
Poblete Vilches et al. v. Chile

ABSTRACT¹

This decision is about a case of medical malpractice that led to the death of a patient. Eventually, Chile admitted responsibility for the violation of some articles of the American Convention. The decision is notable because the Court read the right to health in Article 26 of the American Convention and elaborated on the elements of the right. The Court found also a violation of Article 13 of the Convention (the right to seek, receive, and impart information and ideas of all kinds) because the patient and his family had not been properly informed about, and therefore, could not give consent to, the treatments.

I. FACTS

A. Chronology of Events

January 17, 2001: Mr. Vinicio Antonio Poblete Vilches, a seventy-six-year-old father of three, is admitted to the Sótero del Río Public Hospital (“Hospital”), in Puente Alto, in the suburbs of Santiago de Chile, for severe respiratory failure and hospitalized in the Medical Intensive Care Unit for five days.²

January 22, 2001: Mr. Poblete Vilches is transferred to the Surgical Intensive Care Unit, where he is sedated and attached to sensor cables.³

January 23, 2001: Mr. Poblete Vilches’s relatives visit the unit and are prevented from seeing him by Dr. Alejandra Chacón.⁴ The family hears Mr. Poblete Vilches moaning that they need to “get him out of there because they were killing him.”⁵ Despite Mr. Poblete Vilches’s requests,

1. Patricia Kim Author; Kevin Zipser, Editor; Elizabeth Russo, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Poblete Vilches et al.v. Chile, Report on Merits, Report No. 1/16, Inter-Am. Comm’n H.R., Case No. 12,695, ¶ 33, (Apr. 13, 2016).

3. *Id.*

4. *Id.* ¶ 34.

5. *Id.*

Dr. Chacón and Dr. Anuch inform the family that the patient is in good health.⁶ Furthermore, Dr. Chacón and Dr. Anuch explain that they will need to perform a small procedure but would not need to operate.⁷

January 26, 2001: Mr. Poblete Vilches undergoes a heart procedure.⁸ Mr. Vilches's medical file from the Hospital includes a handwritten consent note, signed by Ms. Tapia, Mr. Poblete Vilches's daughter, stating that her father's surgical procedure and the risks had been explained to her and that she agreed to the procedure.⁹ After the procedure, Mr. Poblete Vilches emerges with three wounds on his right side, through which a drainage tube is inserted.¹⁰ The family unsuccessfully attempts to communicate with the hospital director about the procedure.¹¹

February 2, 2001: The hospital releases Mr. Poblete Vilches and calls his family to "come and collect him."¹² The family is forced to hire a private ambulance to bring Mr. Poblete Vilches home because there are none available at the hospital.¹³ Mr. Poblete Vilches arrives home with a very high fever and multiple suppurating wounds, only one of which is sutured.¹⁴

February 5, 2001: Mr. Poblete Vilches's family calls a private doctor, Dr. Sandra Castillo Momtufar, who diagnoses Mr. Vilches with a complicated fever, bilateral bronchopneumonia, and septic shock, and orders Mr. Poblete Vilches to go to the hospital immediately.¹⁵ The family takes Mr. Poblete Vilches to the hospital a second time, where he is admitted to the Emergency Service department.¹⁶ Doctor Luis Carvajal Freire tells the family that Mr. Poblete Vilches has "simple bronchopneumonia."¹⁷

On or after February 5, 2001: Mr. Poblete Vilches remains in Surgical Intensive Care Unit, where a doctor tells Mr. Vinicio Poblete Tapia, Mr.

6. *Id.*

7. *Id.*

8. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 35.

9. *Id.* ¶ 36.

10. *Id.* ¶ 37.

11. *Id.*

12. *Id.* ¶ 38.

13. *Id.*

14. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 39.

15. *Id.*

16. *Id.* ¶ 40.

17. *Id.*

Poblete Vilches's son, that the facility does not have a mechanical ventilator, but the Medical Intensive Care Unit has one available.¹⁸ When Mr. Vinicio Poblete Tapia asks a doctor about the respirator, he is told that there is no point in connecting Mr. Poblete Vilches to one, "since he was only going to last another week."¹⁹

February 7, 2001: Mr. Poblete Vilches dies at 5:40 a.m.²⁰ Mr. Vinicio Poblete Tapia is informed via telephone that Mr. Vilches died from cardiac arrest, but when Mr. Vinicio Poblete Tapia arrives at the hospital, he is informed that Mr. Poblete Vilches died from liver failure.²¹ When the family is granted access to see Mr. Poblete Vilches's body, they notice a piece of tape on his chest that lists the cause of death as pulmonary edema.²² The family requests an autopsy of Mr. Poblete Vilches, but no autopsy is performed and the death certificate lists the causes of death as septic shock and bilateral bronchopneumonia.²³

