

Clarification Questions and Answers
Twenty-Sixth Inter-American Human Rights Moot Court Competition
Academy on Human Rights and International Humanitarian Law
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1. **Referring to paragraphs 16 and 17 on the swine virus pandemic: How has the number of deaths and infections in the Federal Republic of Vadaluz progressed from the time the WHO declared a pandemic to the present, as compared to the other countries of the hemisphere?**

Cases have increased exponentially, but at the same rate as in the other countries of the region. The mortality rate has not been as high as originally thought possible. However, when the decree was published, there was no definitive or proven data in Vadaluz or the other countries of the region.

2. **How many complaints and applications for remedies were filed digitally with the judiciary the same week that attorney Claudia Kelsen filed the writ of *habeas corpus*?**

More than a thousand complaints and applications for remedies were filed digitally with the judiciary during that week. However, the system was operating intermittently and irregularly that week.

3. **What other suitable remedy was available to challenge the administrative detention provided for in Article 3 of the Constitutional Emergency Decree?**

There is no other judicial remedy in the domestic legal system for the protection of personal liberty besides *habeas corpus*.

4. **What did attorney Claudia Kelsen ask for in the request for a precautionary measure filed on March 6 and how did it differ from the *habeas corpus* action filed on the same day?**

She requested Pedro's release on the same basis as the *habeas corpus*.

5. **What was the legal basis for the unconstitutionality action that attorney Claudia Kelsen filed with the Supreme Court? And What was the Federal Supreme Court's rationale for finding that there was no constitutional violation?**

The Federal Supreme Court found that the pandemic was an exceptional public health event, as it had begun to cause acute lung disease and some deaths. The Court believed that the pandemic threatened to cause enormous harm to the population of Vadaluz, especially since—at the time of the decree's publication—the full extent of the pandemic's causes and implications for human health, as well as treatments for the disease, were unknown. The Federal Supreme Court also found that the executive branch, based on WHO recommendations, had taken extraordinary and urgent measures to prevent the spread of the virus; therefore, it could not wait for Congress (which had not been in session) to convene sessions, either in person or virtually, hold a debate, and then enact legislation to address the pandemic. Indeed, in its decision, the Supreme Court urged Congress to resume activities.

The Federal Supreme Court examined the decree in light of the Constitution of Vadaluz and Article 27.2 of the American Convention, and determined that, although a state of emergency was declared, it did not formally suspend any non-derogable rights. However, the decree did restrict—albeit without formally announcing it—rights that generally can be limited, such as the right of assembly and freedom of expression.

6. How are administrative detentions regulated in Vadaluz’s domestic law and what powers do the authorities in charge of executing them have?

Domestic law authorizes administrative detentions for administrative offenses provided for in municipal ordinances and national laws. If expressly authorized, the police may arrest a person in flagrante delicto and bring him or her before the police chief for the imposition of short-term administrative detention. The State is a party to the American Convention.

7. What do the laws of Vadaluz say about jurisdiction, remedies, and procedures for hearing and deciding writs of *habeas corpus*?

All trial court judges have jurisdiction to hear and decide writs of *habeas corpus*, except for the family judicial police stations, which are only competent to hear complaints of gender-based violence.

Once a writ of *habeas corpus* has been adjudicated, it may be challenged on appeal to a higher court; in extraordinary cases, it may be reviewed by the Federal Supreme Court if there is a manifest error of law or a serious error in weighing evidence.

8. What do the laws and regulations of Vadaluz provide in terms of procedures, requirements, and rights that may be limited for the declaration of a state of emergency?

The procedures and requirements were described in the facts of the case. The State is a party to the American Convention.

9. On what grounds did the Federal Supreme Court deny Claudia Kelsen’s action challenging the constitutionality of Decree 75/20?

The Federal Supreme Court found that the pandemic was an exceptional public health event that threatened to cause enormous harm to the population of Vadaluz, especially since—at the time of the decree’s publication—the full extent of the pandemic’s causes and implications for human health, as well as treatments for the disease, were unknown. The Federal Supreme Court also found that the executive branch, based on WHO recommendations, had taken extraordinary and urgent measures to prevent the spread of the virus; therefore, it could not wait for Congress to convene during the pandemic. Indeed, in its decision, the Supreme Court urged Congress to resume activities.

