvaro Paúl;⁸ 3) Alliance Defending Freedom (ADF);⁹ 4) the

¹ The alleged victim was 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 its Agents. It also designated Karen Soledad Zacur López, Constanza Alejandra Richards Yáñez and Oliver Román López Serrano as Alternate Agents.

³ In a note of the Secretariat dated July 24, 2020 (CDH-26-2019/021) and following the instructions of the President, the State was informed that a verification study was carried out with the Department of Information Technology of the Court, which concluded that no communication was received on July 10, 2020 from the State. The State filed 7 appeals for reconsideration against said decision before the President of the Court (July 24 and 31, August 4 and 15, 2020) and before the Plenary of the Court (September 9 and 30, and November 4, 2020). These appeals were settled and dismissed by the Presidency and the Court, respectively, and the aforementioned decisions were communicated through notes of the Secretariat (July 31, September 1, October 15, and November 26, 2020). Finally, in an Order dated March 26, 2021, the Court reiterated that the answering brief submitted by the State was inadmissible because it was time-barred. *Cf. Case of Pavez Pavez v. Chile*. Order of the Inter-American Court of Human Rights of March 26, 2021.

⁴ *Cf. Case of Pavez Pavez v. Chile*. Call to a hearing. Order of the President of the Inter-American Court of Human Rights of March 3, 2021. http://www.Courtidh.or.cr/docs/matters/pavez_pavez_04_03_21.pdf

⁵ The following appeared at the hearing: a) for the Inter-American Commission: Joel Hernández García, IACHR Commissioner; Soledad García Muñoz, Special Rapporteur on Economic, Social, Cultural and Environmental Rights of the IACHR; Marisol Blanchard, Assistant Executive Secretary of the IACHR; Jorge Meza Flores, Adviser of the IACHR, and Analía Banfi Vique, Adviser of 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, Jose María 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*. Order of the Inter-American Court of Human Rights of March 26, 2021. http://www.Courtidh.or.cr/docs/matters/pavez_26_03_21.pdf

⁷ Brief signed by Uziel Santana, Felipe Augusto, and Raíssa Martins on the secularism of the State, religious freedom and discrimination, and the rights of parents in relation to their children’s education.

⁸ Brief signed by Álvaro Paul versa religious freedom, separation between Church and State, and the right of parents to choose their children’s education.

⁹ Brief signed by Tomás Henríquez C. on the autonomy of religious communities to choose their teachers, and on freedom of religion.

Observatory of Religious Freedom in Latin America-OLIRE in collaboration with Law in Action;¹⁰ 5) the Law Clinic of the University of San Andrés and New York University Clinic on Policy Advocacy in Latin America;¹¹ 6) Javier Martínez-Torrón and María J. Valero Estarellas;¹² 7) the Episcopal Conference of Chile;¹³ 8) the Becket Fund for Religious Liberty;¹⁴ 9) the International Center for Law and Religion Studies (ICLRS);¹⁵ 10) Juan Navarro Floria;¹⁶ 11) Javier Borrego, Giovanni Bonello, and Vincent de Gaetano;¹⁷ 12) Eduardo Fuentes Caro, Fernando Arancibia Collao, Carlos Augusto Casanova Guerra, Javiera Corvalán Aspiazu, and Claudio Pierantoni;¹⁸ 13) Flavio Allegreti de Campos Cooper, Odacyr Carlos Prigol, and Scott E. Isaacson;¹⁹ 14) the Confederation of Parents and Guardians of Private Subsidized Schools of Chile;²⁰ 15) the Argentine Council for Religious Freedom-CALIR;²¹ 16) Jorge Barrera Rojas;²² 17) Jorge Horacio Gentile;²³ 18) Macarena Marey;²⁴ 19) the Association for the Promotion of Civil Rights (PROCEDI);²⁵ 20) Pauline Capdevielle and María del Pilar González Barreda;²⁶

¹⁰ Brief signed by Teresa Flores Chiscul and Rossana Esther Muga Gonzáles on the autonomy and immunity from coercion of denominational schools, as well as the right of parents to choose the education of their children.

¹¹ Brief signed by Eduardo Bertoni and Florencia Saulino on the principle of non-discrimination and equality before the law, parameters for the appointment of public servants, the ministerial exception, and the State's obligations under the American Convention on Human Rights.

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

¹³ 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 on religious autonomy.

¹⁴ Brief signed by Eric Rassbach, Diana Verm, and Kayla Toney, on the autonomy of religious institutions.

¹⁵ Brief signed by Brett G. Scharffs, Elizabeth A. Clark, David H. Moore, Gary B. Doxey, and J. Samuel Morales González on the rights to equality and religious freedom.

¹⁶ Brief signed by Juan Navarro Floria on the right to religious freedom in its collective aspect, the autonomy of religious denominations, the right to religious education in public schools and the hiring of religious education teachers in these establishments.

¹⁷ Brief signed by Javier Borrego, Giovanni Bonello, and Vincent De Gaetano on the right to religious freedom and the autonomy of religious communities in matters of their own governance.

¹⁸ Brief signed by Eduardo Fuentes Caro, Fernando Arancibia Collao, Carlos Augusto Casanova Guerra, Javiera Corvalán Aspiazu, and Claudio Pierantoni on philosophical aspects related to whether education in general, and religious education in particular, require those who impart it to give testimony of what they preach in their own lives.

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

²⁰ Brief signed by Erika Muñoz Bravo concerning religious freedom.

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

²² Brief signed by Jorge Barrera Rojas on the meaning and scope of the role of general inspectors in Chilean schools, colleges and high schools, as well as the legality of Sandra Pavez Pavez's role as a teacher.

²³ Brief signed by Jorge Horacio Gentile on the situation of Sandra Pavez Pavez in light of the State's international obligations and the jurisprudence of the European Court of Human Rights.

²⁴ Brief signed by Macarena Marey on the political philosophy of religion, informed by theoretical updates on secularism, religious plurality, LGBT+ rights, neo-conservatism and sovereignty.

²⁵ Brief signed by Miguel J. Haslop on the balancing of rights, religious freedom, and comparative case law.

²⁶ Brief signed by Pauline Capdevielle and María del Pilar González Barreda on non-discrimination based on sexual orientation, the principle of secularism and the balancing of rights.

21) Pablo Suárez;²⁷ 22) Angela Wu Howard and Asma Uddin;²⁸ 23) *Fundación Mujeres X Mujeres*;²⁹ 24) W. Cole Durham and Jan Figel;³⁰ 25) Human Rights Clinic of the University of Santa Clara;³¹ 26) *Colombia Diversa* and *Synergia Iniciativa para Derechos Humanos*;³² 27) students of the Research Group on Gender, Rights and Society, and the Human Rights Group of the Externado University of Colombia;³³ 28) Alba Rueda;³⁴ 29) José Miguel Rueda, Sandra Martínez, Luis Fernando Rodríguez and Luciana Rodríguez;³⁵ 30) Soledad Bertelsen;³⁶ 31) *Semillero de Litigio ante Sistemas Internacionales de Protección de Derechos Humanos -SELIDH* of the University of Antioquia;³⁷ 32) Laura Saldivia Menajovsky;³⁸ 33) *Abogad*s por los Derechos Sexuales (AboSex)*;³⁹ 34) Professors of the Canon Law Department of the Law Faculty of the Pontificia Catholic University of Chile;⁴⁰ and 35) Nicolás Panotto and Sebastián Valencia.⁴¹

11. *Final written arguments and observations.* On June 14, 2021, the Commission submitted its final written observations, and the State and the representatives forwarded their respective final written arguments. On June 29, 2021, the representatives and the State submitted their observations on the

²⁷ Brief signed by Pablo Suárez on the scope of the right to equality and non-discrimination, the scope of the right to freedom of religion, worship and conscience, and the autonomy of religions in their actions in the public sphere

²⁸ Brief signed by Angela Wu Howard and Asma Uddin on whether or not a State can compel religious discussion in education and how preaching can have a profound existential impact on religious minorities.

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

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

³¹ Brief signed by Francisco J. Rivera Juaristi, Jasmine Gill and Isabella Perello on the rights to equal protection before the law, to privacy and to work.

³² 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 on the principle of equality and non-discrimination, protection of the religious autonomy of the Catholic Church in Chile, the right to work and workplace discrimination, and the right to privacy and family life.

³³ 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 on the State's obligation to guarantee rights, and on indirect discrimination.

³⁴ Brief signed by Alba Rueda, Julieta Arosteguy and Jorge Alejandro Mamani regarding discrimination based on gender identity, and freedom of belief and religion.

³⁵ Brief signed by José Miguel Rueda, Sandra Martínez, Luis Fernando Rodríguez and Luciana Rodríguez on manifestations of violence related to sexual orientation and control of conventionality.

³⁶ Brief signed by Soledad Bertelsen on the distinction between freedom of conscience and freedom of religion.

³⁷ 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 on the principle of non-discrimination and the right to equality before the law, religious freedom, the right to education, control of conventionality, the rights to personal integrity, a decent life, privacy and sexual autonomy, and violations of the right to remain in public service, the principle of legality and judicial guarantees.

³⁸ Brief signed by Laura Saldivia Menajovsky on religious autonomy in Chile, the posture of the Catholic religious doctrine and sacred texts on homosexuality, the principle of equality and non-discrimination, and reparations requested by the alleged victim.

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

⁴⁰ Brief 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 on the application and understanding of canon law in Chilean law from a regulatory and jurisprudential perspective.

⁴¹ Brief signed by Nicolás Panotto and Sebastián Valencia on the limits to religious freedom.

annexes presented in their final written arguments. 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 instant case.* The Court began deliberation of this judgment on February 1, 2022.

III JURISDICTION

13. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention, since Chile has been a State Party to the American Convention since August 21, 1990, and accepted the Court's contentious jurisdiction on the same date.

IV EVIDENCE

14. The Court admits those documents that were presented at the appropriate procedural moment by the parties and the Commission (Article 57 of the Rules of Procedure), and whose admissibility was neither contested nor challenged, nor their authenticity questioned.⁴² The Court also finds it pertinent to admit the statements rendered at the public hearing⁴³ and by affidavit,⁴⁴ insofar as they are in keeping with the purpose defined by the President and the Court in the orders that required them.⁴⁵ Furthermore, the Court accepts the documentation submitted by the representatives together with their final written arguments and the supporting documents related to the litigation of this case before the Court, insofar as they refer to costs and expenses.⁴⁶ At the same time, the Court notes that the State submitted, together with its final written arguments, a series of documents related to the subject matter and dispute in this case.⁴⁷ The Court admits said documents in application of Article 58(a) of the Rules of Procedure, considering them relevant and useful for the settlement of this case, and also noting that their admissibility was not challenged by the representatives or by the Commission.

⁴² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits. Judgment* of July 29, 1988. Series C No. 4, para. 140, and *Case of the Julien Grisonas Family v. Argentina. Preliminary objections, merits, reparations and costs. Judgment* of September 23, 2021. Series C No. 437, para. 48.

⁴³ The Court received statements from the following persons: Sandra Pavez Pavez, Rodrigo Uprimny Yepes, José Luis Lara Arroyo, and Estefanía Esparza Reyes.

⁴⁴ The Court received statements rendered by affidavit from the following persons: Paolo Carozza, Cynthia Verónica Ormazabal Pávez, Aída del Carmen Pavez Pavez, Ximena de los Ángeles Messina Bravo, Berta Leticia Fernández Pizarro, and Gerhard Robbers.

⁴⁵ The purposes of the statements are established in the Order of the President of the Court of March 3, 2021, and in the Order of the Court of March 26, 2021.

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

⁴⁷ These include the following documents: 1) Employment contract signed on March 12, 1991 between the teacher Sandra Pavez Pavez and the Municipal Education Corporation of San Bernardo; 2) Public statement of Mayor Orfelina Bustos, of December 24, 2007, concerning the meeting held with the teacher Sandra Pavez Pavez; 3) Letter from the Vicar for Education of the Diocese of San Bernardo to the Health and Education Corporation of San Bernardo, of July 23, 2007; 4) Decree-Law No. 5291 of 1929; 5) Law N° 6.477 of 1939; 6) Supreme Decree N. 776, regulating religious education in schools; 7) Law 19.638 of 1999; 8) Labor Code of Chile; 9) General Law of Education, enacted as Law No. 20.370, in its consolidated and systematized text under Decree-Law No. 2, of 2010, of the Ministry of Education; 10) Teachers' Statute, enacted as Law. N. 19,070, and now in its consolidated and systematized text under Decree-Law No. 1, of 1997, of the Ministry of Education; 11) Law No. 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 filed by the representatives of Sandra Pavez Pavez before the Court of Appeals of San Miguel.

V FACTS

15. In this chapter, the Court will establish the facts considered proven in this case, based on the body of evidence that has been admitted and on the factual framework described in the Merits Report. In addition, it will include those facts presented by the parties that serve to explain, clarify or dismiss this factual framework. The facts are presented below in the following order: a) the relevant regulatory framework; b) the disqualification of Sandra Pavez Pavez to teach Catholic religion classes, and c) judicial remedies.

A. Relevant regulatory framework

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

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

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

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

6. Freedom of conscience, expression of any belief and the free exercise of all religions which are not contrary to morals, good customs or public order. [...] Churches, and religious denominations and institutions of any faith shall have the rights, with regard to assets, which the laws currently in force grant and recognize. [...];

10. The right to education. Education has as its goal 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 will correspond to the State to provide special protection for the exercise of this right. [...] Elementary education and secondary education are obligatory; the State shall finance a free system with this objective, designed to assure access by all the population. [...] Likewise, it will correspond to the State to promote the development of education at all levels; stimulate scientific and technological research, artistic creation, and the protection and increase of the cultural patrimony of the Nation. 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, good customs, public order and national security. Officially recognized education cannot be aimed at propagating any type of political-partisan tendency [...];

16. Freedom to work and its protection. Every person has the right to freely contract and freely choose his work with a just compensation;

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 additional requirements other 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 following:⁴⁸

That the principles that inspire the lines of action of the present government are based on moral and spiritual values inherent to our Western humanist cultural tradition;

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

[...]

⁴⁸ Decree 924, of September 12, 1983, Ministry of Education, regulates religious education in schools (evidence file, folios 293 to 295).

Article 1. - The study programs of the different grades of pre-school, general elementary and middle education, shall include, in each grade, 2 weekly religion classes.

Article 2. - Religious education classes shall be imparted as part of the official weekly timetable of each educational establishment.

Article 3. - Religion classes shall be offered in all the country's educational establishments, on an optional basis for the student and the family. Parents or guardians shall indicate in writing, when enrolling their children or wards, whether or not they wish to receive religious education, also stating whether they opt for a particular creed or if they do not wish their child or ward take religious education classes.