Some days after February 7, 2001: Mr. Poblete Vilches's family goes to the hospital and a nurse named Lily tells them that Mr. Poblete Vilches was given an injection so he would not suffer.²⁴

November 12, 2001: Mr. Poblete Vilches's wife, Ms. Blanca Tapia Encina, and daughter, Ms. Cesia Poblete Tapia, file a criminal complaint for the negligent homicide of Mr. Poblete Vilches against Dr. María Chacón Fernández, Ms. Ximena Echeverría Pezoa, Dr. Freire, and Mr. Marcelo Adán Garrido, Mr. Anuch, and Mr. Montesinos with the First Court of Puente Alto ("First Civil Court").²⁵ The complaint requests Mr. Poblete Vilches's medical records and the exhumation and autopsy of Mr. Poblete Vilches's body to determine his actual cause of death.²⁶

The First Civil Court rules itself incompetent and refers the proceedings to the Third Criminal Court.²⁷

18. *Id.* ¶ 41.

19. *Id.* ¶ 42.

20. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 48.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* ¶ 49.

25. *Id.* ¶ 52.

26. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 53.

27. *Id.* ¶ 54.

November 23, 2001: The Third Criminal Court rules itself incompetent and returns the case to the First Civil Court.²⁸

December 11, 2001: The First Civil Court rules itself incompetent again and refers the case to the Court of Appeal of San Miguel (“Court of Appeal”).²⁹

February 6, 2002: The Court of Appeal rules the First Civil Court has jurisdiction over the case.³⁰

February 13, 2002: The First Civil Court admits the complaint, orders commencement of committal proceedings, and issues an investigation order to the Metropolitan Homicide Brigade of the Chilean Investigations Police.³¹

October 16, 2002: Sotéro del Río Hospital is asked to present Mr. Poblete Vilches’s medical records.³²

November 14, 2002: Mr. Poblete Vilches’s medical records are received from Sotéro del Río Hospital.³³

January 13, 2003: Mr. Poblete Vilches’s wife, Ms. Tapia Encina, dies.³⁴

April 12, 2003: The police report from the Metropolitan Homicide Brigade of the Chilean Investigations Police and the criminal forensic physician’s report are received.³⁵ The forensic physician’s report states that Mr. Poblete Vilches’s medical records indicated he received adequate and timely medical care and that his death was the result of unforeseen complications that exceeded the available means of medical care.³⁶

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* ¶ 55.

32. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 55.

33. *Id.*

34. *Id.* ¶ 31.

35. *Id.* ¶ 56.

36. *Id.*

February 28, 2004: The First Civil Court issues a warrant for Dr. Luis Carvajal Freire's arrest.³⁷

April 6, 2004: The 19th Criminal Court orders Dr. Luis Carvajal Freire's arrest and, if necessary, a search of his home.³⁸

December 20, 2004: The First Civil Court issues a second warrant for Dr. Luis Carvajal Freire's arrest.³⁹

January 8, 2005: The 19th Criminal Court orders Dr. Luis Carvajal Freire's arrest a second time.⁴⁰

July 19, 2005: The First Civil Court sends the case to the Legal Medical Service to "report on the medical responsibility incurred by the attending medical staff."⁴¹

September 15, 2005: The First Civil Court sends the case to the Court of Appeal.⁴²

November 21, 2005: The Court of Appeal resolves that they will not admit the case and the case is returned to the First Civil Court.⁴³

October 7, 2005: Mr. Vinicio Poblete Tapia, Mr. Poblete Vilches son, files a second complaint with the First Civil Court.⁴⁴

October 31, 2005: The First Civil Court issues a third warrant for Dr. Luis Carvajal Freire's arrest.⁴⁵

February 6, 2006: The First Civil Court rules that Dr. Luis Carvajal Freire is a fugitive from justice.⁴⁶

37. *Id.* ¶ 59.

38. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 59.

39. *Id.*

40. *Id.*

41. *Id.* ¶ 60.

42. *Id.* ¶ 61.

43. *Id.*

44. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 62.

45. *Id.* ¶ 59.

