

Press Release

Inter-American Court of Human Rights

I/A Court H.R._PR-87/2021 English

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I/A Court H.R. Protecting Rights

CHILE IS RESPONSIBLE FOR THE VIOLATION OF A DISABLED GIRL'S RIGHT TO CHILDHOOD, LIFE AND HEALTH

San José, Costa Rica, November 18, 2021. In the Judgment, notified today, of the Case of Vera Rojas et al. v. Chile, the Inter-American Court of Human Rights found the State of Chile internationally responsible for the violation of the rights to life, quality of life, personal integrity, childhood, health and social security; in relation to the obligation to guarantee rights without discrimination and the duty to adopt domestic law provisions, to the detriment of Martina Vera Rojas, and for the violation of her parents' right to personal integrity. Consult the official summary of the Judgment [here](#) and the complete text of the Judgment [here](#).

The Court ruled that the rights of the child Martina, who suffers from "Leigh Syndrome" (a progressive disease that generates serious neurological and muscular sequelae), were affected as a result of the decision made by the private insurer, Isapre MasVida, to withdraw her home hospitalization regime (HHR). This care regime was essential for Martina's adequate medical treatment given that, as a disabled girl, she also requires special care. The Court noted that the decision of the insurer was made on the basis of a regulatory provision contrary to human rights, particularly with respect to the obligation to regulate health services supplied by private providers. Similarly, the Court noted that, although the HHR was later returned to Martina in accordance with an arbitration decision, and the provision applied was modified, the risk of the girl's rights being affected is ongoing. Therefore, the State was found responsible for the breach of its obligation to prevent the violation of human rights, and of its obligations of progressive development for health and social security.

When analyzing the case, the Court emphasized that, since health is a public good, the protection of which is the State's responsibility, the State has the obligation to prevent third parties from unduly interfering with people's enjoyment of their rights. States have the duty to regulate and supervise all health care provided to people under their Jurisdiction, as a special duty to protect life and personal integrity, regardless of whether the entity that provides such services is public or private. In particular, the Court highlighted that rehabilitation treatments for disabilities and palliative care are essential services in relation to children's health. For this reason, States must guarantee health services related to pediatric rehabilitation and palliative care in accordance with the standards of availability, accessibility, acceptability and quality, taking into account the particular characteristics of the medical treatment required by children with disabilities.

The events in this case constituted a violation of the rights to life, quality of life, personal integrity, childhood, health and social security, in relation to the obligation to guarantee rights without discrimination, and the duty to adopt provisions of domestic law, contained in articles 4(1), 5(1), 19 and 26 of the American Convention on Human Rights, in relation to articles 1(1) and 2 of the same instrument

Due to these violations, the Court ordered various measures of reparation, including: 1) to ensure Martina Vera's ongoing medical treatment, in the event of the death of her parents or because they are unable to cover medical insurance, 2) delivery of a neurological wheelchair to

Martina that allows her to travel to the hospital when necessary, and 3) legislative or other measures for the Ombudsman for Children to participate in processes before the Superintendency of Health, or in judicial processes, in which the rights of children could be affected by actions of private insurers

Judges Humberto Antonio Sierra Porto and Ricardo Pérez Manrique announced their concurring individual votes.

The Court's composition for this Judgment was as follows: Judge Elizabeth Odio Benito, (President), Judge Patricio Pazmiño Freire (Vice President), Judge Eduardo Ferrer Mac-Gregor Poisot, Judge Humberto Antonio Sierra Porto, Judge Eugenio Raúl Zaffaroni and Judge Ricardo Pérez Manrique.

As a Chilean national, Judge Eduardo Vio Grossi did not participate in the deliberation of this Judgment, in accordance with Art. 19 of the Court's Rules of Procedure.

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