Article 4. - Any religious creed may be taught, provided that it does not undermine sound humanism, morals, good customs and public order [...].

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

Article 6. - Religious education 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 shall be applied when it is necessary to introduce modifications to the current program.

Article 8. - Religious education classes shall be evaluated on the basis of concepts. This information will be given to the parents or guardians, together with the performance evaluation of the other disciplines or subjects of the respective Study Program. The evaluation of religious education will not affect the student's promotion [to the next grade].

Article 9. - In order to carry out their duties, religious education teachers shall be in possession of a certificate of suitability granted by the corresponding religious authority, which shall be valid as long as it is not revoked, and shall also accredit the studies carried out to hold such position.

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

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

18. Law No. 19.638 which establishes regulations for the legal constitution of churches and religious organizations,⁴⁹ states the following:

Article 1. The State guarantees freedom of religion and worship under the terms of the Constitution of the Republic.

Article 2. 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 persons may freely pursue their religious activities as well as the freedom of churches, denominations and religious entities.

[...]

Article 6. Freedom of religion and worship, with the corresponding autonomy and immunity from coercion, shall signify for every person, at least, the right to:

[...]

d) Receive and impart religious instruction or information by any means; to choose for himself – and, in the case of minors, their parents, and the guardians of incapacitated persons under their care - the religious and moral education that is in accordance with their own convictions [...]

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

Article 7. By virtue of freedom of religion and worship, religious entities are recognized as having full autonomy to pursue their own objectives and, *inter alia*, are entitled to:

- a) Freely exercise their own ministry, to worship, to hold meetings of a religious nature, and to found and maintain places for such purposes;
- b) Establish their own internal organization and hierarchy; to train, appoint, elect and designate the appropriate persons in positions and hierarchies, and to determine their denominations; and
- c) Express, communicate and disseminate, by word, in writing or by any other means, their own creed and to proclaim their doctrine.

B. Regarding the disqualification of Sandra Pavez Pavez as a Catholic religion teacher

19. Sandra Cecilia Pavez Pavez was born on March 20, 1958. She holds a Professional Diploma as a "Teacher of Catholic Religion and Morals" issued by the *Universidad de Ciencias de la Educación*; a Professional Diploma as a "Religion Teacher for General Basic Education," awarded by the *Pontificia Universidad Católica de Chile*, and a Diploma as a "Catechist" awarded by the same university.⁵⁰

20. She began working as a Catholic religion teacher at the "Cardinal Antonio Samoré" Municipal High School in 1985. On April 9, 1991, she became a permanent teacher at this educational institution.⁵¹ The "Colegio Cardinal Antonio Samoré" is a public high school, administered and financed by the Chilean State through the San Bernardo Municipal Corporation, which is part of the Municipality of San Bernardo.⁵² The commune of San Bernardo is located in the southern part of the Metropolitan Area. It is an undisputed fact that the salary and social security of Sandra Pavez Pavez were paid by the municipality of San Bernardo and derived from the national budget.

21. The labor relationship between the Municipal Corporation and Sandra Pavez Pavez was regulated by 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 funded by the Chilean State.

22. In accordance with the applicable regulatory framework derived from Decree 924 (*supra* para. 17), Sandra Pavez Pavez had been granted several certificates of suitability from the church authorities since 1985, in compliance with the provisions of Article 9 of Decree 924, and therefore had the necessary requirements to teach Catholic religion classes. The last certificate of suitability issued by the Vicariate for Education of San Bernardo, which is part of the Diocese of San Bernardo of the Chilean Catholic Church, was dated April 30, 2006, and was valid until 2008.⁵³

23. In 2007, through anonymous phone calls to the school and to the Diocese of San Bernardo, the rumor "spread" that the alleged victim was a lesbian. On several occasions, the Vicar for Education allegedly urged Ms. Pavez to end her "homosexual life" and told her that, in order to continue in her position, she must undergo psychiatric treatment.⁵⁴

24. On July 25, 2007, the Vicar issued a written communication addressed to Sandra Pavez Pavez informing her of the decision to revoke her certificate of suitability, thus preventing her from teaching

⁵⁰ Cf. Certificates obtained by Sandra Pavez Pavez as a Religious Education Teacher, Catechist and Teacher of Catholic Religion and Morals (evidence file, folios 17 to 20).

⁵¹ Cf. Resolution No. 129, confirming the hiring of Sandra Pavez Pavez as a teacher at the Cardinal Antonio Samoré High School on April 9, 1991 (evidence file, folios 21 and 22).

⁵² The Corporations are established by the municipalities for administration purposes. In addition, the Organic Constitutional Law of Municipalities establishes that the municipalities are part of the State and administer the communes.

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

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

Catholic religion classes in schools located in the Diocese of San Bernardo. The aforementioned communication stated that the decision was taken in accordance with the norms of canon law and that, after a review of the situation, the matter had been discussed with Ms. Pavez. It also indicated that the Mayor of San Bernardo and the Director of the Municipal Education and Health Corporation had been informed of the withdrawal of Sandra Pavez Pavez's certificate of suitability.⁵⁵

25. In the same communication, the Vicar for Education also pointed out the following: "as you know, as a priest and vicar of this diocese, I have tried to do everything possible to avoid reaching this difficult decision, noting that the spiritual and medical assistance offered was turned down by you, which I deeply regret."⁵⁶

26. Furthermore, in a letter dated July 23, 2007, in which the school was notified of the withdrawal of Ms. Pavez's certificate of suitability by the Vicariate, the latter indicated that the suitability of a religious education teacher "implies three aspects that are closely related: professional suitability [,] doctrinal suitability and moral suitability." With respect to moral suitability, the letter stated that:

[from] every religious belief there follows a personal or moral behavior derived from that belief. The teacher must adhere to the conduct required of members of that 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 in this regard, at least on the most crucial points of morality; morality is not only taught by word, but above all by example and testimony. A person who lives in public contradiction with essential aspects of the Catholic doctrine and morals that he or she is required to teach, is not qualified to transmit these teachings to the students."

[...]

In the case at hand, such an inconsistency has occurred. Indeed, although Professor Pavez holds a legitimately awarded diploma, and her knowledge of the contents of the Catholic doctrine may be sufficiently well 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 the Catholic doctrine that she was called upon to teach.⁵⁷

27. As a consequence of the withdrawal of the certificate of suitability by the Vicariate for Education of San Bernardo, Sandra Pavez Pavez was prevented from teaching Catholic religion classes in any national educational institution and, in particular, in the "Cardinal Antonio Samoré" High School where she worked as a Catholic religion teacher.

28. The school administration then offered her a position as acting inspector general. As of 2011, she was appointed to the position of inspector general by legal mandate, a position did not allow her to teach Catholic religion classes. However, her employment contract was not terminated, 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 school in order to be eligible for a retirement incentive granted by the State.

29. According to information provided by the expert witness Lara Arroyo during the public hearing, the position of inspector general involves teaching, supervision and administrative responsibilities in accordance with the Chilean Teachers' Statute and "is given to teaching professionals with extensive experience so that they can perform this role."⁵⁸ Article 34c of the Chilean Teachers' Statute states that in order to be a general inspector, a professional education background is required and, in addition, the individuals appointed to this position must belong to the teaching staff of the respective

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

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

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

⁵⁸ Expert opinion of José Luis Lara during the public hearing in the present case.

municipality.⁵⁹ Furthermore, the Statute establishes that the teaching management role “is a professional position of a higher level that requires specific training and teaching experience [...], and involves responsibility for matters related to the management, administration, supervision and coordination of education, and entails additional direct supervision and responsibility for teaching, administrative and auxiliary staff, or minor services personnel, and for the students.”⁶⁰

C. Judicial remedies

30. Sandra Pavez Pavez, the legal representative of the Homosexual Integration and Liberation Movement (*Movimiento de Integración y Liberación Homosexual- MOVILH*) and the President of the Teachers’ Association (*Asociación Gremial- A.G.*)⁶¹ filed an appeal for protection before the Court of Appeals of San Miguel, claiming that the action by the Vicariate was arbitrary and unlawful and that it breached several constitutional guarantees. In particular, they alleged that it violated the constitutional guarantees related to respect for and protection of private and public life and the honor of persons, the right to work and its protection, and to equality before the law.⁶²

31. On November 27, 2007, the Court of Appeals of San Miguel dismissed the appeal, considering that the action challenged could not be characterized as illegal or arbitrary. It pointed out that the legislation applicable to the case, namely, Decree 924, authorizes the religious body to grant and revoke the corresponding authorization in line with its principles, a situation that does not allow the State or any individual to interfere in any way. The Court of Appeals of San Miguel considered that “the legislation applicable to this case allows the corresponding religious body to grant and revoke the authorization [...] in accordance with its particular religious, moral and philosophical principles, a situation that will depend only on each one, with no interference from the State or any private individual, since the power rests with the creed itself, which has broad powers to establish its own rules and principles.” The aforementioned Court also ruled that the challenged action could not be characterized as illegal or arbitrary and that, therefore, the action attempted lacked the basic and fundamental requirements to claim the protection sought through this channel. The Court of Appeals of San Miguel thus declared the appeal inadmissible and rejected it “without the need [...] to analyze and refer in detail to the constitutional guarantees invoked by the appellant.”⁶³

32. In response to this ruling, Sandra Pavez’s lawyers filed an appeal before the Supreme Court of Chile. In a decision dated April 17, 2008, the Supreme Court found that the arguments put forward by the appellants were not admissible and confirmed all parts of the judgment of the Court of Appeals of San Miguel. In its ruling, the Supreme Court specifically indicated that it did not accept the “arguments submitted” and therefore ruled that “the appealed judgment is upheld.”⁶⁴

VI MERITS

33. In the instant case, the Court must analyze the scope of the State’s international responsibility for the alleged violation of several rights enshrined in the Convention due to the disqualification of Sandra Pavez Pavez as a Catholic religion teacher, following the withdrawal of her certificate of suitability by the Vicariate for Education of the Diocese of San Bernardo, of the Chilean Catholic

⁵⁹ Cf. Law 19.070, article 34.c.

⁶⁰ Law 19.070 article 7.

⁶¹ The Chilean organization that represents the elementary and secondary school teachers' association.

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).

Church. The Court will now examine 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 provisions of domestic law, and b) the rights to judicial guarantees and judicial protection in relation to the obligations to respect and guarantee rights and to adopt provisions of domestic law.

VI.1

RIGHTS TO EQUALITY,⁶⁵ EQUAL ACCESS TO PUBLIC SERVICE, ⁶⁶PERSONAL LIBERTY,⁶⁷ PRIVACY,⁶⁸ AND TO WORK⁶⁹ IN RELATION TO THE OBLIGATION NOT TO DISCRIMINATE⁷⁰ AND TO ADOPT PROVISIONS OF DOMESTIC LAW⁷¹

A. Arguments of the parties and the Commission

34. The **Commission** noted that there is no dispute that the reason for revoking Sandra Pavez Pavez's certificate of suitability was her sexual orientation, which constituted a difference in treatment based explicitly and exclusively on that very reason. There is also no dispute concerning the suspect category of sexual orientation, both in case law and in accepted doctrine. In this regard, the Commission recalled that, in this case, there was a difference in treatment that also translates into an interference in private life and autonomy, which is presumed to be in conflict with the State's international obligations. Thus, it is necessary to determine whether there is a justification of sufficient weight to overcome a strict scrutiny of a proportionality test.

35. In this regard, the Commission considered that the contents of the revocation do not offer any explanation to suggest a compelling need for the difference in treatment, the suitability of said difference in relation to such need, nor its strict proportionality. On the contrary, it indicated that the revocation is limited to stating explicitly that the differentiating criterion was the sexual orientation of Ms. Pavez without offering any reason that would pass a simple test of objectivity and reasonableness, much less a strict scrutiny as required in the case of such a category.

36. It argued that in order to determine whether Sandra Pavez Pavez could be removed from her position as a religious education teacher, the State had the obligation to analyze various aspects in order to safeguard the rights at stake and ensure that the restriction on her rights was not disproportionate. It recalled that the counterpart of respect for religious autonomy 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 consider these duties in relation to the right to religious freedom, though it appeared that the latter 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 at a public school with the status of a public official and, therefore, she had a direct relationship with the State, 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

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.

component of the public authority 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 the actions of the religious authorities in exercise of the mandate contained in Decree 924 of 1983 for the exercise of a public office, necessarily compromise the State's international responsibility. Finally, it pointed out that, upon learning of a discriminatory act or an unjustified differentiated 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 full reparation. It is therefore essential to provide effective judicial remedies to protect individuals against discriminatory acts by both the State and non-State actors.

39. Consequently, the Commission concluded that the difference in treatment based on sexual orientation to the detriment of Sandra Pavez Pavez did not have the least justification that would allow for an analysis of the first step of the proportionality test, namely, the legitimacy of the purpose. The latter, when it refers to the suspect categories set forth in Article 1(1) of the Convention, must be assessed strictly in terms of requiring a compelling reason. Thus, in this case, said difference in treatment does not pass the first step of the proportionality test and, therefore, it is discriminatory and violates Articles 24 and 1(1) of the Convention.

40. Furthermore, the Commission considered that Sandra Pavez Pavez was discriminated against for her sexual orientation in relation to her work as a teacher, and that there were no concrete and deliberate efforts to prevent such a violation. On the contrary, the State ratified and reinforced it through the decisions of its judicial authorities. It noted that the nature of Ms. Pavez's job as a schoolteacher also involved the exercise of a public service, and that discrimination in the continuance of this work performed for many years of her professional career resulted in the violation of the rights of access to public service under conditions of equality and to non-discrimination in the workplace, 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 prior inquiries into Sandra Pavez's sexual orientation and life with her partner, including warnings that she "correct" said matters, as well as the withdrawal of the certificate of suitability precisely on the basis of the latter, constituted an intrusion into her privacy and autonomy. Thus, it argued that in this case it was not possible to demonstrate a legitimate purpose that was fully applicable to this matter and, therefore, it was sufficient to establish that the intrusion into Sandra Pavez Pavez's privacy and autonomy 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 Sandra Pavez Pavez suffered "a dismissal based on her lesbianism with the tolerance of the State; therefore, this case does not refer to interference with the doctrine of the Catholic Church." They added that the "background to this case is that of a democratic State governed by the rule of law that allows religious entities to discriminatorily interfere in public employment matters and dismiss a person objectively qualified to teach." They added that the acceptance that acts protected by religions have a "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, *inter alia*, the right of parents and guardians to ensure that their children and wards receive a religious education in keeping with their own convictions. It also pointed out that the principle of religious freedom protects the right of religious communities to freely choose their teachers and that this principle has been reflected in precedents both in the universal system of human rights and in the European regional system, as well as in the comparative jurisprudence of the American States.