46. *Id.*

March 21, 2006: Mr. Vinicio Poblete Tapia's attorney requests that his client's statement be taken as quickly as possible because the client's health is deteriorating.⁴⁷

April 4, 2006: Mr. Poblete Vilches's son, Mr. Jorge Alejandro Fuentes Poblete, states that the Hospital failed to perform his father's incision correctly and released Mr. Poblete Vilches prematurely.⁴⁸ He further claims that the Hospital failed to perform an autopsy and Dr. Chacón's treatment of their family was humiliating.⁴⁹

April 5, 2006: Dr. Chacón's attorney files a motion to dismiss, which is denied.⁵⁰

April 6, 2006: Mr. Vinicio Poblete Tapia gives his statement to the First Civil Court.⁵¹

June 7, 2006: The Legal Medical Service presents a report which concludes: 1) Mr. Poblete Vilches suffered from ischemic and atherosclerotic heart disease and type 2 diabetes mellitus, and was hospitalized twice in three weeks for high-frequency atrial fibrillation and acute pulmonary edema caused by ischemic heart disease, an extensive cutaneous infection, and ecthyma and cellulitis of the right buttock and thigh.⁵² The conditions were all diagnosed and treated due to their seriousness in the ICU.⁵³ 2) Mr. Vilches was readmitted three days after his release due to septic shock and multi-organ failure from hospital-acquired pneumonia, a common risk because of his advanced age, preexisting conditions, and multiple risk factors.⁵⁴ Further, pneumonia ultimately led to his death despite receiving numerous and appropriate forms of treatment as soon as he was admitted.⁵⁵ 3) The experts found no professional failing.⁵⁶

47. *Id.* ¶ 65.

48. *Id.* ¶ 88.

49. *Id.*

50. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 66.

51. *Id.* ¶ 64.

52. *Id.* ¶ 68.

53. *Id.*

54. *Id.*

55. *Id.*

56. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 68.

November 21, 2006: Dr. Chacón's attorney files a second motion for dismissal.⁵⁷

November 22, 2006: The First Civil Court declares the committal proceedings closed.⁵⁸

December 7, 2006: Dr. Chacón's attorneys request that the First Civil Court issue formal charges against Ms. Chacón, or order her permanent or temporary dismissal from the case.⁵⁹ The First Civil Court resolves that the facts are not sufficient to establish that the alleged crime occurred and temporarily dismisses the case until new and better evidence is collected.⁶⁰

January 29, 2007: Mr. Vinicio Poblete Tapia's attorneys request to reopen the committal proceedings because, despite the Court's request for information, important background information that is directly related to the case was not obtained.⁶¹

April 17, 2007: The First Civil Court reopens the committal proceedings stage.⁶²

May 23, 2007: The First Civil Court verifies that Dr. Luis Carvajal is still working at the Hospital.⁶³

June 30, 2008: The First Civil Court issues a second dismissal of the case because the facts gathered during the proceedings do not sufficiently establish the existence of the alleged crime.⁶⁴ The Court temporarily dismisses the case until new and better evidence is collected for investigation.⁶⁵

August 4, 2008: Plaintiffs' attorney requests the case to be withdrawn from the archive due to new and better evidence.⁶⁶

57. *Id.* ¶ 71.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* ¶ 72.

62. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 73.

63. *Id.* ¶ 74.

64. *Id.* ¶ 79.

65. *Id.*

66. *Id.* ¶ 80.

August 5, 2008: The First Civil Court once again orders the case withdrawn from the archive.⁶⁷

August 28, 2008: The Supreme Court of Justice requests the First Civil Court to submit a copy of the proceedings against Dr. Chacón and others for homicide.⁶⁸

September 9, 2008: The First Civil Court provides the Supreme Court of Justice a copy of the proceedings.⁶⁹

July 8, 2011: The Supreme Court of Justice responds to one of Mr. Vinicio Tapia's applications by stating that the President does not have power to hear the case because the case is closed.⁷⁰

December 4, 2011: Mr. Poblete Vilches son, Mr. Gonzalo Poblete Tapia, dies.⁷¹

August 20, 2012: The Supreme Court of Justice resolves that Mr. Vinicio Poblete Tapia's application is a duplicate of a previous application.⁷²

March 14, 2013: The Supreme Court of Justice responds to one of Mr. Vinicio Tapia's applications by stating that, once again, the President of the Supreme Court does not have power over judicial matters that have already been decided by competent courts.⁷³

January 8, 2015: The Supreme Court of Justice resolves again that the President of the Supreme Court lacks legal power to hear the case because it has been heard and resolved by a competent Court and cannot be modified.⁷⁴

B. Other Relevant Facts

[None]

67. *Id.*

68. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 81.

69. *Id.*

70. *Id.* ¶ 82.

71. *Id.* ¶ 31.

72. *Id.* ¶ 83.

73. *Id.* ¶ 84.

74. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 85.