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restrict—albeit without formally announcing it—rights that generally can be limited, such as the right of assembly and freedom of expression.

- 10. According to paragraph 23 of the hypothetical case, Pedro Chavero had been informed that he could pursue the legal actions provided for in the legal system of Vadaluz. So, what remedies would be applicable and available for Pedro to file, given that he had been deprived of his liberty? Referring to the same paragraph, what authority is competent to hear Pedro Chavero after his arrest, under the law of Vadaluz?**

The judicial remedy available at the domestic level for the protection of personal liberty is *habeas corpus*. The State is a party to the American Convention.

- 11. Under the domestic laws of Vadaluz, what is the legal effect of Congress's failure to act (by either approving or rejecting decrees declaring a state of emergency) within the eight-day period established by the new Constitution, as described in paragraph 7 of the hypothetical case? Does the executive branch have the power to enact laws on criminal matters by decree?**

There is no consequence under domestic law for Congress's inaction. However, the Federal Supreme Court found the executive branch's decision constitutional, given the urgent need to act and the fact that the executive branch could not wait for Congress to convene. Under the Constitution and the American Convention, Vadaluz is governed by the principle of criminal legality.

- 12. Regarding paragraphs 36 and 37 of the hypothetical case, how did the petition with the IACHR proceed? What were the specific dates and statements made by the parties?**

The admissibility report was adopted on August 30, 2020.

The report on the merits was adopted on October 30, 2020.

The case was submitted to the Inter-American Court on November 8, 2020.

The Inter-American Court scheduled a hearing for May 20, 2021.

- 13. According to paragraph 23, can it be understood that the Police Headquarters performs court functions in proceedings arising under Decree 75/20?**

Yes, it performs court functions to charge, investigate, indict, and impose administrative penalties of up to four days of detention. The State is a party to the American Convention.

- 14. In relation to paragraph 28, what policies have the State adopted to eliminate the digital divide in the country, specifically to improve access to filing applications for remedies?**

The judiciary has been gradually adopting effective measures to improve the virtual filing and processing of applications for remedies.

15. Regarding paragraph 32, has the congressional oversight of Executive Order 75/20 been carried out to date?

No, not yet. Congress is discussing whether virtual sessions are valid.

16. Regarding the facts in paragraph 22 of the hypothetical, what was the review measure carried out upon Pedro's arrest?

See the facts of the case.

17. Besides the writ of *habeas corpus* and the legal action brought in the Federal Supreme Court alleging unconstitutionality, what other legal actions or remedies are available in Vadaluz?

According to the case, the domestic judicial remedy available to protect personal liberty is *habeas corpus*. To challenge the legality of a rule or regulation in the abstract, the available judicial remedy is an unconstitutionality action.

18. Under Article 3 of Decree 75/20, what is the definition of the crime of “noncompliance with public health measures”?

Anyone who violates health measures imposed by law or by the national health authority responsible for regulating the introduction into the country or spread of a disease or epidemic or an epizootic or plague is subject to a term of imprisonment of four months to two years, depending on the seriousness of the offense.

19. Did the State of Vadaluz notify the OAS General Secretariat of the declaration of the constitutional state of emergency, as required by Article 5 of Decree 75/20?

The State of Vadaluz forwarded a copy of Decree 75/20 to the OAS General Secretariat.

20. What remedies are available under the laws of Vadaluz to challenge administrative decisions made under Decree 75/20?

To protect personal liberty, the available domestic judicial remedy is *habeas corpus*; to challenge the legality of the administrative act, the ordinary remedy is an administrative appeal; and to challenge a rule or regulation in the abstract, the available judicial remedy is an unconstitutionality action against regulations or decrees whose provisions have the force of law. Decree 75/20 has the force of law in the domestic legal system.

21. Does Vadaluz have any prompt and effective mechanism comparable to the amparo or tutela action [petition for a constitutional remedy], for the protection of human rights in particular cases?

The writ of *habeas corpus*.

- 22. While the state of emergency declared by the executive branch is in force, can the executive branch create new administrative and criminal offenses on an extraordinary basis?**

Formally, the executive branch cannot establish criminal offenses. It can, however, enforce the administrative penalties provided for under domestic law. The State is a party to the American Convention.