44. In addition, it noted that in this case there are no elements that would make it possible to attribute responsibility to the State. First, with respect to the duty to adopt provisions of domestic law, it argued that Decree 924 is consistent with the Convention insofar as this norm was necessary

to give effect to the rights and freedoms contained in Article 12(4). However, it indicated that there are also safeguards to protect 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 own convictions, within a general framework of non-discrimination.⁷²

45. Regarding the certificate of suitability, it indicated that this serves as a mechanism to guarantee the autonomy of religious entities to pursue their basic activities, including the selection of their teachers. It held that requiring this particular qualification for the specific function of representing the religious community through teaching ensures that the teaching will be faithfully imparted by those who, in fact, represent that community according to its criteria. Moreover, the certificate is only a requirement to perform a specific and defined role within schools, which is to teach the subject of denominational religion. All persons who hold professional certificates in education, or who are legally qualified or authorized to practice the profession, are eligible to be hired to perform teaching tasks, either in the classroom, or in management or to perform work of a technical-pedagogical nature.⁷³ The State insisted that possession of a certificate of suitability is not a legal requirement to be hired as 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. With regard to the breach of the duty of respect, it argued that Decree 924 does not delegate public authority to the churches as the certification of the suitability of teachers of denominational religion is not an attribution of the public authorities because that is not a mandate of the State. On the contrary, this power belongs to the religious communities or to their authorities. The State also considered that it was not responsible for a violation of the Convention due to a breach of the duty to guarantee, or for the alleged failure to comply with the duty of protection under the argument that the judicial authorities did not take any action to safeguard the rights of the alleged victim. On this point it emphasized that the State had adequate and effective remedies that were not exhausted and that this fact has an impact on the merits of the case.⁷⁴

47. Regarding the right to equal access to public service, it noted that since 1991, Sandra Pavez Pavez had an employment contract with the Education and Health Corporation of San Bernardo; that the employees of municipal corporations under private law are not public servants; and that, therefore, they are not entitled to the right to job stability in public service.⁷⁵ The State indicated, therefore, that Sandra Pavez Pavez, as well as the other teachers and educational personnel employed by private law corporations, were not public servants and, therefore, Article 23(1)(c) of the American Convention is not applicable in the instant case.

48. The State also pointed out that, even if Sandra Pavez's job were to be 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

⁷² The State insisted that religion classes are optional for students and their families in all the country's educational establishments, even if they have an institutional religious education program, that religion classes are not evaluated with a numerical grade, and that a student's performance in this subject does not affect his or her promotion to the next grade or education level.

⁷³ It also recalled that the lack of a certificate of suitability does not alter this fact, and that education professionals are eligible to teach any other subject in the classroom, or to teach religion classes on behalf of other churches or religious entities that are willing to issue a certificate of suitability.

⁷⁴ It argued, specifically 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, that an appeal for protection was filed against the Vicar for Education and not against a public authority or the educational establishment. Moreover, it 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 ruling dismissing the claims was not in itself a reason to attribute international responsibility to the State and that, furthermore, such decisions were not in breach of the duty to state grounds.

⁷⁵ It recalled that the teachers or personnel who work in schools could not be classified as public officials, since they are not public servants under Chilean administrative law.

understood that, in this case, Sandra Pavez Pavez was not prevented from obtaining a promotion,⁷⁶ nor did she suffer a measure that implied dismissal or suspension from her teaching duties, nor has she been legally prevented from exercising her professional functions in accordance with her professional teaching qualifications, neither in the public nor the private sector.⁷⁷ The State recalled that, in 2007, when the certificate of suitability was revoked, the contract remained in force, and the only practical consequence of the revocation was the reassignment of Ms. Pavez's duties from teaching the Catholic religion to working as a general inspector.⁷⁸ The State argued that her access to and tenure in public service were not affected, and there was not even a modification of duties not included in the employment contract. Consequently, the actions of the educational corporation in reassigning the alleged victim's functions are not within the scope of protection of Article 23(1)(c); thus, it is not possible to conclude that this right has been violated.

49. Regarding Article 26 of the Convention, it 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 in those States that have ratified the Protocol of San Salvador and that, to date, Chile has not ratified this instrument. Therefore, the rights recognized therein, including the right to work, do not entail obligations for the Chilean State. Furthermore, it argued that none of the components of the right to work recognized by this Court in its case law (free choice or acceptance of employment, job security, and equitable and satisfactory working conditions) have been affected, since Ms. Pavez had continuity in her job and was legally authorized to exercise the profession of educator, in accordance with her qualifications;⁷⁹ the claim of a vocation to specifically teach the Catholic religion does not constitute an obligation for the State, and the reassignment of her duties in no way constituted a real, objective and unlawful demotion.

50. In addition, the State argued that, even if it were considered that the reassignment of duties caused some type of impact on Sandra Pavez Pavez's right to work, it will be demonstrated below that this alleged impact would be fully proportional in compliance with the strict proportionality test. On this point, the State argued that the specific case requires a weighing of rights that takes into account all the interests involved (the rights of the teacher Sandra Pavez and, on the other hand, freedom of religion of the Catholic community and the children and parents who are part of it). It pointed out that the withdrawal of the certificate of suitability: a) pursued a legitimate and compelling purpose, namely the realization of the right to religious freedom enshrined in Article 12 of the American Convention; b) it was suitable to fulfill that purpose;⁸⁰ c) it was necessary since there were no alternatives that would have allowed the right to freedom of religion to be realized to the same degree, affecting to a lesser extent the interests of Ms. Pavez Pavez, and d) it was strictly proportional because the impact

⁷⁶ It emphasized that, in fact, she was promoted to a management position of higher rank which, like all promotions, entails greater responsibilities, hierarchy and remuneration.

⁷⁷ Her lack of a certificate of suitability to teach Catholic religious education did not disqualify her from classroom teaching, technical-pedagogical support or supervision of teachers. It also pointed out that Sandra Pavez Pavez could teach any other subject of the basic education curriculum, including religious education on behalf of any other religious community that wished to certify her for this purpose.

⁷⁸ It added that this consequence, which was decided by the employer, was accepted by Ms. Pavez Pavez, and that there is no record in the file of any claim by her against the State or her employer for the reassignment of duties. It further 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 Cardinal Samoré High School, and that it is a generic teaching position in the staff. It recalled that according to Chilean law and to Ms. Pavez's own employment contract, the employer has the power to modify the tasks performed by the employee, unilaterally, provided that these do not constitute deterioration in her working conditions, and that even if Ms. Pavez Pavez were to be considered as a public servant, this power of *ius variandi* also applies to public employment.

⁷⁹ The State recalled that the position of inspector general is, *per se*, a teaching position, that Ms. Pavez's appointment as inspector general required her to be a teacher, a professional in education, and that the loss of the certificate of suitability did not imply a loss of employment or of her status as a teacher. It added that Chilean law does not contemplate a legal disqualification that would prevent Ms. Pavez Pavez from working as an educator in any of the teaching functions described in the Teachers' Statute. Furthermore, she continued to be entitled to the benefits and prerogatives of teachers in Chile.

⁸⁰ It considered that removing from denominational religion classes those teachers who no longer enjoy the confidence of their religious authorities is appropriate to avoid imposing denominational religion teachers.

on Sandra Pavez's rights was 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 denominational religious education.⁸¹ In addition, it referred to the ministerial exception according to which the right to non-discrimination in employment applies differently to religious communities by virtue of the separation between churches and the State, and that this provision applies to the circumstances of the specific case.

51. Regarding the right to equality and non-discrimination, the State argued that there had been no violation because there was no difference in treatment based on a suspect category, inasmuch as Supreme Decree No 924 does not expressly or implicitly contemplate differentiated treatment based on sexual orientation. It asserted that the requirement of the certificate of suitability and the reassignment of duties did not constitute differentiated treatment, that the withdrawal of said certificate by the Vicariate was based on religious requirements of consistency of conduct or way of life as part of the criterion of suitability, and that the decision of the national judge was based on respect for religious freedom.

52. With respect to the right to honor, the State indicated that it did not delegate public powers to the ecclesiastical authorities or allow "prior inquiries" into the private life of Ms. Pavez. It added that she was fully aware that the Catholic Church, in exercise of its rights as a religious community, would pay attention to certain aspects related to her personal life in order to issue the certificate of suitability and that Ms. Pavez' private life 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, of 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 thereof, to the detriment of Sandra Pavez Pavez. This is based on 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 teacher of the Catholic religion. According to the Commission and the representatives, this responsibility is attributable to the State owing 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 religious education in public educational establishments; b) a breach of the duty to respect given that the Vicariate revoked the certificate by exercising public authority, and c) a breach of the duty to guarantee those rights inasmuch as there were no subsequent controls or review by the judicial authorities regarding the conformity of the revocation of the certificate with international human rights standards. Finally, they argued that Ms. 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 contended that the actions of the Vicariate should be viewed 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 ensure that their children or wards receive a religious and moral education that is in keeping with their own convictions. It argued that in this specific case, the violations alleged by the Commission and the representatives did not occur,

⁸¹ It recalled that a certificate of suitability is not a requirement to teach, and its loss does not automatically result in a teacher's dismissal or in the non-renewal of his/her contract. Moreover, the law does not disqualify a teacher from teaching other subjects, including religion classes on behalf of other religious communities, if they so wish. In this case, Ms. Pavez's employment contract not only continued, but she was even offered a promotion to the position of inspector general, which resulted in an increase in her salary and her continued employment within the same educational community to which she was linked. She retained her teaching hours and her job security over time, under the same conditions as for all other education professionals in Chile, and there was no objective and concrete deterioration in her job. The only consequence of the withdrawal of the certificate of suitability was that her duties were reassigned, in accordance with the exercise of *ius variandi*, but without losing her status as a teacher.

inasmuch as the religious authorities have the autonomy to appoint religious education teachers, and that Ms. Pavez Pavez was not a public official, she was not dismissed from her job, her duties were merely reassigned, and that in all cases the restriction of these rights would comply with a strict test of proportionality.

55. Based on the content of the State's arguments, the Court will proceed to analyze the alleged violations of the rights 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 examine 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 privacy and autonomy, to equal access to public service and to work; 2) the alleged conventional nature of Decree 924, and 3) the alleged discrimination and alleged violation of the rights to privacy and autonomy, access to 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) The rights to privacy, personal liberty, equality and non-discrimination of persons based on their sexual orientation

57. The Convention contains a universal clause for the protection of dignity, which is based on the principle of the individual's autonomy and on the idea that all persons should be treated as equals, inasmuch as these are ends in themselves according to their intentions, will and their own life decisions. In addition, the American Convention recognizes the inviolability of private and family life, among other protected spheres. This area of a person's private life is characterized as a space of freedom exempt and immune from abusive or arbitrary interference by third parties or public authorities.⁸²

58. At the same time, the Court has specified that the protection of the right to private life is not limited to the right to privacy, since it encompasses a series of factors related to the dignity of the individual, including, for example, the capacity to develop his or her own personality and aspirations, determine his or her identity and define his or her personal relationships. The concept of privacy also covers aspects of physical and social identity, including the right to personal autonomy and personal development, and the right to establish and develop relationships with other human beings and with the outside world. The effective realization of the right to private life is decisive for the possibility of exercising personal autonomy in relation to the future course of events that are relevant for an individual's quality of life. Furthermore, private life encompasses the way in which individuals see themselves and how they decide to project themselves towards others, this being an essential condition for the free development of the personality.⁸³

59. That said, a crucial aspect of the recognition of dignity is the possibility, accorded to all human beings, of self-determination and to freely choose the options and circumstances that give meaning

⁸² Cf. Gender identity, equality and non-discrimination of same-sex couples. State obligations in relation to change of name, gender identity, and the 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 of 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.

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.

to their existence based on their own preferences and convictions.⁸⁴ In this context, the principle of personal autonomy plays an essential role as it prohibits any action by the State that tries to exploit or utilize the individual; in other words, any action that converts the individual into a means to an end which is alien to the choices about their own life, body and the full development of their personality, within the limits imposed by the Convention. Thus, based on the principle of the free development of the personality or of personal autonomy, everyone is free and autonomous to live in a way that accords with their values, beliefs, convictions and interests.⁸⁵

60. The Court has also made a broad interpretation of Article 7(1) of the American Convention, indicating that it includes a wide-ranging concept of liberty, understood as the capacity to do or not to do whatever is legally permitted. In other words, it constitutes the right of everyone to organize, pursuant to the law, their individual and social life in accordance with their own choices and convictions.⁸⁶ Defined as such, liberty is a basic human right, inherent in the attributes of the person, which pervades the entire American Convention.⁸⁷

61. Regarding the right to identity, the Court has indicated that, in general terms, this may be conceived as the series of attributes and characteristics that individualize a person in society and that encompass several rights depending on the subject of rights in question and the respective circumstances.⁸⁸ The right to identity may be affected by numerous situations or contexts that may occur from childhood to adulthood.⁸⁹ Although the American Convention does not specifically refer to the right to identity as such, it includes other rights that comprise it.⁹⁰ Thus, the Court recalls that the American Convention protects those elements as rights in themselves, even though not all such rights will necessarily be implicated in all cases that concern the right to identity.⁹¹ Moreover, the right to identity cannot be confused with, or reduced or subordinated to one of the rights that it includes, nor to the sum of them.⁹² In addition, this Court has indicated that the right to identity is closely related to human dignity, the right to privacy and the principle of personal autonomy (Articles 7 and 11 of the American Convention).⁹³

62. It can also be understood that this right is closely linked to the individual in his or her specific individuality and private life, both of which are supported by historical and biological experiences and

⁸⁴ Cf. *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*, para. 150; *Case of Atala Riffo and Daughters 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 v. 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 Cf. *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.