II. PROCEDURAL HISTORY

A. Before the Commission

April 24, 2002: Ms. Blanca Tapia Encina, Ms. Cesia Tapia, and Mr. Vinicio Tapia file Petition No. 339-02 with the Inter-American Commission on Human rights (“the Commission”) against the Republic of Chile (“the State”) on behalf of Mr. Poblete Vilches.⁷⁵

March 19, 2009: The Commission approves Admissibility Report No. 13/09.⁷⁶

The State contests the petition’s admissibility stating it is groundless.⁷⁷ Furthermore, the State argues that the Chilean judicial system has not yet issued a final judgment with respect to negligent homicide of the alleged victim, thus, it is unreasonable to hold that domestic remedies have been exhausted.⁷⁸

The petitioners argue the petition is admissible because the investigation into death of the alleged victim remains in the preliminary stage.⁷⁹

The Commission holds that the State’s unwarranted delay in the legal proceedings prevented the petitioners from exhausting domestic remedies.⁸⁰ Moreover, the Commission holds the State fails to present evidence to show the domestic remedies made available continue to provide effective reparations to the victims.⁸¹ Based on the foregoing, the Commission declares the petition admissible for the purposes of investigating the alleged violations of Articles 4 (Right to Life), 8 (Right to a Fair Trial), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection), all in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention.⁸²

April 13, 2016: The Commission approves the Merits Report No. 1/16.⁸³

75. Poblete Vilches et al. v. Chile, Admissibility Report, Report No. 13/09, Inter-Am. Comm’n H.R., Case No. 339-02, ¶ 5, (Mar. 19, 2009).

76. *Id.* ¶ 4.

77. *Id.* ¶ 3.

78. *Id.* ¶ 31.

79. *Id.* ¶ 2.

80. Poblete Vilches et al. v. Chile, Admissibility Report, ¶ 54.

81. *Id.* ¶ 49.

82. *Id.* ¶ 4.

83. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) No. 349, ¶ 2(c) (Mar. 8, 2018).

The Commission finds that the State violated Articles 13 (Freedom of Thought and Expression), in relation to Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 1(1) (Obligation of Non-Discrimination), to the detriment of Mr. Poblete Vilches and his family; Articles 4 (Right to Life), and 5 (Right to Humane Treatment) in relation to Article 1(1) (Obligation of Non-Discrimination) to the detriment of Mr. Poblete Vilches; and Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation of Non-Discrimination), to the detriment of Mr. Poblete Vilches's relatives.⁸⁴

In light of the foregoing violations, the Commission recommends the State: (1) make full reparations to Mr. Poblete Vilches's next-of-kin for the human rights violations, including appropriate compensation for material and moral harm; (2) conduct an effective and thorough investigation into the human rights violations aimed at uncovering the truth; and (3) develop and implement mechanisms to ensure non-repetition which may include: (i) administrative, legislative, and other measures required for implementation of informed health consent according to the standards established in the report; (ii) budgetary and other measures necessary to ensure that the Hospital has the infrastructure and resources required to provide adequate care, particularly when intensive therapy is required, and (iii) training and education measures for judicial officers regarding their duty to investigate possible liabilities that arise from inadequate health care and results in a person's death.⁸⁵

May 27, 2016: The State is notified of the Merits Report and given two months to comply with the recommendations, but it does not respond.⁸⁶

B. Before the Court

August 26, 2016: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸⁷

1. Violations Alleged by Commission⁸⁸

Article 13 (Freedom of Thought and Expression)

84. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, ¶ 2(c).

85. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 172.

86. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, ¶¶ 2(d)-(e).

87. *Id.* ¶ 3.

88. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 171.

all in relation to:

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 1(1) (Obligation of Non-Discrimination) of the Convention.

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the Convention.

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the Convention.

2. Violations Alleged by Representatives of the Victims⁸⁹

Same Violations Alleged by Commission, plus:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 11 (Right to Privacy)

Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas)

Article 25 (Right to Judicial Protection)

Article 26 (Right to Progressive Development)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) and

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention.

November 23, 2016: Inter-American Association of Public Defenders (Asociación Interamericana de Defensorías Públicas: “AIDDEF”) appoints

89. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, ¶ 7. Victims in addition to Mr. Poblete Vilches are as follows: (1) Ms. Blanca Tapia Encina (wife, deceased); (2) Mr. Gonzalo Poblete Tapia (son, deceased); (3) Mr. Vinicio Marco Poblete Tapia (son); and (4) Ms. Cesia Poblete Tapia (daughter).

Ms. Silvia Martínez and Ms. Rivana Barreto Ricarte to represent the petitioners.⁹⁰

April 21, 2017: The State partially acknowledges international responsibility.⁹¹

III. MERITS

A. *Composition of the Court*⁹²

Eduardo Ferrer Mac-Gregor Poisot, President
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge
L. Patricio Pazmiño Freire, Judge

Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

March 8, 2018: The Court issues its Judgment on Merits, Reparations and Costs.⁹³

The Court found unanimously:

To acknowledge the State's partial acceptance of international responsibility,⁹⁴ because:

The State recognized international responsibility for the violations of: Article 13 (Freedom of Thought and Expression) in relation to Articles 4 (Right to Life), 5 (Right to Humane Treatment), 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to

90. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, ¶ 6.

