



JUSTICE

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Inter-American Court of Human Rights Issues Decision in Vera Rojas and Others v. Chile - O'Neill

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ANNOUNCEMENT

Washington, D.C. — The Health and Human Rights Initiative of the O’Neill Institute for National and Global Health Law at Georgetown University Law Center (“the HHR Initiative”) is proud to announce the important judgment of the Inter-American Court of Human Rights (“IACtHR” or “the Court”) in *Vera Rojas and Others v. Chile*, and highlights the importance of prompt implementation of reparations by all State actors involved. The Initiative represented the victims in this case before the Court as co-petitioner with Chilean attorney Karinna Fernández Neira. The judgment was issued on November 18, 2021.

This is a landmark judgment on the right to health in the Inter-American Human Rights System, clarifying its content and State obligations with respect to children and persons with disabilities.

RIGHTS TO LIFE, DIGNIFIED LIFE, PERSONAL INTEGRITY

In its judgment, the IACtHR determined that the State of Chile violated Martina Vera Roja’s rights to life, dignified life, personal integrity, health, social security, non-discrimination, and special protection as a child under the American Convention on Human Rights.



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THE CASE

The case involves the State's obligations towards Martina Vera Rojas, a girl with different disabilities due to a rare, incurable, and degenerative neurological disease known as Leigh Syndrome. As a result of her disease, Martina has suffered a significant deterioration of her cognitive level and motor functions and needs constant and multidisciplinary in-home healthcare. Martina's health treatment was originally financed by her parent's private health insurance, which was paid by them and included coverage for catastrophic illnesses such as Leigh Syndrome. The insurance was administered by Isapre MasVida, a private insurance company in Chile.

When Martina was four years old, Isapre MasVida unexpectedly terminated her coverage for catastrophic illnesses, shifting the significant expense of the treatment to her parents. The Isapre's decision was made possible by a regulation of the Chilean Health Superintendency, which granted private insurers the discretionary power to terminate coverage of catastrophic illnesses based on the duration of the disease alone, without any duty to consider the patient's health status and needs.

DECISION

The IACtHR established that, since financing is crucial for the economic accessibility of health services, States have a duty to regulate, monitor and oversee the activity of all public and private actors that finance the healthcare system. The Court determined that the Chilean State had failed to adequately regulate private insurers, allowing the Isapre MasVida to make an arbitrary and discriminatory decision that put Martina's life and health at severe risk.

The judgment clarifies that the right to health extends to palliative care and rehabilitation, particularly in cases of children with disabilities. According to the Court, "physical accessibility" requires States to ensure access to multidisciplinary palliative and rehabilitation services for children and their families. These services should prioritize at home care, or any other form of treatment that preserves family and community life. Additionally, the IACtHR also highlighted the importance of State support for families that care for children with disabilities, especially for mothers, who traditionally bear the disproportionate burden of care.

SIGNIFICANCE

This is the first time that the IACtHR has declared a violation of the principle of non-retrogression in economic, social, and cultural rights. The Court ruled that the regulation of the Superintendence of Health that allowed the withdrawal of catastrophic coverage based on the passage of time was a deliberately regressive and unjustified measure.

REMEDIES

The IACtHR ordered individual reparations for Martina and her family, including monetary and in-kind compensation, as well as guarantees of non-repetition. Among the reparations ordered, the HHR Initiative highlights that the Court required the State of Chile to sign a legally binding instrument to



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ensure Martina's medical treatment would be covered in the event of her parents' deaths or any other type of economic hardship. Additionally, the Court ordered the State to adopt legislative measures to guarantee the participation of the Children's Ombudsman's Office in all proceedings before the Superintendence of Health, or in judicial proceedings in which the rights of children may be affected by private insurers.

Those of us acting as co-petitioners in the case hope that all institutions of the State of Chile involved in implementing reparations do so without delay, in view of the special characteristics of this case. Finally, we call on the Constitutional Convention to ensure that the experience of Martina and her family, as well as Chile's international obligations regarding the right to health, are given special consideration when drafting the content of this right and the mechanisms for its protection.