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*, para. 149 a 152, and *Advisory Opinion OC-24/17, supra*, para. 90.

by the way in which this person relates to others, through the development of relationships within the family and society.⁹⁴ This also means that the individual may experience the need to be recognized as someone who is distinct and distinguishable from others. To achieve this, the State and society must respect and ensure the individuality of each person, as well as the right to be treated in keeping with the essential aspects of their personality, with no limitations other than those imposed by the rights of other persons. Thus, consolidating the individuality of the person before the State and before society implies having the legitimate authority to establish the exteriorization of their persona according to their most intimate convictions. Likewise, one of the essential components of any life plan and of the individualization of the person is precisely their gender and sexual identity.⁹⁵

63. Furthermore, the most relevant implications and scope of the right to identity and, therefore, the right to a sexual and gender identity, are that it constitutes an autonomous right based on the provisions of international law and those derived from the cultural elements contemplated in the domestic legal systems of the States, in order therefore to satisfy the specificity of the individual, with his or her rights that are unique, singular and identifiable.⁹⁶

64. In relation to sexual orientation and sexual identity, the Court reiterates that this is also linked to the concept of liberty and to the possibility of all human beings to enjoy self-determination and to 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 their privacy. Thus, in relation to sexual orientation and sexual identity, this Court has established that affective life with a spouse or permanent partner, which logically includes sexual relations, is one of the main aspects of this sphere or circle of intimacy,⁹⁷ which is also influenced by the self-identified sexual orientation of the individual.⁹⁸

65. In relation to the right to equality and non-discrimination, the Court has indicated that States must refrain from taking actions that are directly or indirectly aimed at creating situations of *de jure* or *de facto* discrimination.⁹⁹ In this regard, it has established that Article 1(1) of the Convention is a general obligation, the content of which extends to all the provisions of this treaty and establishes the obligation of States Parties to respect and ensure the free and full exercise of the rights and freedoms recognized therein "without any discrimination." In other words, whatever the origin or form it takes, any treatment that may be considered discriminatory with regard to the exercise of any of the rights guaranteed by the Convention is, *per se*, incompatible with this general obligation.¹⁰⁰ If a State fails to comply with the general obligation to respect and guarantee human rights by applying any form of differentiated treatment that may be discriminatory – in other words, that does not have a legitimate purpose, is unnecessary and/or disproportionate – this will result in the State's international

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 Riffo and Daughters 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 Cf. *Juridical Condition 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.

¹⁰⁰ Cf. *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*. 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.

responsibility. Consequently, there is an indissoluble link between the obligation to respect and guarantee human rights and the principle of equality and non-discrimination.¹⁰¹

66. Similarly, while the general obligation under Article 1(1) refers to the State's obligation to respect and ensure the rights contained in the American Convention "without any discrimination," Article 24 protects the "right to equal protection of the law."¹⁰² That is, Article 24 of the American Convention prohibits any discrimination by the law, not only with regard to the rights contained in this instrument, but also as regards all the laws enacted by the State and their enforcement.¹⁰³ In other words, if a State discriminates in its respect for, or guarantee of, a treaty-based right, it would be in breach of the obligation established in Article 1(1) and the substantive right in question. If, on the other hand, the discrimination refers to unequal protection by domestic law or its enforcement, this fact must be analyzed in light of Article 24 of the American Convention, in relation to the categories protected by Article 1(1) of the same instrument.¹⁰⁴

67. Thus, by virtue of the obligation not to discriminate, States are required to adopt affirmative measures to reverse or change discriminatory situations existing in their societies that are detrimental to a specific group of persons. This entails the special duty of protection that the State must exercise with respect to the actions and practices of third parties who, with its acquiescence or tolerance, create, maintain or promote discriminatory situations.¹⁰⁵ In this sense, discrimination based on one of the categories mentioned by way of illustration in Article 1(1) of the Convention, warrants particular or special consideration because the respective offense occurs due to what the alleged victims represent, or seem to represent, and what distinguishes them from other people.¹⁰⁶

68. The Inter-American Court has recognized that many people have historically been victims of structural discrimination, stigmatization, diverse types of violence, and violations of their fundamental rights because of their sexual orientation.¹⁰⁷ In this regard, it has established that sexual orientation is a category protected by the Convention.¹⁰⁸ Consequently, the State cannot discriminate against a person based on their sexual orientation.¹⁰⁹

69. The Court also considers that the criteria for determining whether or not there has been a violation of the principle of equality and non-discrimination in a specific case may have varying degrees of intensity, depending on the reasons for a difference in treatment. Thus, the Court finds that, when there is a measure that establishes a differentiated treatment involving one of the categories protected under Article 1(1) of the Convention, a thorough examination must be made, incorporating especially rigorous elements in the analysis; in other words, the difference in treatment must be a necessary measure to achieve an objective that is imperative under the Convention. In this type of analysis, in

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. ("First Contentious Administrative Court") 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 Cf. *Case of Atala Riffo and Daughters 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.

¹⁰⁸ Cf. *Case of Atala Riffo and Daughters v. Chile, 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.

order to assess the suitability of the differentiating measure, the objective pursued must not only be legitimate under the Convention, but also imperative. Moreover, the means chosen must not only be adequate and effectively conducive, but also necessary; that is, it cannot not be replaced by other less harmful means. In addition, the measure must undergo a strict proportionality test, according to which the benefits of adopting the measure in question must clearly outweigh the restrictions it imposes on the treaty-based principles it affects. (*supra* para. 69).

70. With specific regard to the scope of the right to non-discrimination on the grounds of sexual orientation, the Court has indicated that this is not limited to homosexuality *per se*, but that it also includes its forms of expression and the logical consequences in the life project of the individual.¹¹⁰ In this regard, for example, sexual acts are a way of expressing a person's sexual orientation, and are therefore protected under the same right of non-discrimination on the basis of sexual orientation.¹¹¹

71. It should also be recalled that in *Advisory Opinion OC-24/17*, this Court noted the important role that cultural, religious, sociological, economic, ideological and linguistic convictions play in the life and dignity of those who profess them. Nevertheless, it stated that these convictions cannot be used as a parameter of conventionality since the Court could not use them as an interpretative guide when determining the rights of human beings. In that sense, the Court is of the opinion that such convictions cannot condition what the Convention establishes in relation to discrimination based on sexual orientation. Thus, in democratic societies there must exist a peaceful coexistence between the secular and the religious spheres, implying therefore that the role of the States and of this Court is to recognize the sphere inhabited by each of them, and never force one into the sphere of the other.¹¹²

b) The right to education, freedom of religion and religious education

72. The Court has emphasized that "the right to education, which contributes to the possibility of enjoying a dignified life and prevents unfavorable situations for the minor and for society itself, stands out among the special measures of protection for children and among the rights recognized for them in Article 19 of the American Convention."¹¹³ The Court has explained that this right, with respect to children, 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 Salvador.¹¹⁴ The latter recognizes the right to education in Article 13, over which the Court may exercise its jurisdiction.¹¹⁵ Likewise, the right to education is recognized in Article 28 of the Convention on the Rights of the Child. Furthermore, this right is established in Article XII of the American Declaration of the Rights and Duties of Man, which states that "every person has the right to education, which should be based on the principles of liberty, morality and human solidarity." Article 3(n) of the OAS Charter also states that the "education of peoples should be directed toward justice, freedom, and peace." In turn, Article 30 of that instrument establishes that "integral development encompasses the economic, social, educational, cultural, scientific, and technological fields."

73. The Constitution of Chile recognizes the right to education and states that its purpose is "the full development of the person in the distinct stages of his life." It also states that parents or guardians

¹¹⁰ Cf. *Case of Atala Riffo and Daughters 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.

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 for the application of the system of individual petitions regulated by Articles 44 -51 and 61-69 of the American Convention on Human Rights in the event of a violation of Article 8, paragraph a) (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.

"have the preferential right and the duty to educate their children." The State also has the duty to provide special protection for the exercise of this right (*supra* para. 16).

74. Article 12(1) of the American Convention on freedom of conscience and religion establishes that everyone "has right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private." Similarly, Article 12(3) indicates that "freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health or morals, or the rights or freedoms of others." Finally, Article 12(4) stipulates that "parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions." For its part, Article 27(2) of the American Convention establishes that freedom of conscience and religion is one of the rights that cannot be suspended, while Article 1(1) mentions religion as a protected category with respect to any differential treatment that may be discriminatory.

75. This Court has understood that, under 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 a democratic society. Likewise, it has considered that this right, in its religious dimension, "constitutes a transcendental element in the protection of the convictions of believers and in 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 it also includes the right to religious education. In turn, as mentioned previously, the Constitution of Chile recognizes freedom of conscience, the right to express all beliefs and the free exercise of all religions that do not contravene moral standards, accepted customs or public order (*supra* para. 16).

76. Similarly, Law No 19.638, which establishes norms on the legal constitution of churches and religious organizations, guarantees freedom of religion and worship and indicates that 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. Moreover, Article 6 of this Law establishes that freedom of religion and worship, "with the corresponding autonomy and immunity from coercion, implies for every person, at least, the right to: [...] d) receive and impart religious teachings or information by any means; to choose for himself -and parents for minors and guardians for incapable persons under their care - the religious and moral education that is in accordance with his or her own convictions."

77. Finally, Article 7 of said Law establishes that, "by virtue of religious freedom" and freedom of worship "religious entities are accorded full autonomy for the pursuit of their own objectives and, *inter alia*, have the following faculties [...] a) To freely exercise their own ministry, to worship, to hold meetings of a religious nature, and to establish and maintain premises 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 other means, their own creed and to proclaim their doctrine."

78. Within the framework of the OAS, both the American Declaration and the OAS Charter contain provisions on the right of 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 express and practice it in public," while Article 45(a) of the OAS Charter indicates that "[a]ll human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and economic security." In turn, the Protocol of San Salvador¹¹⁷ which includes a

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.

¹¹⁷ Chile has not ratified the Protocol of San Salvador. It is mentioned here for illustrative purposes.

provision on non-discrimination on religious grounds in Article 3, states in Article 13 that education should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups. Similarly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women specifies that every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments, including, among others, "the right to profess her religion and beliefs within the law."¹¹⁸

79. In the context of the Universal System of Human Rights, Article 18 of the Universal Declaration of Human Rights refers to freedom of religion which includes "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." Article 26(2) of 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. Article 18 of the International Covenant on Civil and Political Rights also 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 have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions." Article 27 of the same instrument establishes that in those States "in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language."

81. In similar terms 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, when applicable, of legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions."

82. The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, of November 25, 1981, for its part, refers to the right to religion, and establishes in Article 5(2) that "every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the 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 freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men." Finally, Article 6(e) recognizes that the right to freedom of religion includes the freedom "to teach a religion or belief in places suitable for such purposes."

83. Likewise, Article 4 of Additional Protocol II to the Geneva Conventions establishes that: "Children shall be provided with the care and aid they require, and in particular: a) They shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care." In this regard, the International Committee of the Red Cross indicated that: "By using the future tense in *shall provide* and *shall receive*, 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) stipulates that the education that children receive shall be in accordance with the

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

wishes of their parents or guardians. Thus, it separates the 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 to ensure the continuity of children's cultural and moral ties with their homes."¹¹⁹

84. The United Nations Special Rapporteur on Freedom of Religion and Belief has stated that the purpose of the right to freedom of religion "is not to protect beliefs *per se* (religious or otherwise), but to protect 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 The United Nations Special Rapporteur on the Right to Education has also referred to religious education and noted that Article 13 of the International Covenant on Economic, Social and Cultural Rights recognizes "the freedom 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, as well as the freedom to establish and direct educational institutions."¹²¹

c) Regarding the right of access to public service under conditions of equality

85. Article 23(1)(c) of the American Convention establishes the right of access to public service under general conditions of equality. In this regard, this Court has interpreted that access under conditions of equality is an insufficient guarantee unless it is accompanied by the effective protection of tenure in the position.¹²² This means 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 process.¹²³

86. Furthermore, this Court has established that the right to have access to public service in general conditions of equality protects access to a direct form of participation in the design, implementation, development, and execution of the State's political guidelines through public service. Therefore, it is necessary that the State generate the optimal conditions and mechanisms in order for those political rights to be exercised effectively, respecting the principle of equality and non-discrimination.¹²⁴

d) 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 precedents.¹²⁵ Regarding the specific labor rights protected by Article

¹¹⁹ International Committee of the Red Cross. Report. *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Geneva, 2015, page 66.

¹²⁰ United Nations General Assembly, Human Rights Council. Report of the Special Rapporteur on Freedom of Religion and 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, Report of the United Nations Special Rapporteur on the Right to Education. A/HRC/47/32, April 16, 2021, para. 24.

¹²² Cf. *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 similar vein: *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 the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil, supra*, para. 155.

26, the Court has pointed out that the wording of the aforementioned provision indicates that these rights are derived from the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter.¹²⁶ In this regard, Articles 45(b) and (c),¹²⁷ 46¹²⁸ and 34(g)¹²⁹ of the Charter establish norms that refer to the right to work. Furthermore, in Advisory Opinion OC-10/89 the Court has indicated that “[t]he member States of the Organization have signaled their agreement that the [American] Declaration contains and defines the fundamental human rights referred to in the Charter. Thus the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.”¹³⁰ In addition, Article XIV of the American Declaration stipulates that “[e]very person has the right to work, under proper conditions, and to follow his vocation freely [...].” Similarly, Article 29(d) of the American Convention expressly establishes that “[n]o provision of this Convention shall be interpreted as: [...] d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.” Furthermore, the Court stated that this right¹³¹ is established in the international *corpus iuris*.¹³²

88. The Court has also specified that job security does not imply an unrestricted permanence in the job or position; rather, it has indicated that this right must be respected, among other measures, by granting protection to the worker so that, if he or she is dismissed, this dismissal is not arbitrary but is carried out with justification. This means that the employer must provide sufficient grounds for imposing this sanction with the due guarantees, and that the worker may appeal this decision before the domestic authorities, who must verify that the justification given is not arbitrary or unlawful.¹³³ Likewise, the Court considers that the right to job security protects workers from being deprived of their jobs due to direct or indirect interference by the public authorities, since this affects the freedom

¹²⁶ Cf. *Case of Lagos del Campo v. Peru*, *supra*, para. 143, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families 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, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: [...] b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working; c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws [...].

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 the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal.

¹²⁹ Article 34(g) of the OAS Charter - The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: [...] g) Fair wages, employment opportunities, and acceptable working conditions for all.

¹³⁰ Cf. *Interpretation of the American Declaration of the Rights and Duties of Man in the context 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 Former Employees of the Judiciary v. Guatemala. Preliminary objections, merits and reparations*. Judgment of November 17, 2021. Series C No. 445, para. 102.

¹³¹ Cf. *Case of Lagos del Campo v. Peru*, *supra*, para. 145.

¹³² 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; and Article 1 of the European Social Charter and Article 15 of the African Charter on Human and Peoples' Rights.

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

of individuals to earn a living through the work of their choice, and their right to remain in their jobs, as long as there are no justified causes for their dismissal.