91. Poblete Vilches et al. v. Chile, Report on Merits, ¶ 8.

92. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, n.*. Judge Eduardo Vio Grossi, pursuant to Article 19.1 of the Inter-American Court's Rules of Procedure, is unable to participate in the deliberation and signing of the Judgment due to his Chilean nationality. Judge Eugenio Raúl Zaffaroni, by reason of *force majeure*, is unable to participate in the deliberation and signing of the Judgment. Pablo Saavedra Alessandri excuses himself from participating in the case, and the Court accepts his excuse.

93. *Id.* ¶ 14.

94. *Id.* "Resolution Points," ¶ 1.

Rights) of the Convention, to the detriment of Mr. Poblete Vilches and his relatives; Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), and 11 (Right to Privacy) of the Convention, to the detriment of Mr. Poblete Vilches; and Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention.⁹⁵ The Court held the State's recognition constituted a partial acceptance of responsibility and required the Court to rule on the remaining controversies.⁹⁶

The Court found unanimously that Chile had violated:

Article 26 (Right to Progressive Development), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Poblete Vilches,⁹⁷ because:

The Court has long held that Article 26 (Right to Progressive Development) includes the right to health.⁹⁸ The Court found that health is an indispensable and fundamental human right for adequately exercising other human rights.⁹⁹ It reasoned that every human being has a right to enjoy the highest possible level of health which includes not just the absence of disease, but also complete physical, mental, and social well-being.¹⁰⁰ The Court specified that the State's duty and general obligation is to promote improved health, guarantee effective and high-quality medical services, and ensure that people have access to essential health services.¹⁰¹

The Court set forth the following standards that States must guarantee for emergency medical benefits: 1) quality that ensures that the infrastructure exists to meet urgent and basic health needs, including tools or life support, and enough qualified personnel to respond to medical emergencies, 2) accessibility that ensures access to emergency health facilities, goods, and services to all people without discrimination, 3) adequate availability of public health facilities, goods, services, and comprehensive health programs, and 4) the requirement that health facilities and services respect medical ethics and cultural principles.¹⁰²

95. *Id.* ¶ 29.

96. *Id.* ¶ 31.

97. *Id.* "Resolution Points," ¶ 2.

98. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, ¶¶ 102-103, 109.

99. *Id.* ¶ 118.

100. *Id.*

101. *Id.*

102. *Id.* ¶ 121.

These standards must be implemented without discrimination in public and private spheres.¹⁰³ The Court noted that the elderly are a particularly vulnerable population who require heightened protection as a result of physical limitations, economic conditions, severe disease, and a decreased chance of recovery.¹⁰⁴

Regarding the State's alleged actions and omissions, the Court found that the Hospital was negligent in prematurely discharging Mr. Poblete Vilches during his first admission, for which Chile recognized its international responsibility.¹⁰⁵ The Court held that Mr. Poblete Vilches's early discharge had a considerable impact on his rapid deterioration.¹⁰⁶

Regarding Mr. Poblete Vilches's second admission to the Hospital, the Court discussed the elements of quality and availability and found that the health services provided did not meet the minimum standards required.¹⁰⁷ Furthermore, Mr. Poblete Vilches was not given adequate and timely medical treatment despite his critical condition.¹⁰⁸ The Court reasoned that Mr. Poblete Vilches's age was a factor the physicians considered in their failure to prioritize his treatment.¹⁰⁹ Moreover, the Court held that the absence of clear and accessible information on the patient's condition, and the falsification of Mr. Poblete Vilches's relatives' consent to the procedure, was unacceptable.¹¹⁰

The Court reaffirmed that a person's age should not hinder their access to health.¹¹¹ In particular, the elderly's heightened vulnerability increases the State's obligations to guarantee and protect their right to health.¹¹² Since Mr. Poblete Vilches was a particularly vulnerable patient due to his age and symptoms, he urgently required quality medical care.¹¹³ The State's failure to provide the required standard of care violated Mr. Poblete Vilches's right to health.¹¹⁴

103. *Id.* ¶ 127.

104. *Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs*, ¶¶ 131-2.

105. *Id.* ¶ 136.

106. *Id.*

107. *Id.* ¶ 138.

108. *Id.* ¶ 139.

109. *Id.*

110. *Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs*, ¶ 139.

111. *Id.* ¶ 140.

112. *Id.*

113. *Id.* ¶ 142.

114. *Id.* ¶ 143.