- 23. During the processing of the individual petition before the IACHR, did the State exercise its right of defense, participating in the debates that led to the admissibility and merits reports?**

Yes.

- 24. What are the judicial remedies provided for in Vadaluz's legal system that are referred to in Article 3 of Executive Decree 75/2020, and what are their respective procedures?**

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- 25. How is the judiciary organized in the state of Vadaluz, specifically in terms of the hierarchy of its courts?**

Trial courts.

Courts of appeal.

Federal Supreme Court.

- 26. Paragraphs 26-27: The association of women justice authorities contends that Directive No. 1 of 2020 disproportionately affects women. What adverse effects does this directive have on these women?**

See the facts of the case.

- 27. Paragraph 28: What is the legal value and effect of the statement issued by the Superior Council for the Administration of Justice, specifically in relation to Directive No. 1 of 2020 issued by the judicial union?**

The Superior Council for the Administration of Justice is the independent public entity responsible for judicial governance.

- 28. Has the State of Vadaluz ratified international instruments of the universal human rights system?**

Yes.

29. Did the State of Vadaluz file a preliminary objection before the IAHRs? If so, during which procedural stage?

No.

30. What is the administrative sanctioning procedure in Vadaluz for imposing the penalties provided for in Article 3 of Decree 75/20 (stages, jurisdiction, and remedies)?

The procedure was as described in the facts of the case. To protect personal liberty, the available domestic judicial remedy is *habeas corpus*; to challenge the legality of the administrative act, the ordinary remedy is an administrative appeal; and to challenge a rule or regulation in the abstract, the available judicial remedy is an unconstitutionality action against regulations or decrees whose provisions have the force of law. Decree 75/20 has the force of law in the domestic legal system.

31. It is understood from paragraph 32 of the facts of the case that Congress made no decision on Decree 75/20, and therefore the requirements for the decree to enter into force were not met. Since Pedro was arrested under the decree, what remedies are available under the state of emergency to challenge the unlawful administrative action?

There is no consequence under domestic law for Congress's inaction. However, the Federal Supreme Court found that, as a constitutional matter, urgent measures had to be taken and the executive branch could not wait for Congress to convene.

32. What actions did the IACHR take to verify that the alleged victims had exhausted domestic remedies in Vadaluz and went to the IAHRs after they had obtained a final decision, in keeping with Article 46(1)(a) and 46(1)(b) of the ACHR?

When it analyzed the admissibility of the petition, the IACHR verified that two remedies had been adjudicated: the writ of *habeas corpus* and the unconstitutionality action.

33. What was the State's reply to the admissibility decision of the IACHR when it received notice of the admissibility report? Paragraph 36 of the facts does not specify.

The State responded by protesting the speed with which the report on the merits was adopted. It pointed out that the inter-American system was subsidiary and that it had not had the opportunity at the domestic level to hear the complaint or make reparations to the potential victims.

It also called the IACHR irresponsible for ignoring the context of the serious pandemic and the importance of also protecting the lives and health of justice authorities and the public in general. It showed no interest in reaching a friendly settlement agreement.

- 34. What is the meaning of the offense of noncompliance with public health measures, which is established in the Criminal Code and referred to in Article 3 of the decree?**

It means that, in addition to the penalty provided for in Decree 75/20, there is a criminal offense for failure to comply with public health measures. Its enforcement is not part of the facts of the case.

- 35. The fact that proceedings are being conducted virtually during the pandemic did not interfere with the operation of the courts or procedural deadlines. Did Vadaluz make any changes to adapt and improve court services during the pandemic, such as suspending procedural deadlines if there are difficulties or interruptions in the judiciary's virtual system?**

The judicial system of Vadaluz had never before faced such a situation. After some initial problems, it has gradually taken steps to improve its virtual operations.

- 36. Were the churches and temples (of any religious denomination) that were able to hold services and activities maintaining social distance and was there a limit on the number of people at these meetings?**

Yes.

- 37. Paragraph 10 of the facts states that Vadaluz's judiciary has been mired in corruption scandals, allegations about its tolerance of structural racism, sexual harassment, and other problems. What decisions can be made to justify this criticism?**

This is not relevant to the issues of the case.