89. Regarding the content of the right to work, and for the purposes of this case, 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 “guarantee” the exercise of this right *without any discrimination*.¹³⁴ In turn, the ILO Convention on Discrimination (Employment and Occupation),¹³⁵ ratified by Chile in 1971, establishes in Article 2, that “each Member for which this Convention is in force undertakes to declare and pursue a national policy designed 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, the ILO Convention states that every Member for which this agreement is in force undertakes to “carry out such a policy in respect of employment under the direct control of a national authority.”¹³⁶

90. In turn, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up states that “all Members have an obligation [...] to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: [...] (d) the elimination of discrimination in respect of employment and occupation.”¹³⁷ The Court emphasizes that, as stated by the ILO in the 1999 Report of the Director General, “decent work” involves the convergence of four strategic objectives in labor matters: the promotion of the fundamental rights of work; employment; social protection and social dialogue.¹³⁸ It should also be recalled 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” is Goal 8, which aims to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Among its targets are: “by 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.”¹³⁹

B.2. Decree 924

91. The Commission and the representatives alleged that Decree 924 is not in conformity 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), because it does not establish safeguards to prevent the granting of certificates of suitability to teach religious education classes in a manner that is arbitrary or in violation of fundamental rights.

92. As mentioned previously, Decree 924 regulates religious education classes in public and private schools and, in particular, stipulates that in order to teach religion classes, the teacher must “be in possession of a certificate of suitability granted by the corresponding religious authority, which will be valid for as long as the latter does not revoke it, and will also certify the studies he or she has completed to serve in that position.” In this regard, the Court recalls that Sandra Pavez Pavez taught Catholic religion classes in a public educational establishment.

93. In view of the foregoing, it is necessary to analyze the aforementioned decree and determine whether it is contrary to the right to equality. To this end, the Court will examine the conventionality

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, November 24, 2005.

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

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

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

¹³⁸ Cf. International Labour Conference, Memoria del Director General: Decent work. ILO, 1999.

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

of said norm. First, it will attempt to determine whether there is a difference in treatment that may be discriminatory between different religions. Second, it will seek to establish whether the power of religious communities to grant certificates of suitability, and more generally, to appoint religious education teachers who teach in public schools, is in compliance with the American Convention. Third, it will consider whether Decree 924 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 analyze whether it 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, the Court notes that the content of this decree does not establish differences in treatment between different religious dogmas or provisions for teaching 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 established 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 the right of 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 (Article 12(4)).

95. With respect to the above, the expert witness Paolo Carozza referred specifically 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 with respect to the relationship between religion and the State [...], which 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, 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 inadmissible and the State's obligation should be understood as having a rather more indirect and passive content. However, and notwithstanding 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 standards) allows States to fulfill their obligations by supporting the direct teaching of religion in public schools.¹⁴⁰

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

97. Based on the foregoing considerations, 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 applicable, guardians, to have their children or wards receive the religious and moral education that is in accordance with their own convictions, may imply - depending on the regulatory framework of each State - that the religious authorities have the ability to select 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 the provisions of Article 12(4) of the Convention into domestic law.

¹⁴⁰ Statement of Paolo Carozza rendered by affidavit (evidence file, folio 873).

¹⁴¹ Statement of Estefanía Esparza during the public hearing.

¹⁴² Statement of Rodrigo Uprimny during the public hearing.

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 other categories especially protected by Article 1(1) of the American Convention. On the other hand, this Court notes that it has not been alleged or proven that this norm constitutes a form of indirect discrimination.¹⁴³

99. However, the Court observes that the aforementioned decree does not expressly establish any means by which the decision of the religious authorities to grant or not a certificate of suitability may be subject to subsequent review by the administrative authorities, or to appropriate 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 above, 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 legal control of the State authorities. In this regard, although there is no doubt that religious communities can appoint the persons who will teach their own creed, when this takes place in public establishments, the State must enable persons whose rights may be harmed to have access to an administrative or judicial review of decisions involving an authorization to exercise the teaching profession. In these areas, such decisions must be subject to proper State control and must respect the principles and guarantees established in domestic law and in the American Convention.

101. In the instant case, the Court found that Decree 924 unconditionally delegates the power to grant certificates of suitability to persons to teach religion classes in public schools, without there being a clear mechanism to challenge such decisions (*supra* para. 98). In these situations, the State cannot relinquish its oversight role and has the obligation to establish clear and effective rules for the protection of the rights that may be affected by such delegated acts. In the chapter on judicial guarantees and judicial protection, the Court will analyze the availability and effectiveness of the remedies and judicial review in the case *sub judice* (*infra* paras. 157 to 159).

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

102. The arguments 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” between rights (between religious freedom and the rights to privacy and autonomy, access to public service under conditions of equality and to work). Accordingly, the Court will now examine the arguments regarding the alleged discrimination suffered by Sandra Pavez Pavez and the alleged violations of her rights to personal liberty, privacy, equal access to public service, and to work. For such purposes, the Court will carry out an analysis in the following order: a) the attribution of the facts to the State in the present case; b) the selection of religious education teachers by religious authorities and the autonomous nature of their decisions; c) the alleged restrictions to the rights to privacy and autonomy, 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 instant case, the Commission and the representatives argued that the facts of the case were attributable to the State in two different ways: 1) for 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) for a violation of the duty to guarantee, resulting from the lack of a subsequent review of that decision by the public authorities of Chile (the competent authorities in the educational and judicial spheres).

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.

104. With respect to the State's responsibility for an internationally 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 essential for determining whether a violation of the human rights recognized in the Convention can be attributed to a State Party. Indeed, this article imposes on States Parties the fundamental obligation to respect and guarantee the human rights recognized in the Convention. Any impairment of those rights that can be attributed, under the rules of international law, to the action or omission of any public authority constitutes an act attributable to the State, which implies its responsibility under the terms set forth in the Convention.¹⁴⁴

105. Thus, the Court has indicated that the State's international responsibility may be based on acts or omissions, by any of its powers or organs, that violate the American Convention, and is generated immediately by the internationally wrongful act attributed to the State.¹⁴⁵ The Court has also 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 State.¹⁴⁶

106. Regarding the content of the obligations to respect under Article 1(1) of the Convention, the Court has stated that "in accordance with Article 1(1) any exercise of public authority that violates the rights embodied in the Convention is unlawful. In this regard, any circumstances in which a body or official of the State or of a public institution inappropriately abridges one of those rights constitutes a failure to comply with the duty to respect rights enshrined in that article."¹⁴⁷ This conclusion is independent of whether the organ or official has acted in contravention of the provisions of domestic law or exceeded the limits of his authority, 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 their sphere of competence or in violation of domestic law.¹⁴⁸ Similarly, according to the articles on State responsibility, "the conduct of an organ of a State or of a person or entity empowered to exercise elements of governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity."¹⁴⁹

107. This Court has also indicated that, as a general rule, and in accordance with Article 7 of International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts, any conduct, including *ultra vires* acts, of a State organ 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 said organ or person is not acting in that capacity, i.e. when the

¹⁴⁴ Cf. *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.

¹⁴⁵ Cf. *Case of González Medina and Family 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 Cf. *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. See also, United Nations General Assembly, Responsibility of States for Internationally Wrongful Acts, A/RES/56/83, January 28, 2002, Article 2.

¹⁴⁷ Cf. *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 Cf. *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 Cf. *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 Articles on Responsibility of States for Internationally Wrongful Acts drafted by the UN International Law Commission. See also, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment*. I.C.J. Reports 1986.

person is acting within his or her capacity as a private entity.¹⁵⁰ Likewise, the most widely accepted criterion in international law for determining the extent to which an act by a State body or a person or entity empowered to exercise public authority can be attributed to the State, requires the determination of whether the said act was executed as an exercise of authority or as an apparent exercise of State authority.¹⁵¹

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

109. Regarding the contents of Article 1(1) of the Convention, the Court has pointed out that the obligation to guarantee implies the duty of the States Parties to organize the entire governmental apparatus and, in general, all the structures through which public authority is exercised, 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 provide compensation as warranted for the damage caused by the violation of human rights.¹⁵²

110. These obligations are also applicable to potential acts by non-State actors. Specifically, the Court has indicated that the State's international responsibility may arise from the attribution to it of acts that violate human rights committed by third parties or individuals.¹⁵³ 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 relations amongst individuals.¹⁵⁴

111. In sum, and in accordance with the foregoing, in order to establish the international responsibility of the State, the decisive factor is to determine whether a given violation of the human rights recognized in the Convention has taken place with the support or acquiescence of the public authorities, or whether the State has acted in such a way that the violation has been carried out in the absence of any prevention. Thus, it is necessary to determine whether a human rights violation is the result of the State's failure to fulfill its duty to respect and guarantee the rights established in Article 1(1) of the Convention.¹⁵⁵

112. In the instant case, the State of Chile considered that the action by the Vicariate for Education in revoking the certificate of suitability of Sandra Pavez Pavez was not attributable to the State, since

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 Cf. *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.

¹⁵² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits. Judgment* of July 29, 1988. Series C No. 4, para. 166, *Case of Xucuru Indigenous People and their 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 Displaced Afrodescendant Communities of the Río Cacarica River Basin (Operation Génesis) 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.

the latter did not delegate the task of certifying the suitability of teachers of denominational religion. In fact, it pointed out there is no attribution of public authority because the religious suitability of teachers of denominational religion is not a mandate of the State and that, on the contrary, it is a power vested in the religious communities or their authorities.

113. In this regard, the Court recalls, first of all, that Article 12(4) of the American Convention does not stipulate that religious authorities have the exclusive and inherent power to select religious education teachers or to determine their suitability. Said article only mentions that parents or guardians, as the case may be, have the right to ensure that their children or wards receive the religious and moral education that is in accordance with their own convictions.

114. Furthermore, as mentioned above, the possibility that the religious authorities may select teachers of religious education to teach their own doctrine, is one of the ways in which the right contained in Article 12(4) - namely the right of parents or guardians to have their children or wards, as the case may be, receive the religious and moral education that is consistent with their own convictions - can be realized. However, this is not the only means to do so and, depending on the domestic legislation of each State, this right can be realized in other ways.¹⁵⁶

115. Accordingly, the possibility that religious institutions have to determine the suitability of religious education teachers, far from constituting an inherent power contemplated in international law, depends on the domestic legal system established by each State. Thus, under Chilean domestic law, and specifically Decree 924, Chile's religious authorities have the ability to issue certificates of suitability that qualify teachers of religious education teachers to teach their doctrine. However, as the expert witness Carozza points out, this is a consequence of the constitutional model of that country, and not an inherent power or one that would derive from freedom of religion. Therefore, it is the Chilean domestic regulations that delegated to third parties - in this case to the religious authorities - the power to issue certificates of suitability. Moreover, as noted previously, the certificate of suitability is necessary to teach religious education classes in public educational establishments and, therefore, to be a teacher in a public school.

116. Consequently, based on the foregoing, this Court understands that Decree 924 conferred attributes of public power upon the religious authorities, and therefore, when issuing the certificate of suitability to religious education teachers, they exercise an act that is directly attributable to the State.

117. Regarding the attribution of responsibility for a breach of the duty to guarantee, this Court understands that this may also be based on the actions of the judiciary in charge of hearing appeals related to the revocation of the certificate of suitability (*infra* chapter VII).

b) The selection of religious education teachers by the religious authorities and the autonomous nature of their decisions

118. According to the State, the certificate of suitability required by Decree 924 to teach religious education classes is a guarantee of the autonomy of religious entities to carry out their fundamental activities, including the selection of their teachers. It added that the requirement of this particular qualification for the specific function of representing the religious community through teaching religion, guarantees that it will be faithfully taught by the person who, in fact represents that faith 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 taken, when faced with

¹⁵⁶ On this point, it should be recalled that Paolo Carozza, the expert witness proposed by the State, indicated that with regard to the right to receive religious education in accordance with the convictions of the parents, "the various legal systems and legal traditions of the States in the inter-American sphere offer very different constitutional models in terms of the relationship between religion and the State [...] which 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 could mean the active provision of religious instruction in public schools, while in others, such as Mexico or the United States, it would be constitutionally unacceptable and the obligation of the State should be understood as having a rather indirect and passive content. However, despite reasonable differences on the question of how [to comply] the State must fulfill its affirmative obligations under the ACHR 12(4)." Statement of Paolo Carozza rendered by affidavit (evidence file, folio 873).

the question of whether the teacher is religiously suitable, since the contrary would necessarily imply making a pronouncement on religious matters, encroaching on religious autonomy, in a matter that is at the core of such freedom —the possibility of appointing those who teach the doctrine— and would be a flagrant violation of the principle of separation between churches and the State.”

119. Regarding the State’s argument concerning the autonomy of the decisions made by the religious authorities when selecting persons who are suitable to teach religion classes, this Court first notes that in the instant case there is no dispute 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 areas related to religious beliefs and the organizational life of the community and, in particular, in matters concerning their internal organization. Nevertheless, 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 religious education classes in a public educational establishment is included within the sphere of the autonomy inherent to the right to religious freedom.

120. On this point, the 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 However, he added that “the counterpart of 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. Consequently, the State cannot invoke religious beliefs - even if these are held by a majority - to justify discriminatory decisions on the basis of any of the criteria prohibited by international human rights law, including sexual orientation.”¹⁵⁸

121. With respect to this point, the expert witness added that the concept of the “ministerial exception:”¹⁵⁹

operates in ministerial matters [...] in determining who are the members of that church, who are its ministers, its hierarchies, [...] but when this ministerial exception is projected in other spheres it is weakened [...]this idea that religious education teachers are covered by the exception is far from generating consensus [...],in the case of the Catholic religion, I believe that the ministerial exception can be applied there [...] but 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, training children to respect 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, in a similar manner 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 [...].” Likewise, Article 13(1) of the International Covenant on Economic, Social and Cultural Rights recognizes the right of every person to education, which “shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace.”

123. This Court has also emphasized that “the right to education, which contributes to the possibility of enjoying a dignified life and to preventing unfavorable situations for the minor and for society itself, stands out among the special measures of protection for children and among the rights recognized for

¹⁵⁷ Statement of Rodrigo Uprimny during the public hearing.

¹⁵⁸ Statement of Rodrigo Uprimny during the public hearing.

¹⁵⁹ This provision of the jurisprudence of the Supreme Court of the United States prohibits the application of anti-discrimination laws in labor relations between religious institutions with their “ministers”. Cf. Supreme Court of the United States, *Case of Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*. Case cited by the State in its final written arguments, and by the expert witness Paolo Carozza (evidence file, folios 885 and 886).

them in Article 19 of the American Convention.”¹⁶⁰ The Court has explained that this right, with respect to children, 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 Salvador.¹⁶¹

124. Accordingly, the Court has affirmed that an education that is imparted in violation of human rights does not allow for the fulfilment of the aforementioned goals, is completely contrary to them and, therefore, violates the right to education. Therefore, States must take adequate steps to prevent violations of human rights in the course of the children’s educational process.¹⁶² In fulfilling these obligations, 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 stated by the ESCER Committee, education must be “accessible to all, especially 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 encompasses all internationally prohibited grounds of discrimination.”¹⁶³

125. In the opinion of this Court, these principles are consistent with the considerations set forth in Decree 924, which states that education “has as one of its fundamental objectives to achieve the full development of man (*sic*).” (*supra* para. 17).