Article 4 (Right to Life), in relation to Articles 26 (Right to Progressive Development) and 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Poblete Vilches,¹¹⁵ because:

*The Court noted that the following elements must be met to determine international State responsibility for deaths in the medical context: 1) acts or omissions that deny access to health for essential medical treatments or in urgent medical situations despite foreseeable risk, or 2) proof of serious medical negligence; and 3) a causal link between the damage suffered by the patient and the alleged act.*¹¹⁶

*The Court determined that the State did not implement the basic, necessary, and urgent procedures that could reasonably have been performed to guarantee Mr. Poblete Vilches' right to life.*¹¹⁷ *The State denied Mr. Poblete Vilches urgent medical treatment despite the fact that he was elderly and in critical condition.*¹¹⁸ *Additionally, the State failed to provide a legitimate reason for denying basic emergency services.*¹¹⁹ *Furthermore, the Court found that there was a high probability Mr. Poblete Vilches's life would have been prolonged if adequate health assistance had been given, and the State's failure to do so was a clear violation of his right to life.*¹²⁰

Article 5 (Right to Humane Treatment), in relation to Articles 26 (Right to Progressive Development) and 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Poblete Vilches,¹²¹ because:

*The Court held that the State's actions blatantly disregarded Mr. Poblete Vilches's physical condition.*¹²² *In particular, the State violated Mr. Poblete Vilches's right to personal integrity when he was prematurely discharged from the hospital, and after readmission, denied basic lifesaving services for five days.*¹²³

115. *Id.* "Resolution Points," ¶ 3.

116. *Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs*, ¶ 148.

117. *Id.* ¶ 150.

118. *Id.*

119. *Id.*

120. *Id.* ¶ 151.

121. *Id.* "Resolution Points," ¶ 4.

122. *Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs*, ¶ 155.

123. *Id.*

Articles 26 (Right to Progressive Development), 13 (Right to Freedom of Thought and Expression), 7 (Rights of the Family), and 11 (Right to Privacy), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Poblete Vilches and his family members,¹²⁴ because:

The Court recognized the Right to Informed Consent and Access to Health Information in accordance with Articles 13, 26, 7, and 11 of the American Convention.¹²⁵ The Court provided that, generally, consent must be provided by the patient to undergo procedures, and that patients must be informed of: 1) the diagnosis; 2) the expected benefits, risks, objectives, methods, and probable duration of the proposed treatment; 3) the possible negative effects of the proposed treatment; 4) alternative treatments, including less-intrusive and less painful treatments, along with the possible risks, benefits, side effects, pain, or discomfort of the alternative treatments; 5) the consequences from the treatments; and 6) the expected process before, during, and after treatment.¹²⁶

The Court specified that absent an emergency situation, informed consent must be obtained by the patient's representative when the patient does not have the capacity to make a decision.¹²⁷ Here, the State failed to show that the surgery performed on Mr. Poblete Vilches during his first admission was an emergency procedure, and thus informed consent was required.¹²⁸ The State failed to obtain informed consent from either Mr. Poblete Vilches or his relatives, thereby violating their right to information.¹²⁹

The State recognized that: 1) when the surgical intervention was decided, the alleged victim was unconscious and unable to consent to any type of procedures; 2) his family was not properly informed regarding the procedure; 3) the only reference to the family's consent was in the clinical file, which raises questions about its authenticity and how it was obtained; 4) there is no record or information in the medical record to indicate that informed consent was given according to international legal

124. *Id.* "Resolution Points," ¶ 5.

125. *Id.* ¶ 160.

126. *Id.* ¶¶ 161-162.

127. *Id.* ¶ 166.

128. *Id.* ¶ 167.

129. *Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs*, ¶ 173.

*requirements, and 5) the medical record raises doubts regarding whether the family understood the alleged victim's situation.*¹³⁰

Articles 8(1) (Right to a Hearing) and 25(1) (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Poblete Vilches's relatives Ms. Blanca Encina, Mr. Gonzalo Tapia, Mr. Vinicio Tapia, and Ms. Cesia Tapia,¹³¹ because:

*The Court has previously held that effective judicial protection requires individuals have access to proceedings that are accessible and without undue obstacles or delays.*¹³² *Additionally, the Court has indicated that States are obligated to guarantee effective judicial remedies for every person in their jurisdiction against acts that violate fundamental rights.*¹³³

*The Court found that although the State executed a series of evidentiary proceedings to investigate the facts of the present case, they failed to move the proceeding past the preliminary stage.*¹³⁴ *Despite numerous requests to exhume Mr. Poblete Vilches's body to determine his cause of death, the State has yet to comply.*¹³⁵ *Furthermore, the State dismissed Mr. Poblete Vilches's criminal case twice during the course of approximately one and a half years and has failed to provide any evidence to show that judicial authorities continue to investigate the events in order to punish those responsible.*¹³⁶ *Based on the foregoing, the Court held these failures and delays in the criminal investigation over the last seventeen years demonstrate that the State authorities failed to exercise the due diligence required.*¹³⁷

Article 5(1) (Right to have Physical, Mental, and Moral Integrity Respected), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Poblete Vilches's relatives Ms. Blanca Encina, Mr. Gonzalo Tapia, Mr. Vinicio Tapia, and Ms. Cesia Tapia,¹³⁸ because:

130. *Id.* ¶ 158.