- 38. What are the conditions for incarceration in Vadaluz, especially in relation to the number of administrative detentions carried out under Decree 75/2020?**

The conditions are as established in Decree 75/20. There are no particular considerations about the number of administrative detentions under Decree 75/20.

- 39. What was the content of the notice given to the Secretary General of the OAS, specifically as to the reasons for the suspension, and which articles of the American Convention were suspended?**

A copy of Decree 75/20 was forwarded to the Secretary General of the OAS.

- 40. Aside from continuing to provide in-person services at the women's police stations, mentioned in paragraph 26 of the hypothetical case, what measures did the judiciary take in Vadaluz to meet the demands of adapting to the pandemic? Were there shifts for handling urgent requests and/or was there any investment in technology? Did the State have experience with online judicial services?**

The judicial system of Vadaluz had never faced a situation like the pandemic. It has gradually taken steps to improve its operations.

- 41. Have there been any new discoveries about the characteristics and spread of the virus? If so, has the State adapted its pandemic response measures? What impact did government measures have on infection rates? How did the public react to these measures taken by the State?**

When Decree 75/20 was published and when Pedro was arrested, all the implications for human life and health were unknown.

- 42. Given Article 3 of Decree 75/20, which deems appropriate the use of all judicial remedies provided for under the domestic law of the State of Vadaluz, the question is: How does the appeal system work? What types of remedies are provided for in the domestic legal system, and what are the possibilities for judicial review in the adjudication of these remedies? Was this appeal filed by [Pedro's] attorney? Was he tried? If so, when?**

Habeas corpus to protect personal liberty. The trial court's *habeas corpus* ruling is subject to appeal and eventually to extraordinary review by the Federal Supreme Court.

- 43. Does the state of emergency in Vadaluz grant State agencies (such as the police) special powers or authority?**

In principle, the state of emergency authorizes the executive branch to take extraordinary measures to restrict rights, provided that, (i) the extraordinary grounds are justified; (ii) such measures are intended to protect other rights and to safeguard the rule of law and democracy; and (iii) the measures taken are necessary, suitable, and proportionate.

The new constitution gave constitutional status to the American Convention. Note also that Congress continues to debate the validity of virtual sessions.

- 44. Does the legal framework of Vadaluz set a time limit for adjudicating writs of *habeas corpus* and constitutionality challenges?**

Yes. Theoretically, rulings on writs of *habeas corpus* must be issued within a maximum of 10 days. Unconstitutionality actions must be adjudicated in no more than 90 days.

- 45. Since Congress did not issue a decision within 8 days, was Decree 75/20 not automatically rejected?**

There is no legal consequence under the laws of Vadaluz for the absence of a decision by Congress. However, the Federal Supreme Court found that urgent measures had to be taken and the executive branch could not wait for Congress to convene.

- 46. According to paragraph 7 of the case: What requirements and limits were established for decreeing a state of emergency in the State of Vadaluz following the adoption of the 2000 Constitution?**

Those established in the facts. The new constitution gave constitutional status to the American Convention. Note also that Congress continues to debate the validity of virtual sessions.

- 47. Did the Federal Supreme Court of the State of Vadaluz review the constitutionality of Decree 75/20, either at the request of a party or sua sponte?**

The Federal Supreme Court conducted the review at the request of Claudia Kelsen.

- 48. Regarding paragraphs 22 and 23, do the police authorities of the State of Vadaluz have the power to perform judicial functions under the constitution?**

Yes.

- 49. What are the current infection and mortality rates of the swine pandemic?**

Infection rates are very high. Mortality rates are lower than expected. When the decree was published, the full implications for human health were unknown.

- 50. What material changes are there now compared to the beginning of the pandemic in Vadaluz?**

The question is vague. The State has gradually taken steps to adapt its operations.

- 51. What is the maximum time limit established by the Constitution of Vadaluz for the duration of a state of emergency?**

To the extent and for the period of time strictly required by the exigencies of the situation.

- 52. What are the police protocols for the apprehension of participants in peaceful protests?**

There are protocols in place that incorporate inter-American standards regarding the legitimate use of force.

- 53. Was Decree 75/2020 subject to constitutional review?**

Yes, at the request of a party, through the action filed by Claudia Kelsen.