126. The facts of this case relate to the withdrawal 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 “Cardinal Antonio Samoré” High School, which is a public educational establishment, in compliance with the provisions of Decree 924 which “regulates religious education classes in schools.” Said Decree refers in its preamble to the “moral and spiritual values inherent to our Western humanist cultural tradition” and indicates that “education has as one of its fundamental objectives to achieve the full development of man.” Similarly, Article 1 of Decree 924 stipulates that the “study plans of the different courses of the preschool, elementary and high school education shall include, in each course, two weekly classes of religion.” Article 2 states that religion classes “shall be taught in the official weekly timetable of the educational establishment.” In addition, Article 3 of the decree stipulates 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).

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. *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, para. 185. Although in the latter case the Court referred to “primary” education, it understands that this refers 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 which Article 26 refers, contemplates the right to education (*Cf. 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 *Cf. 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, without prejudice to other more specific actions, that the measures of prevention that States should adopt include those aimed at “[c]hallenging attitudes which perpetuate the tolerance and condoning of violence in all its forms, including gender-based violence, [...] and other power imbalances.” These measures “should support children’s life skills, knowledge and participation and enhance the capacities of caregivers and professionals in contact 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 “strategic areas” required to achieve a “robust response to school-related gender violence,” while observing the need for analysis of “each context.” The Guidance emphasizes the importance of curricula to prevent violence and promote gender equality, as well as “training education staff to give them the tools to prevent and respond to school-related gender-based violence” (UNESCO and UN Women, *Global Guidance on addressing school-related gender-based violence*, 2019, pages 14 and 15).

¹⁶³ *Cf. Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 119. Also, CESCR, General Comment No. 13, *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 explained that the obligation of non-discrimination “is subject to neither progressive realization nor the availability of resources.”

127. In view of the foregoing, for this Court there is no doubt that the subject of religious education established in Decree 924 was intended to realize the right to education of students in general terms, and that, although it is true that this subject is optional, it is integrated into the educational program for children.

128. With respect to the so-called “ministerial exception,” the Court understands that it operates in matters related to the functioning of religious communities, such as the determination of the membership of the church, its ministers and its hierarchies. However, when this ministerial exception is applied in other areas, it becomes weaker and less robust, particularly in the field of education in public establishments, where the principles and values of tolerance, full respect for human rights, fundamental freedoms and non-discrimination are mandatory for the State.

129. Although the Court considers that the appointment of teachers of a particular religious creed by the religious communities concerned, in accordance with the provisions of Decree 924, may include a certain margin of autonomy, which would be consistent with the right to religious freedom (*supra* paras. 73 to 83), this cannot be absolute. This is because Catholic religion classes, which are part of a public education program in public schools, financed with public funds, are not within the scope of religious freedom that should be free from any interference by the State, since they are not specifically related to religious beliefs or to the organizational life of the communities.¹⁶⁴

130. Thus, while the Chilean religious authorities have broad autonomy when it comes to granting a certificate of suitability to teach religious education classes, given that this subject is part of the education program for children, these powers, which derive directly from the right to religious freedom, must be adapted to the other rights and obligations in force in the area of equality and non-discrimination. This power of the religious authorities also applies to the revocation of the certificate of suitability, as long as the rights and obligations of the State in the sphere of public education are respected.

131. Taking into account the foregoing considerations, and having established that the ministerial exception and the discretionary nature of the decisions of religious communities are not applicable in the area of education in public establishments, the Court will now analyze whether in this 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) *Alleged restrictions to Sandra Pavez Pavez’s rights to personal liberty, privacy, equal access to public service and to work*

132. In the instant case, the Commission and the representatives alleged that the revocation of Sandra Pavez Pavez’s certificate of suitability had the direct consequence of infringing her rights to privacy and autonomy, to equal access to public service and to work (*supra* para. 39).

133. With regard to the right to private life recognized by Article 11(2) of the Convention, it was stated that the protection of this right is not limited to the right to privacy; rather, 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 right of every human being to self-determination and to freely choose the options and circumstances that give meaning to his or her existence, according to his own choices and convictions. The Court has recognized this right

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 “a mere allegation by a religious community that there is an actual or potential threat to its autonomy is not sufficient to render any interference with its members’ rights to respect for their private or family life [...]. The religious community in question must also show, in light of the circumstances of the individual case, that the risk alleged is probable and substantial and that the impugned interference with the right to respect for private life does not go beyond what is necessary to eliminate that risk.” ECHR, *Fernández Martínez v. Spain* [GS], No. 56030/07. Judgment of June 12, 2014, para. 132.

by broadly interpreting Article 7(1), and in close relation to Article 11, stating that the latter includes a comprehensive concept of freedom (*supra* para. 59).

134. This Court considers that the rights to personal liberty and privacy of Sandra Pavez Pavez were affected in different ways. First, because the revocation of her certificate of suitability was specifically due to her 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 right of all human beings to self-determination and to freely choose the options and circumstances that give meaning to their existence, according to their own convictions, as well as the right to protection of privacy (*supra* paras. 58 and 63). Ms. Pavez Pavez's private life, and specifically her sexual orientation, was exposed in the same resolution in which the Vicariate of San Bernardo revoked her certificate of suitability (*supra* para. 24).

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

136. Regarding the rights to have 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 paid with public funds; b) the teaching position she held was as a tenured teacher; 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 servant due to the fact that her employment was governed by a private law contract and not a public law contract. However, for this Court, the relevant point is that Sandra Pavez Pavez held a position as a public education teacher, in a public school, and was paid with public funds. In this sense, the nature of the functions she performed were those of a public servant, whose access and tenure in a position depended ultimately on the decision of a State institution; therefore she enjoyed the protections established in Article 23(1)(c) of the American Convention, which recognizes the right of 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 perform 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 a higher salary and more responsibilities. The change of contract from incumbent to interim lasted for four years and only related to the position of Inspector General. According to the argument of the State, which was not challenged by the Commission or the representatives, this was the common procedure for the position of Inspector General, for all teachers, and not only for her. Moreover, according to what was reported, she was promoted to the position from within the same teaching staff and commissioned as inspector general, being first and foremost a tenured teacher at the school.

139. In view of the above, this Court finds that Sandra Pavez Pavez's right of access to public service under equal conditions was not affected, since she was not dismissed from her job. Moreover, the reassignment of her duties was carried out in accordance with the terms 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 line with the content of the right to work discussed previously (*supra* paras. 88, 89 and 90), the Court considers that this right was compromised to the extent that the reassignment of duties experienced by Sandra Pavez Pavez undermined her teaching vocation and constituted a form of demotion in her job. The fact that her employment contract did not specify that she was a Catholic religion teacher, that it envisaged the possibility that her duties could be reassigned, and that she could have continued teaching classes of other religions if she had been granted certificates of suitability from religious communities of other faiths, does not change the conclusion that the new duties assigned to her were the consequence of a different treatment based

on her sexual orientation and not on objective grounds of the requirements of the service.¹⁶⁵ Thus, although she continued to carry out activities related to education, she could not continue to do so as a Catholic religion teacher because she was subjected to discriminatory treatment, and, in this sense, her right to job security was affected and, therefore her right to work.

141. Having established that there were restrictions to the rights to personal liberty, privacy, and work, contained in Articles 7(1), 11(2) and 26 of the American Convention, the Court will now analyze whether these were the result of discriminatory treatment. This will be determined on the basis of the differentiating criterion, so it is appropriate to analyze whether it is proportional in the strict sense of the word.

142. On this point, the Court recalls that, as indicated *supra*, the criteria for analyzing whether there has been a violation of the principle of equality and non-discrimination in a specific case may be of varying intensity, depending on the reasons for the difference in treatment. In this sense, the Court considers that, in the case of a measure establishing a differentiated treatment involving one of the categories protected by Article 1(1) of the Convention, the Court must apply a strict scrutiny that incorporates particularly rigorous elements in the analysis. Thus, the different treatment must be necessary to achieve an imperative objective recognized by the Convention, and the means chosen must not only be adequate and appropriate, but also necessary. In other words, it cannot be replaced by a less injurious measure. In addition, it must include 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.

143. In this case, there is no doubt or dispute 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 protecting religious freedom and the right of parents to choose their children's education. Indeed, at no time was there any consideration of the effects that this measure would have on Sandra Pavez Pavez's personal life or on her teaching vocation. Nor is it clear that there is an actual or potential infringement of the autonomy of the religious community, or of the right to religion, or the right of parents or guardians to have their children or wards receive the religious education that is in accordance with their beliefs. On the contrary, the alleged victim stated - without this being challenged by the State - that she received support in the form of 700 signatures "from students and their parents, who were even authorized to speak 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, regarding the State's argument related to the coherence between the content of the religion classes and the conformity of the lifestyle of the person who teaches those classes with the religious creed, this Court considers 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 area of public education.

145. For the foregoing reasons, this Court considers that the decision of the authorities of the "Cardinal Antonio Samoré" (public) High School to remove Sandra Pavez Pavez from her position and assign her different duties other than those of a Catholic religion teacher, which resulted from the revocation of her certificate of suitability by the Vicariate for Education of San Bernardo, did not meet the strict test of proportionality and violated the principle of equality and non-discrimination to her detriment.

d) Conclusion

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

¹⁶⁶ Cf. Statement of Sandra Pavez Pavez during the public hearing and letter of support from her teaching colleagues at the "Cardinal Antonio Samoré" High School (evidence file, folios 297 to 301).

146. Therefore, this Court finds the State responsible for the violation of the rights to equality and non-discrimination, personal liberty, privacy and work, contained in Articles 1(1) and 24, 7(1), 11(2), and 26 of the American Convention, in relation to Article 1(1) thereof, 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 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 the violation of the right to have access to public service under conditions of equality, established in Article 23(1)(c) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Sandra Pavez Pavez.

VI.2

THE RIGHTS TO JUDICIAL GUARANTEES¹⁶⁷ AND JUDICIAL PROTECTION,¹⁶⁸ IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND TO ADOPT PROVISIONS OF DOMESTIC LAW

A. Arguments of the parties and the Commission

147. The **Commission** and the **representatives** argued that the Court of Appeals of San Miguel failed to consider whether the withdrawal of the certificate of suitability violated Sandra Pavez's constitutional and conventional rights, and merely established the legality of the action by the religious authority, in accordance with Decree 924. They also noted that despite the fact that Ms. Pavez, in her appeal, explicitly referred to the need to assess the arbitrariness of the measure in light of her rights, the Supreme Court upheld all parts of the judgment of the Court of Appeals of San Miguel without giving any justification. Moreover, it did not respond to her plea for a ruling beyond the legality of the revocation, in order to determine whether the revocation had violated her human rights.

148. The Commission likewise recalled that Sandra Pavez Pavez approached the Chilean courts, claiming that the withdrawal of her certificate was arbitrary and illegal, that it was a serious breach of her constitutional guarantees since it prevented her from exercising her rights, and that it was discriminatory. Thus, the Commission concluded that, in addition to the breach of the duty to safeguard against the violation of the rights analyzed up to this point, the appeal for protection violated her rights to obtain a duly justified decision and to judicial protection.

149. The **State** argued that it should not be concluded that Sandra Pavez Pavez's right to judicial protection was infringed by the State solely because its courts rejected the action filed. It noted that the dismissal of the action was due in large measure to the incorrect use of the procedural mechanism by the representatives of the alleged victim. It recalled that the action was brought against the then Vicar for Education of the Diocese of San Bernardo, and that in the context of that action, only the facts related to the revocation of the certificate of suitability granted by the Vicariate were mentioned. The State affirmed that Sandra Pavez Pavez never made use of a judicial mechanism aimed at questioning the actions of the public authorities or, failing that, the actions of the school authorities. In particular, it noted that the arguments that are being examined by this Court were never submitted to dispute through the domestic mechanisms available 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 (for actions taken by national authorities or members of the educational establishment, among others).¹⁶⁹ In this regard, it considered that it is not appropriate to claim the international

¹⁶⁷ Article 8(1) of the American Convention.

¹⁶⁸ Article 25 of the American Convention.

¹⁶⁹ It added that the alleged victim did not challenge the legality of the decree before the Comptroller General of the Republic, nor did she file a labor lawsuit or an appeal for protection against the corporation. Moreover, she did not request a review of the legality of the actions by the authorities of the educational establishment before the Comptroller General of the Republic, nor did she file an action for the annulment of a public law.

responsibility the State when the domestic courts have not been given the opportunity to settle a dispute or remedy an alleged human rights violation.

150. The State also argued that it is not internationally responsible for a breach of the duty to state reasons for judicial decisions. In this sense, it considered that the Court of Appeals of San Miguel guaranteed Ms. Pavez's right to obtain a reasoned decision inasmuch as it presented different elements that reflect the incorporation and materialization of this right. Therefore, it considered that the decision was related to the nature of the appeal, and to the nature of the issues raised. Regarding the decision of the Supreme Court of Chile, it felt that the different considerations put forward by the Court of Appeals of San Miguel were accurately taken up and that the expression "having seen, the judgment appealed is upheld" is a formula that signifies that the Court, having assessed the background of the case, assumes as its own the substantive considerations expressed by the court of first instance. It also recalled that the basis for this procedure is expressly provided for in Chilean law and that this provision of the Code of Civil Procedure has not been challenged on the grounds that it is unconstitutional or contrary to judicial guarantees or judicial protection.¹⁷⁰

B. Considerations of the Court

151. The Commission and the representatives alleged that the State had violated the rights to judicial guarantees and judicial protection for two reasons: due to the lack of effectiveness of the appeal filed by Sandra Pavez Pavez and due to the 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 closely linked to due process of law, which "encompasses the conditions that must be met to ensure the adequate defense of those whose rights or obligations are under judicial consideration." In relation to the duty to state reasons, this Court has pointed out that the grounds are the exteriorization of the reasoned justification that allows a conclusion to be reached.¹⁷¹ The duty to state grounds is a guarantee linked to the proper administration of justice, which protects the right of citizens to be tried for the reasons provided by law, while giving credibility to the legal decisions adopted in a democratic society.¹⁷² By virtue of this, the decisions adopted by national bodies that could affect human rights must be duly justified, otherwise they would be arbitrary decisions.¹⁷³

153. Regarding the right to obtain duly justified decisions, the Court has reiterated that the grounds are "the exteriorization of the reasoned justification that allows a conclusion to be reached" and that implies a rational presentation of the reasons that led the judge to take a decision. The duty to state grounds for decisions is a guarantee arising from Article 8(1) of the Convention, linked to the proper administration of justice, as it protects the right of citizens to be tried for the reasons provided by law and gives credibility to the legal decisions adopted within the framework of a democratic society.¹⁷⁴

154. Thus, a reasoned decision demonstrates to the parties that they have been heard and, when the decision is subject to appeal, it affords them the possibility to challenge it, and to have the decision

¹⁷⁰ In this regard, it considered that if it were to accept the criterion expressed by the Commission, the Chilean Supreme Court would be obliged to change its practices and rule on 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 addressed the legal disputes before them, and without the Supreme Court having anything new to contribute, as in fact occurred in the present case.

