



## Pediatric Clinic of Los Lagos v. Brazil

Report No. 70/08, Petition 12.242, October 16, 2008; OEA/Ser.L/V/II.134, Doc. 5, rev. 1, 25 February 2009

**Country:** Brazil

**Region:** Americas

**Year:** 2008

**Court:** Inter-American Commission on Human Rights Inter-American Commission on Human Rights

**Health Topics:** Child and adolescent health, Hospitals, Infectious diseases, Medical malpractice, Poverty, Sexual and reproductive health, Water, sanitation and hygiene

**Human Rights:** Right to due process/fair trial, Right to life

### Facts

Ten children died as a result of the presumed medical negligence of the personnel at the Clínica Pediátrica da Região dos Lagos. The hospital received funds from the state via the public system of health of Brazil called Sistema Unico de Salud. The majority of children treated at the hospital were from families with "reduced economic resources." One child was admitted to the hospital in good health in order to receive oxygen. He acquired an infection classified as mild by doctors but he died on the sixth day of his stay as a result of the infection.

Petitioners alleged that doctors and nurses did not follow basic healthcare guidelines like wearing gloves, washing hands after touching the children, and changing coats or disinfecting them before examining babies. Petitioners further alleged that Brazil failed in its duty to inspect and evaluate the hospital in a timely manner, and in its duty to supervise its operation. As a result, petitioners alleged Brazil violated Articles 4 (right of life), 8 (right to a fair trial), 19 (children's rights), and 25 (judicial protection) of the American Convention on Human Rights (the Convention).

### Decision and Reasoning

The Commission declared the petition is admissible in regard to the presumed violations of rights protected in articles 4, 5, 8, 19 and 25 of the Convention.

Brazil alleges that judicial decision registered regarding this matter at the national level is legitimate and therefore the Commission's review would be unnecessary. The Commission noted that while it may not review cases that fall within the competence of national tribunals and follow the necessary judicial safeguard, it may still do so if it deems that there is a violation of the Convention. The Commission also indicated that it is of course competent to review cases where there may be a violation of the right to due process because otherwise such violations could be precluded from review altogether.

The Commission further stated that the presumed victims were newborn infants to whom the State has special obligations in accordance with securing the rights of children pursuant to article 19 of the Convention. It was pertinent that the deaths of the presumed victims allegedly occurred as a result of Brazil's neglect of its duty to supervise the operation of the hospital. This may amount to a violation of the right to life under article 4 of the Convention.

### Decision Excerpts

"The State alleges that the judicial decisions rendered in the criminal proceeding are legitimate because they have been rendered in accordance to the judicial rights and inasmuch, the review of the case by the Commission would characterize the fourth instance formula. In that regard, the Commission considers it pertinent to point out that such rule does not permit the review of sentences rendered by national tribunals that may be within the realm of its competence and applying the due judicial safeguards, unless it considers the possibility that there may be a violation of the Convention. The Commission is competent to declare the petition admissible and adjudicate on the merits when this refers to the principles of due process. In that respect, the function of the Commission consists of ensuring the observance of obligations assumed by the States that are parties to the American Convention, but it cannot replace a higher court to review supposed errors of law or of facts that might have been committed by national courts that were acting within the boundaries of their competence. A review of such nature would only correspond inasmuch that the errors resulted in a possible violation of any of the rights enshrined in the American Convention." Para. 47.

Likewise, the IACHR notes that the presumed victims are newborn infants to whom the State has special

obligations that should be held in consideration of the special characteristics of first infancy, as this is an essential time for securing the rights of children in accordance with article 19 of the American Convention. One of the special obligations of fundamental importance in these cases is to act in a diligent and immediate manner to assure the full scope of human rights. In that sense, the Commission considers that the incidents mentioned in the present case could characterize a violation of children's rights as established in article 19 of the American Convention. • Para. 49

• Furthermore, the Inter-American Commission believes it pertinent to take into consideration that the deaths of the presumed victims by virtue of the presumed omission of the State in compliance with the duty to supervise the services on the part of CLIPEL could characterize a violation of the right to life mentioned in article 4.1 of the Convention associated with the compliance of the State's with its obligation enshrined in article 1.1 of the same instrument. In that sense, in the appropriate stage, the IACHR will analyze the duty of the State to prevent violations of right to life over a due supervision of the operations of CLIPEL and to respond to said deaths through a diligent investigation pursuant to due process. • Para. 50.

• Likewise, in application of the principle *iura novit curia*, the IACHR believes that the incidents alleged by the petitioners could characterize violations to article 5.1 of the American Convention to the detriment of the family members of the presumed victims because of the possible suffering caused by the circumstances of the deaths of the ten children and the impunity thereof. • Para. 51.