- 54. What constitutional guarantees does the State have and what are their respective legal effects under the legal system of Vadaluz?**

The question is vague. The Constitution contains a generous catalog of rights. It also establishes the constitutional status of ratified human rights treaties such as the American Convention.

- 55. Did the State inform the OAS General Secretariat or, failing that, the IACHR, about the human rights situation during the pandemic?**

A copy of Decree 75/20 was forwarded to the Secretary General of the OAS.

- 56. What was the position of the Congress of Vadaluz on the approval or rejection of Decree 75/20?**

There is no legal consequence for Congress's failure to issue a decision. At present, the validity of virtual sessions is still under debate.

57. Under Vadaluz's constitutional, legal, and regulatory frameworks, how is the procedure for declaring a state of emergency regulated and what are the effects of Congress's failure to decide on the matter?

There is no legal consequence for Congress's failure to issue a decision. The validity of virtual sessions is still under debate.

58. Did the judiciary suspend activities completely (in-person and virtual) as of publication of Decree 75/20, based on Article 2.1 of the decree, or did it suspend only in-person activities as of the publication of the Judicial Union's Directive No. 1 of 2020?

The judiciary suspended its in-person activities upon the publication of Decree 75/20. However, it has been taking steps to improve its virtual service.

Since the March 4 announcement made by the Superior Council for the Administration of Justice, the judiciary has been partially resuming in-person services.

59. What powers do the police — particularly the chief of Police Headquarters No. 3 — have in relation to administrative offenses?

Under the domestic law, if there is an express provision, the police may arrest a person in flagrante delicto and bring him or her before a police chief.

60. How long did the state of emergency last in the State of Vadaluz, and was it for all the states?

The decree did not set a time limit. Nor did it set a geographical limit, so it is assumed to apply throughout the national territory.

61. How was the judiciary functioning through the "new virtual system"?

It has been gradually improving.

62. Is the Superior Council for the Administration of Justice part of the judiciary? is it a judicial or administrative body?

Yes, the Superior Council for the Administration of Justice is the independent public entity responsible for the governance and administration of the judiciary and is attached to the judiciary.

63. Did Congress and the judiciary resume their activities after March 2021? Did the members of Congress evaluate Decree 75/20?

Congress is still debating the validity of virtual sessions.

- 64. Why did the police station not contact attorney Claudia Kelsen until 24 hours after Pedro's arrest, given that she and Pedro's family went to the police station the day before? When were they notified of the arrest? Is this standard procedure?**

Claudia Kelsen was only able to see him 15 minutes before he was brought before the chief of Police Headquarters No. 3.

- 65. What were the specific elements of the case that justified the Court's decision not to grant emergency measures such as the provisional measure and the precautionary measure?**

The central argument was that the inter-American system does not provide precautionary protection from *per se* violations of personal liberty in the case of arbitrary detentions.

Concerning the request for a precautionary measure, the argument was that the case does not meet the regulatory requirements and criteria developed by the IACHR.

As for the request for the provisional measure, the argument was that the case does not meet the requirements of the American Convention and the criteria developed by the Inter-American Court.

- 66. According to paragraph 7 of the facts of the case, the executive branch may declare a state of emergency, and such declaration may be approved or rejected within 8 days by Congress. So, what would be the effects of such approval or rejection? Is it binding or is there any possibility of appealing a rejection? And, if approved, are there any constitutional limits on the duration of the state of emergency?**

There is no legal consequence for Congress's failure to issue a decision. The situation is unprecedented. At present, Congress is still debating the validity of virtual sessions.

- 67. Paragraph 8 of the facts says that "only people with sufficient financial means can promptly access quality health services." Does this mean that quality health services were entirely private? Did the State have a free public health care system?**

This is not relevant to the issues.

- 68. According to paragraphs 31 and 32 of the facts, both the *habeas corpus* and the precautionary measure filed by attorney Claudia Kelsen were dismissed because Pedro had been released from custody. Would a writ of *habeas corpus* and a precautionary measure have the same procedural effect in the State of Vadaluz even if Ms. Kelsen had been able to file them on March 5 through the judiciary's website, had it not been down?**

This is unknown.