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. ("First Contentious Administrative Court") 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. ("First Contentious Administrative Court") v. Venezuela, supra*, para. 77, and *Case of Cuya Lavy et al. v. Peru, supra*, para. 136.

reviewed by a higher body. Accordingly, the reasoning of a decision and of certain administrative acts allows the facts, reasons and laws on which the authority based its decision to be known, in order to rule out any indication of arbitrariness.¹⁷⁵

155. With regard to Article 25(1) of the Convention, the Court has pointed out that this provision requires the States Parties to guarantee, to all persons under their jurisdiction, an effective judicial remedy against acts that violate their fundamental rights.¹⁷⁶ This presupposes that, in addition to the formal existence of such remedies, they must ensure results or responses to violations of the rights established in the Convention, the Constitution or the laws. The Court has stated that for a remedy to exist it is not sufficient that it be formally established; rather, it must be truly effective in establishing whether there has been a violation of human rights and in providing redress. This does not mean that the effectiveness of a remedy is assessed based on whether it produces a favorable result for the plaintiff.¹⁷⁷

156. Furthermore, the Court has repeatedly indicated that the different State authorities are obliged to exercise an *ex officio* "conventionality control" between the domestic norms and practices and the American Convention on Human Rights, within the framework of their respective competences and the corresponding procedural rules. In this task, the domestic authorities must take into account not only the treaty, but also the interpretation made of it by the Inter-American Court, which is the final interpreter of the Convention.¹⁷⁸

157. With specific reference to the effectiveness of the remedy, the Court has held that the meaning of the protection granted by Article 25 of the Convention is the real possibility of access to a judicial remedy so that a competent authority with jurisdiction to issue a binding decision may determine whether or not there has been a violation of a right claimed by the person filing the action. Likewise, if a violation is found, the remedy must be useful to restore to the interested party the enjoyment of his right and repair it.¹⁷⁹ Remedies which, because of the general conditions in the country, or even the particular circumstances of a given case, are illusory, cannot be considered effective.¹⁸⁰ This may occur, for example, when their uselessness has been demonstrated in practice, because the judiciary lacks the means to enforce its judgments or because of any other situation that constitutes a denial of justice.¹⁸¹

158. As mentioned previously, in this case Sandra Pavez Pavez challenged the Vicariate's decision regarding her certificate of suitability through an appeal for protection against the same entity. Both the Court of Appeals of San Miguel and the Supreme Court of Justice dismissed her appeal stating that decisions by the authorities of the religious communities could not be subject to external

¹⁷⁵ Cf. *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 Former Employees of the Judiciary v. Guatemala, supra*, para. 77.

¹⁷⁷ Cf. *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.

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 Cf. *Case of 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 Cf. *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.

interference by the State (*supra* paras. 30 and 31). In fact, the Court of Appeals of San Miguel rejected the appeal filed by Ms. Pavez, considering that “the legislation applicable in the case in question empowered the relevant religious body to grant and revoke the authorization to be issued in accordance with its particular religious, moral and philosophical principles, a situation that depends entirely on each one, with no interference by the State or any private individual, since the power rests with the creed itself, which has broad authority to establish its own rules and principles” (*supra* para. 30). Likewise, the Supreme Court upheld all parts of the judgment of the Court of Appeals of San Miguel (*supra* para. 31). The Court of Appeals of San Miguel and subsequently the Supreme Court of Justice 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.” (*supra* para. 30).

159. With respect to the foregoing, in Chapter VII.1 the Court noted that the facts of the present case took place in a public educational establishment and that, in this context, activities that affect human rights must be subject to a control of legality. Similarly, it noted that Decree 924 delegates the power to grant certificates of suitability to persons to impart religious education in public schools without there being a clear way to challenge this type of decision. Thus, Article 9 of Decree 924 cannot be interpreted as granting the 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 by the religious authorities of whether or not to grant the certificate of suitability must be subject to subsequent review by the State authorities, or to appropriate and effective remedies before the jurisdictional authorities, in order to protect and safeguard the rights of individuals against discriminatory acts contrary to the Convention.

160. In view of the foregoing, the Court considers that 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 rights established in Article 1(1) of the same instrument, inasmuch as the domestic judicial authorities did not carry out an adequate control of conventionality regarding the action of the “Cardinal Antonio Samoré” High School, whereby 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 her about the revocation of her certificate of suitability. Similarly, in the present case, the rights to judicial guarantees and 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 REPARATIONS¹⁸²

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 produced harm entails the obligation to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.¹⁸³

162. Reparation for the harm caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the situation prior to the violation. If this is not feasible, as occurs in the majority of cases of human rights violations, the Court may order measures to protect the rights that have been violated and repair the harm caused

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

¹⁸³ Cf. *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 Family Members v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2021. Series C No. 447, para. 150.

by those violations.¹⁸⁴ Accordingly, the Court has considered the need to provide different types of reparation in order to fully redress the damage; therefore, in addition to pecuniary compensation, other measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition have special relevance owing to the severity of the harm caused.¹⁸⁵

163. The Court has also established that reparations must have a causal nexus with the facts of the case, the violations declared, the damage proven, and the measures requested to redress the respective harm. Consequently, the Court must analyze the concurrence of these factors in order to rule appropriately and according to the law.¹⁸⁶

164. Therefore, taking into account the considerations on the merits and the violations of the American Convention declared in this judgment, the Court will now examine the claims presented by the Commission and the representatives of the victim, as well as the corresponding observations of the State, in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation, for the purpose of ordering measures to redress the harm caused.¹⁸⁷

A. Injured party

165. Pursuant to Article 63(1) of the Convention, this Court considers as injured party anyone who has been declared a victim of the violation of any right recognized therein. Therefore, the Court considers as "injured party" Sandra Pavez Pavez, who, as the victim of the violations declared in Chapter VI, will be considered the beneficiary of the reparations ordered by the Court.

B. Measures of satisfaction and rehabilitation

B.1. Measures of satisfaction

a) Publication of the judgment

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

167. The **representatives** asked the Court to order the State to publish the judgment in a national newspaper with wide circulation and on the websites of the relevant State institutions, particularly the Ministry of Education and the Ministry of Foreign Relations, requesting also that the State be required to make said publication available for one year.

168. As it has done in other cases,¹⁸⁸ the **Court** orders the State to 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, in the Official Gazette; b) the official summary of this judgment prepared by the Court, once, in a national newspaper with wide circulation, and c) this judgment in its entirety, available for one year, on an official website of the State, in a manner accessible to the public from the home page of the website. The State shall immediately inform this Court once it has issued

¹⁸⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, para. 24, and *Case of Digna Ochoa and Family Members v. Mexico*, *supra*, para. 151.

¹⁸⁵ Cf. *Case of the Dos Erres Massacre 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 Family Members 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 Family Members v. Mexico*, *supra*, para. 152.

¹⁸⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, paras. 25 and 26, and *Case of Former Employees of the Judiciary v. Guatemala*, *supra*, para. 136.

¹⁸⁸ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Digna Ochoa and Family Members v. Mexico*, *supra*, para. 167.

each of the publications ordered, regardless of the one-year time frame to present its first report as indicated in the twelfth operative paragraph of this judgment.

b) Public act of acknowledgement of international responsibility

169. The **Commission** requested that the State be required to adopt appropriate measures of satisfaction; however, it did not refer specifically to those measures.

170. The **representatives** requested that the State hold a public act to acknowledge its international responsibility, with the participation of 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, particularly the Minister of Education. They also requested that the details of said act be agreed with the victim.

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

172. In order to repair the harm caused to the victim and to prevent the repetition of events similar to those in this case, the **Court** deems it necessary to order the State to carry out a public act of acknowledgement of international responsibility in relation to the facts of this case. Said act must make reference to the human rights violations declared in this judgment. Likewise, it should be conducted through a public ceremony in the presence of high-ranking State officials and of the victim declared in this judgment, if she so wishes, and her representatives.¹⁸⁹

173. The State, the victim, and/or her representatives must agree upon the manner in which the public act is to be carried out, as well as the necessary details, such as the place and date of this event.¹⁹⁰ It must also be ensured that the victim has the possibility of attending, for which the State must cover her transportation expenses.¹⁹¹ Furthermore, as it has done in other cases,¹⁹² the Court orders the State to publicize the event through the media as widely as possible, including radio and television broadcasts and via the social media networks of the Ministry of Education. The State authorities who attend or participate in said act must be high-ranking State officials, including the most senior authorities of the Ministry of Education. The State has one year from notification of this judgment to comply with the obligation to hold an act of acknowledgement of international responsibility.

B.2. Measures of rehabilitation

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

175. The **Court** has confirmed the violations of the right to personal liberty and to privacy suffered by Sandra Pavez Pavez as a consequence of the facts of this case and the discrimination to which she was subjected owing to her sexual orientation (*supra* Chapter VI.1). Therefore, the Court deems it appropriate to order a measure of reparation that ensures adequate care for the ailments suffered by the victim as a result of the facts of this case and that takes into account her specificities and background.¹⁹³ Consequently, this Court orders the State to pay a sum of money so that Ms. Sandra

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 Cf. *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.

Pavez Pavez can cover the costs of the necessary psychological and/or psychiatric treatment. The amount will be defined in the chapter on non-pecuniary damage (*infra* para. 198).

C. Guarantees of non-repetition

C.1. Training

176. The **Commission** requested that the State be ordered to provide training for the persons responsible for evaluating the suitability of teaching staff and for judicial officials, at all levels, who are called upon to hear appeals for the protection of fundamental rights on the scope and content of the right to equality and non-discrimination, including the prohibition of discrimination based on sexual orientation.

177. The **representatives** expressed their agreement with all the points mentioned by the Commission in the Merits Report.

178. In its final written arguments, the **State** explained that it has already implemented training processes for the 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 responsible for evaluating the suitability of teachers in public schools 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 assess the progress made during its implementation.

C.2. Measures necessary to ensure adequate administrative and judicial oversight

180. The **Commission** requested that the State be ordered to: i) adapt its 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 adequate administrative and judicial oversight of possible discriminatory situations in the context of enforcement of the law.

181. The **representatives** requested that Decree 924 be repealed and 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 any other prohibited category of discrimination." Likewise, in their final written arguments, they requested that the State be ordered to adapt the anti-discrimination legislation, Law 2.609 of 2012, to "effectively ensure the non-repetition of cases similar to the present one in the future."

182. In this regard, the **State** argued that Decree 924 is "fully compatible with the American Convention," and is a "direct development of Article 12 of the Convention," and therefore it considered that 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 to revoke 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 role of oversight of the acts of private individuals that may affect human rights (*supra* para. 158). Therefore, in consideration of 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 to ensure that

the decisions taken pursuant to Decree 924 are in line with the rights and principles contained in the Convention and that the State's control over such acts is established in a clear and objective manner.

184. Based on the considerations in the preceding paragraph, and as it has done in other cases,¹⁹⁴ this Court deems it necessary to order the State, within two years from notification of this judgment, to clearly specify or regulate, through legislative or other measures, the remedy, procedure and jurisdictional competence for challenging the decisions of public educational institutions regarding the appointment or removal of teachers of religious education as a result 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 power to carry out an adequate control of conventionality over the decisions of public educational establishments regarding the appointment or removal of religious education teachers as a consequence of the issuance or withdrawal of a certificate of suitability.

D. Other measures requested

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

186. The **representatives** indicated that they agreed with everything stated by the Commission in the Merits Report.

187. In its final written arguments, the **State** referred to the request for the reinstatement of Ms. Pavez, noting that this specific measure and its scope are not clear. It affirmed that such measure was inappropriate since Ms. Pavez was never dismissed as a teacher, and that the proposed measure would imply appointing a teacher of Catholic religion who "does not enjoy the confidence and, in the opinion of the religious authorities, does not represent that faith." It argued that this 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. Compensation

E.1. Pecuniary damage

189. The **Commission** requested that the State be ordered to make full reparation for the human rights violations declared in the Merits Report, including the pecuniary aspects. It added that the pecuniary damage should take into account the differences in the amounts of the salaries and social benefits that Ms. Pavez 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 pecuniary damage, the costs of the psychiatric and psychological therapy incurred by the victim since 2007.

191. In its final written arguments, the **State** argued that the Commission's request was inadmissible inasmuch as the victim did not suffer a direct or indirect financial loss as a result of the reassignment of her duties, nor did she lose her wages and benefits as a teacher. As for the request of the representatives, the State denied that it was the cause of the "alleged losses" for which reparations were sought, and therefore the request would be inappropriate. Furthermore, it alleged that the victim could have availed herself of the State's medical and mental health services, through Chile's social security system.

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

192. In its case law, this **Court** has developed the concept of pecuniary damage, which encompasses the loss of or detriment to the income of the victims, the expenses incurred owing to the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.¹⁹⁵

193. In view of the circumstances of this case, the Court considers it reasonable to order the State to pay compensation for consequential damage in favor of Sandra Pavez Pavez, for the psychological therapies that she had to undergo as a result of the facts of the case. Bearing in mind that the information provided by the representatives does not allow the Court to establish with certainty the amount of the pecuniary damage caused by the facts examined in this case, the Court sets in equity the amount of USD\$ 5,000.00 (five thousand United States dollars) in favor of Sandra Pavez Pavez.

E.2. Non-pecuniary 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 non-pecuniary aspect, requesting, in addition, that it be required to adopt the corresponding compensation measures.

195. The **representatives** requested that the State compensate the victim for the suffering she endured as a result of the discrimination to which she was subjected, exposing her private life and harming her professional career. In their final written arguments they also explained that the events caused Ms. Pavez Pavez severe trauma for many years, and that since 2007 she has held the position of inspector general on an interim basis, “essentially a precarious and unstable” situation. In view of the foregoing, they proposed an award of USD\$30,000.00 alleging the similarity of the present case with the case of Atala Riffo and Daughters v. Chile.

196. The **State**, in its final written arguments, considered this request inadmissible, maintaining that it is not internationally responsible in the instant case.

