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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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Contents

[**Inter-American Court of Human Rights Issues Decision in Vera Rojas and Others v. Chile - O'Neill** 1](#_Toc126265974)

[ANNOUNCEMENT 1](#_Toc126265975)

[RIGHTS TO LIFE, DIGNIFIED LIFE, PERSONAL INTEGRITY 1](#_Toc126265976)

[THE CASE 1](#_Toc126265977)

[DECISION 2](#_Toc126265978)

[SIGNIFICANCE 2](#_Toc126265979)

[REMEDIES 2](#_Toc126265980)

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.

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 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.

[oas.org](https://www.oas.org/en/iachr/media_center/PReleases/2020/037.asp)

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OAS

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Washington, D.C. - On September 6, 2019, the Inter-American Commission on Human Rights (IACHR) filed an application with the Inter-American Court of Human Rights (IA Court) over case 13.039, Martina Rebeca Vera Rojas vs. Chile.

The case relates to the state’s responsibility regarding the lack of regulation, control, and adequate regulatory systems for supervising the medical care provided a health insurance company, to the detriment of the victim.

The IACHR found that the state allowed and legally endorsed a health insurance company’s decision to unilaterally and arbitrarily terminate the home-based hospitalization regime that was essential to the survival of Martina Vera, a girl who had been diagnosed with Leigh’s syndrome. In response to these events, Martina’s family filed an action for protection on October 26, 2010, which was ultimately heard by the Supreme Court of Justice, which ruled in favor of the insurance provider on January 26, 2011, without regard for the state’s special role as guarantor of the rights of children and people with disabilities. In December 2011, the family began a second, arbitration-type appeal before the Health Authority to call the suspension of Martina’s treatment into question. The Health Authority ruled in favor of the victim on August 27, 2012, on the basis of an economic study that found it to be more efficient to continue the treatment due to the subsequent economic consequences that suspending it could trigger.

In Merits Reports 107/18, the IACHR declared the state to be responsible for the lack of regulation, oversight, and appropriate monitoring of the decision to stop Martina’s treatment, which was compounded by the fact that the state did not protect a child’s rights, despite the fact that it has the duty to guarantee these, and instead put her life and health at risk, which runs counter to its social security obligations. The IACHR also found that the rulings of the Supreme Court of Justice and Health Authority were not based on the girl’s best interests or on her vulnerability given the state’s treaty obligations to her as a child with a disability. Finally, the IACHR declared that the right to personal integrity of the girl’s mother and father, Carolina Andrea del Pilar Rojas Farías and Ramiro Álvaro Vera Luza, had been violated due to the pain they were caused by their daughter’s fragile life being jeopardized by such unpredictable circumstances.

In sum, the IACHR concluded that the state was responsible for the violation of the rights to health, social security, life, integrity, judicial guarantees and legal protection, and the protection of children enshrined in articles 4.1, 5.1, 19, 26, 8.1 and 25.1 of the American Convention, and in relation to articles 1.1 and 2 of the same instrument.

In its Merits Reports, the IACHR made the following recommendations to the state of Chile:

1. Provide comprehensive tangible and intangible redress for the human rights violations set out in Merits Report 107/18 concerning Martina Rebeca Vera Rojas and her parents, including fair compensation.

2. Provide the physical and mental healthcare measures needed to help Ramiro Vera Luza and Carolina Rojas Farías with their recovery process, should they so wish. Any such measures should be agreed upon with them.

3. Ensure that the home-based hospitalization scheme for Martina Vera Rojas remains in force for as long as she requires. This reparation measure also stipulates that any future decision on this hospitalization scheme must comply with Chile’s international obligations in this area and that it should be guided by the victim’s best interests as a child with a disability.

Provide mechanisms for nonrepetition that include: i) ensuring that legal processes before the Health Authority regarding conflicts between Isapres and insured people over the withdrawal of medical benefits in cases of serious illness comply with the standards established in this report; and ii) ensuring that there are appropriate, expeditious judicial remedies which can be used to challenge possible decisions by Isapres that may affect a person’s right to health and social security and endanger their life and personal integrity.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a mandate to promote respect for and to defend human rights in the region and acts as a consultative body to the OAS in this area. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly and who do not represent their countries of origin or residence.

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