197. In its case law, the Court has established that non-pecuniary damage may include both the suffering and afflictions caused to the direct victim and his family, and the impairment of values of great significance for the individual, as well as any alterations of a non-pecuniary nature in the living conditions of the victim or his family.¹⁸⁶ Moreover, since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, this can only be compensated, for the purposes of comprehensive reparation to the victims, through the payment of an amount of money or the delivery of goods or services that can be valued in money, as determined by the Court in reasonable application of judicial discretion and in terms of equity.¹⁹⁶

198. Considering the circumstances of this case, the nature and seriousness of the violations committed, the suffering caused to the victim,¹⁹⁷ and the time that has elapsed since the facts occurred, the **Court** finds it reasonable to order the State to pay compensation for non-pecuniary damage in favor of Sandra Pavez Pavez. Consequently, the Court establishes, in equity, the sum of USD\$ 30,000.00 (thirty thousand United States dollars) for non-pecuniary damage, in favor of Sandra Pavez Pavez. This amount includes a sum of money to enable Sandra Pavez Pavez to cover the costs of the necessary psychological treatment (*infra* para. 175).

¹⁹⁵ Cf. *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 Family Members 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 of coming out publicly, running the risk of being hurt by anyone in the street.” She also stated that she was affected by “having lost (her...) right to teach, (...and), what the media says.” Similarly, with respect to her position as inspector, she said that she felt that she “was not doing what [she] [...] liked, [...], that it was not what (her) inner self felt, it was like doing something because you have to do it and because you have to earn money and make a living, but was not (her) inner essence. (She) felt she totally lost (her) dignity as a human being.”

F. Costs and expenses

199. The **representatives** requested that the State be ordered to reimburse them for the expenses incurred in relation to this case. In their final arguments, they also requested that the State be ordered to cover 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. They explained that this was necessary because the victim lives in a rural area south of Santiago, so for the purpose of appearing before the Court she had to stay in the city. They stated that this expenditure totaled \$137,088.00 Chilean pesos for which they attached two payment vouchers.

200. The **Court** recalls that, based on its case law, costs and expenses form part of the concept of reparation, because the activities carried out by the victims in order to obtain justice, both at the national and the international level, entail disbursements that must be compensated when the State's international responsibility is declared in a judgment. Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes the expenses generated before the authorities of the domestic jurisdiction and those incurred during 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 may be made based on the equity principle and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.¹⁹⁸

201. This Court has indicated that "the claims of the victims or their representatives with regard to costs and expenses, and the evidence to support them, must be submitted to the Court at the first procedural opportunity granted to them; that is, in the pleadings and motions brief, without prejudice to such claims being updated subsequently, in keeping with the new costs and expenses incurred during the proceedings before this Court."¹⁹⁹ The Court also reiterates that it is not sufficient merely to forward evidentiary documents; rather, the parties are required to include arguments that relate the evidence to the facts that they represent and, in the case of alleged financial disbursements, clearly specify the items and their justification.²⁰⁰

202. Taking into account the amounts requested by the representatives and the expense vouchers presented, the Court decides to establish, based on equity, the payment of USD\$30,000.00 (thirty thousand United States dollars) for costs and expenses. This amount shall be delivered directly to the representatives. At the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives for any reasonable and duly proven expenses incurred at that procedural stage.²⁰¹

G. Method of compliance with the payments ordered

203. The State shall make the payments for compensation of pecuniary and non-pecuniary damage and to reimburse the costs and expenses established in this judgment directly to the persons indicated herein, within one year of notification of this judgment, or it may bring forward full payment, pursuant to the following paragraphs.

204. If the beneficiary is deceased or dies before she receives the respective compensation, this shall be delivered directly to her heirs, in accordance with the applicable domestic law.

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 the Former Employees 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 Cf. *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 Family Members v. Mexico, supra*, para. 193.

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

206. If, for reasons that can be attributed to the beneficiary of the compensation or her heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit said amounts in her favor, in an account or certificate of deposit in a solvent Chilean financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

207. The amounts allocated in this judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses shall be paid in full directly to the persons indicated, without any deductions arising from possible taxes or charges.

208. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in Chile.

VIII OPERATIVE PARAGRAPHS

209. 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 to respect and guarantee rights established in Article 1(1) of the same instrument, to the detriment of Sandra Pavez Pavez, pursuant to paragraphs 57 to 146 of this judgment.

2. The State is responsible for the violation of the rights to personal freedom, to privacy, and to work contained in Articles 7(1), 11(2), and 26 of the American Convention, in relation to the obligations to respect and guarantee rights, established in Article 1(1) of the same instrument, to the detriment of Sandra Pavez Pavez, pursuant to 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, 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, pursuant to paragraphs 151 to 160 of this judgment.

4. The State is not responsible for the violation of the right of access 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, pursuant to paragraphs 137 to 139, and 146 of this judgment.

AND ESTABLISHES:

Unanimously, that:

5. This judgment constitutes, *per se*, a form of reparation.

6. The State shall issue the publications indicated in paragraph 168 of this judgment, within six months of notification thereof.
7. The State shall hold a public act of acknowledgement of international responsibility in relation to the facts of this case, pursuant to paragraphs 172 and 173 of this judgment.
8. The State shall create and implement a permanent training plan for the persons responsible for evaluating the suitability of the teaching staff, in the terms of paragraph 179 of this judgment.
9. The State shall adapt its regulations on the remedy procedure and judicial competence for challenging the decisions of public educational establishments regarding the appointment or removal of religious education teachers as a consequence of the issuance or revocation of a certificate of suitability, pursuant to paragraphs 183 and 184 of this judgment.
10. The State shall pay the amounts specified in paragraphs 193, 198 and 202 of this judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, pursuant to paragraphs 203 to 208 of this judgment.
11. The State shall pay the amount specified to cover psychological and/or psychiatric treatment for the victim, pursuant to paragraphs 175 and 198 of this judgment.
12. The State, within one year from notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it.
13. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will close this case once the State has complied fully with all its provisions.

Judge Humberto Antonio Sierra Porto advised the Court of his concurring opinion.

DONE, at San José, Costa Rica, on February 4, 2022, in the Spanish language

I/A Court HR. *Case of Pavez Pavez v. Chile. Merits, Reparations and Costs.* Judgment of February 4, 2022, adopted at 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
Deputy Registrar

So ordered,

Elizabeth Odio Benito
President

Romina I. Sijniensky
Deputy Registrar

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

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF PAVEZ PAVEZ V. CHILE

JUDGMENT OF FEBRUARY 4, 2022

(Merits, Reparations and Costs)

1. With my customary respect for the majority decisions of the Inter-American Court of Human Rights (hereinafter “the Court”), I offer the present opinion with the aim of explaining my disagreement with the second operative paragraph, in which the Court declared the international responsibility of the State of Chile (hereinafter “the State” or “Chile”) for the violation of the rights to personal liberty, privacy, and to work, to the detriment of Sandra Pavez Pavez. This opinion complements the position I have already expressed in my partially dissenting opinions in the following cases: *Lagos del Campo v. Peru*¹, *Dismissed Workers of 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 *National Association of Discharged and Retired Employees of the National Tax Administration*

¹ Cf. *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.

² Cf. *Case of the Dismissed Employees 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.

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

⁴ Cf. *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 opinion of Judge Humberto Antonio Sierra Porto.

⁵ Cf. *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.

Superintendence (ANCEJUB-SUNAT) v. Peru,⁶ *Hernández v. Argentina*,⁷ *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*,⁸ *Guachalá Chimbo et al. v. Ecuador*,⁹ as well as in my concurring opinions in the cases of: *Gonzales Lluy et al. v. Ecuador*¹⁰, *Poblete Vilches et al. v. Chile*¹¹, *Casa Nina v. Peru*¹², *Miskito Divers v. Honduras*,¹³ *Vera Rojas et al. v. Chile*¹⁴, *Manuela et al. v. El Salvador*,¹⁵ and the case of the *Former Employees of the Judiciary v. Guatemala*,¹⁶ in relation to the justiciability of the economic, social, cultural and environmental rights (hereinafter “ESCER”) through Article 26 of the American Convention on Human Rights (hereinafter “the Convention” or “ACHR”).”

2. In previous separate opinions, I have presented in detail numerous arguments that demonstrate the logical and legal contradictions and inconsistencies in the theory of the direct and autonomous justiciability of ESCER. 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-retrogression, not of the ESCER in their individual dimension.

⁶ Cf. *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2019. Series C No. 394. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

⁷ Cf. *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.

⁸ Cf. *Case of Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs*. Judgment of February 6, 2020. Series C No. 400. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

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

¹⁰ Cf. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298. Concurring opinion of Judge Humberto Antonio Sierra Porto.

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

¹² Cf. *Case of Casa Nina v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2020. Series C No. 419. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

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

¹⁴ Cf. *Case of Vera Rojas et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of October 1, 2021. Series C No. 439.

¹⁵ Cf. *Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 2, 2021. Series C No. 441.

¹⁶ Cf. *Case of Former Employees 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 case of *Lagos del Campo v. Peru* ignores the scope of Article 26 as determined based on the rules of interpretation of the Vienna Convention on the Law of Treaties (literal, systematic and teleological interpretation).¹⁷ Furthermore, it modifies the nature of the obligation of progressive development enshrined with absolute clarity in Article 26;¹⁸ it ignores the will of the States as expressed in Article 19 del Protocol of San Salvador;¹⁹ and it undermines the legitimacy of the Court in the regional sphere,²⁰ just to mention a few arguments.

4. Likewise, I must recall that the posture I have taken does not deny the interdependence and indivisibility of civil, political, economic, social, cultural and environmental rights, nor does it disregard the individual dimension of the ESCER. In my opinion, the justiciability of all rights must be advanced through the channels established by each of the regulatory systems. Thus, the direct protection of the ESCER can be achieved in the sphere of the domestic jurisdictions, and before this Court by means of "connectivity", as was done in other cases prior to the case of *Lagos del Campo*. This makes it possible to achieve the same degree of protection that is now afforded by the jurisprudential position of the majority, and, at the same time, to respect the regulatory framework that grants jurisdiction to the Inter-American Court, and to protect its operation 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, considering that the withdrawal of Ms. Sandra Pavez's certificate of suitability to teach Catholic religion classes owing to her sexual orientation violated her rights to equality and non-discrimination, personal liberty, privacy, and work in relation to the obligations to respect and guarantee rights. Likewise, the Court found the State responsible for not providing effective remedies for the protection of her rights, and particularly the means to challenge decisions issued by the religious authorities, which, under the provisions of domestic law, were granted legal effects. 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 would like to emphasize that, in the judgment, prior to the analysis of the alleged violation of the right to work, the Court examined 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 impaired because, after the revocation of the certificate of suitability required to teach Catholic religion classes, Ms. Pavez continued to carry out public duties as a general inspector at the educational institution where she worked. Likewise, it found that this change did not constitute a demotion, but rather a reassignment of duties in accordance with the terms of her contract, which took the form of a promotion, with higher remuneration and greater

¹⁷ Cf. *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375.

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

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

²⁰ Cf. *Case of Dismissed Employees of Petroperú et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344.

responsibilities.²¹ Thus, the Court analyzed the concept of occupational demotion, although it did not specify its scope and content, within the context of Article 23 of the Convention. Despite the foregoing, and without further explanation, the Court resumes its analysis of the alleged occupational demotion in relation to Article 26 ACHR, taking into account two distinct elements.

7. Indeed, the Court found that the violation of the right to work was proven when it considered that, “[...] the **reassignment of duties experienced by Sandra Pavez Pavez undermined her teaching vocation and constituted a form of demotion in her job.** The fact that her employment contract did not specify that she was a Catholic religion teacher, that it envisaged the possibility that her duties could be reassigned, and that she could have continued teaching classes of other religions if she had been granted certificates of suitability from religious communities of other faiths, does not change the conclusion **that the new duties assigned to her were the consequence of a different treatment based on her sexual orientation and not on objective grounds of the requirements of the service**”²² (emphasis added). This assertion is imprecise and lacks any 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 in working conditions to the detriment of Ms. Pavez relates not only to a reduction in remuneration, in the stability offered by the contract or in the rank of her position, but also to the fact that she could no longer carry out the work that was her vocation, and to changes in her 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*; it 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 a person’s vocation as an area protected by the right to work, the Court’s failure to substantiate its position is evident. The judgment does not explain what this concept refers to, whether it is associated with a person’s profession in general, or with the scope of a specific contract; nor does it indicate the scope of this obligation for the State, or what its limits are in relation to the contract or the need for the service. Even more serious, the Court does not explain which provisions directly or indirectly recognize vocation as part of the right to work in the field of international human rights law. Furthermore, the Court does not specify on the basis of which criteria of interpretation it is possible to conclude that Article 26 - in relation to Articles 45(b) and (c), 46 and 34(g) of the OAS Charter,²³ and the precedents of the cases of *Lagos del Campo v. Peru*, *Dismissed Employees of PetroPerú et al. v. Peru*, *San Miguel Sosa et al. v. Venezuela*, *Spoltore v. Argentina* and *Workers of the Fireworks 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 legal 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. Secondly, the Court blurs the content of Article 23 of the Convention. As I explained earlier, the judgment mentioned the notion of occupational demotion both when referring to the right of access to public service and to the right to work; however,

²¹ *Case of Pavez Pavez v. Chile. Merits, reparations and costs.* Judgment of February 4, 2022. para. 138.

²² *Case of Pavez Pavez v. Chile. Merits, reparations and costs.* Judgment of February 4, 2022. para. 140.

²³ It should be recalled that the State of Chile did not ratify the Protocol of San Salvador.

in relation to the latter, the Court considered two additional elements of analysis: the vocation and the prohibition of discrimination. As noted previously, the vocation lacks any legal basis in the judgment, but there is no reason to exclude the prohibition of discrimination in the workplace from the content of Article 23. Thus, if the Court considered it necessary to mention this, 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 evolutive and *pro persona* interpretation should be preferred, in order to give content to the rights under the Convention, regarding which the Court does have jurisdiction to rule in the context of contentious cases.

11. Finally, I must emphasize, as I have done in other opinions, that the Court only determines the violation of the ESCER 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 declaring the State's responsibility for the violation of Articles 1(1) and 24 of the Convention. Consequently, 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 rigor of the Court's legal analysis.

12. The above is an indication that the majority of the Court intended to reiterate its position in relation to the justiciability of ESCER - with that sole intention and despite having no effect on the specific case. This not only demonstrates the lack of solidity of this jurisprudential position, and its limited practical relevance in the cases that are brought before the Court in general, and in the case of Ms. Pavez in particular; but above all, the lack of rigor in the analysis and determination of the standards in the matter, which instead of consolidating a clear area of protection for each of the rights, weakens its borders and empties its content.

Humberto Antonio Sierra Porto
Judge

Romina I. Sijniensky
Deputy Registrar