131. *Id.* "Resolution Points," ¶ 6.

132. *Id.* ¶ 184.

133. *Id.*

134. *Id.* ¶ 190.

135. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, ¶ 190.

136. *Id.*

137. *Id.* ¶ 192.

138. *Id.* "Resolution Points," ¶ 7.

The Court has explained that victim's relatives' right to mental and moral integrity may be violated as a result of the acts perpetrated against their loved ones.¹³⁹ Mr. Poblete Vilches's family members were unable to see him during his hospitalization and given no information about his condition or diagnosis.¹⁴⁰ As a result, they suffered mental and emotional distress.¹⁴¹ Furthermore, Mr. Poblete Vilches's family has waited seventeen years for the State to determine what happened to their loved one.¹⁴² The lack of clarity and access to justice has destroyed the family and caused great suffering.¹⁴³

The Court found unanimously that Chile did not violate:

Articles 26 (Right to Progressive Development) and 8 (Right to a Fair Trial) of the Convention,¹⁴⁴ because:

The Court emphasized that the right to be tried by an impartial judge or tribunal is a fundamental guarantee of due process.¹⁴⁵ The Court established that an impartial judge lacks any prejudice and offers sufficient, objective guarantees that inspire confidence to parties in cases.¹⁴⁶ Furthermore, the Court explained that an impartial court's members do not have a direct interest, position, or preference for any party, are not personally involved in the dispute, and cannot be subject to pressure or influence.¹⁴⁷ In determining the impartiality of a judge, the Court reiterated that it must be presumed unless proven otherwise.¹⁴⁸ In analyzing impartiality, the Court must analyze the judge's personal interests or motivations in a given case to determine if the judge was personally influenced.¹⁴⁹

A violation of Article 8 (Right to a Fair Trial) must be established based on concrete and specific evidence which shows the judges had been

139. *Id.* ¶ 205.

140. *Id.* ¶ 210.

141. *Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs*, ¶ 210.

142. *Id.* ¶ 209.

143. *Id.* ¶ 210.

144. *Id.* "Resolution Points," ¶ 8.

145. *Id.* ¶ 195.

146. *Id.*

147. *Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs*, ¶ 195.

148. *Id.* ¶ 196.

149. *Id.*

*clearly influenced by aspects outside of the law.*¹⁵⁰ *The Court found no evidence that the judicial authorities acted impartially, and therefore concluded that the State did not violate the judicial guarantee of impartiality.*¹⁵¹

C. Dissenting and Concurring Opinions

1. Concurring Vote of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Porto emphasized that he agreed with the Court's conclusion, but not the methods, in determining Chile's international responsibility for violating Mr. Poblete Vilches's right to personal integrity and life related to his right to health.¹⁵² Judge Porto also questioned the reasoning presented for the violation of Article 26 (Right to Progressive Development) which suggested that violating a person's personal right to integrity or life results in an automatic violation of the right to health.¹⁵³ Judge Porto argued that the Court's reasoning confuses the separate rights and affects legal certainty.¹⁵⁴ He was concerned about the possibility of procedural congestion resulting from a wave of petitions based on this reasoning.¹⁵⁵

Judge Porto disagreed with the Court's broad interpretation of Article 26 arguing it implies an unlimited expansion of a Court's jurisdiction.¹⁵⁶ He also commented that the Judgment suggests that Article 26 potentially gives the Court the ability to find violations of rights contained in any national and international instrument.¹⁵⁷ However, Judge Porto emphasized that the Court is an international tribunal and, therefore, the Court's interpretation of standards outside the Convention must be within the framework and rules of international law that determine the manner of interpretation and obligatory nature of sources of law.¹⁵⁸

IV. REPARATIONS

150. *Id.* ¶ 197.

151. *Id.* ¶¶ 197-98.

152. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, Concurring Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (Ser. C) No. 349, ¶¶ 3-4 (Mar. 8, 2018).

153. *Id.* ¶ 9.

154. *Id.* ¶ 10.

155. *Id.* ¶ 11.

156. *Id.* ¶ 15.

157. *Id.* ¶¶ 16-17.

158. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, Concurring Opinion of Judge Humberto Antonio Sierra Porto, ¶ 22.

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Publish and Disseminate the Judgment

The State must publish within six months of the Judgment: 1) the official, court-prepared summary of the Judgment in the Official Gazette; 2) the official, court-prepared summary of the Judgment in a national newspaper, and 3) the complete Judgment on an official website accessible from the home page to the public for one year.¹⁵⁹ The Court also ordered the State to immediately inform the Court once all the requested items are published.¹⁶⁰

2. Publicly Acknowledge Responsibility

The State must, within one year of the Judgment, publicly acknowledge international responsibility which references the human rights violations.¹⁶¹ The State must coordinate the details of the act with the victims or their representatives, such as the method, time, and location.¹⁶²

3. Provide Free and Immediate Psychological Care

The State must immediately provide free psychological treatment as means of rehabilitation for the emotional and psychological sufferings the victims endured.¹⁶³ The victims that elect to receive treatment must request it, either directly or through their representatives, from the State within six months of notice of the Judgment.¹⁶⁴

4. Implement Permanent Human Rights Education Programs

159. *Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs*, ¶ 226.

160. *Id.*

161. *Id.* ¶ 227.

162. *Id.*

163. *Id.* ¶ 231.

164. *Id.*

The State must implement permanent programs to educate and train medical students, professionals, and staff, on appropriate treatment for elderly patients to prevent repetition.¹⁶⁵ Furthermore, the programs should mention this Judgment and the applicable human right guarantees including rights to health and access to information.¹⁶⁶ The State must make annual reports on its implementation.¹⁶⁷

The Court ruled four votes to one that the State had the following obligations:

1. Provide Yearly Progress Reports of the Hospital

The State must report, within one year, on: 1) the progress in the implementation of better infrastructure in the Intensive Care Unit of the Hospital; 2) the current protocols for medical emergencies, and 3) the measures implemented to improve patient care in the ICU, particularly elderly patients, and with regards to the Judgment.¹⁶⁸ The State must also report on the requested items annually for a period of three years.¹⁶⁹

2. Strengthen the Impact of the National Institute of Geriatrics on Hospitals and Design a Pamphlet with Health Rights of the Elderly

The State must support the National Institute of Geriatrics and strengthen its impact on public and private hospitals.¹⁷⁰ The Court also ordered the State to design a pamphlet that describes the health rights of the elderly in a clear and accessible way, complying with the standards established in this judgment.¹⁷¹ The printed or digital pamphlet must be on the Ministry of Health's website and available in every public and private hospital in Chile to patients and medical personnel.¹⁷² Once the pamphlet is published, the State must report annually for three years.¹⁷³

3. Adopt Measures to Design a General Policy Providing Comprehensive Protection for the Elderly

165. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, ¶ 237.

166. *Id.*

167. *Id.*

168. *Id.* ¶ 238.

169. *Id.*

170. *Id.* ¶ 239.

171. Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, ¶ 240.

172. *Id.*

173. *Id.*

The State must adopt measures to design a general policy providing comprehensive protection to the elderly, complying with the standards in this Judgment.¹⁷⁴ The State must implement it within three years of notice of the Judgment.¹⁷⁵

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The State must pay \$10,000 for estimated lost profits from Mr. Poblete Vilches's death and \$1,000 for damages related to Mr. Poblete Vilches's death, including the ambulance and his subsequent funeral services.¹⁷⁶ These damages must be split equally between his two living children, Mr. Vinicio Poblete Tapia, and Ms. Cesia Poblete Tapia.¹⁷⁷

2. Non-Pecuniary Damages

The State must pay the Court-fixed, equitable amount of \$100,000 to Mr. Poblete Vilches's heirs for non-pecuniary damages.¹⁷⁸ The State must also pay \$15,000 to each of the four victims (or their heirs), Ms. Blanca Tapia Encina (deceased), Mr. Gonzalo Poblete Tapia (deceased), Mr. Vinicio Poblete Tapia, and Ms. Cesia Poblete Tapia, for the psychological and emotional damages they suffered.¹⁷⁹

3. Costs and Expenses

The State must pay \$15,000 to be split between the two surviving victims as a reasonable amount for the expenses incurred during litigation.¹⁸⁰ Additionally, the State is required to reimburse expenses to the Victim's Legal Assistance Fund in the amount of \$10,939.93.

4. Total Compensation (including Costs and Expenses ordered):

174. *Id.* ¶ 241.

175. *Id.*

176. *Id.* ¶¶ 247, 249.

177. *Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs*, ¶ 250.

178. *Id.* ¶ 252.

179. *Id.* ¶ 253.

180. *Id.* ¶ 259.

\$ 141,000

C. Deadlines

The State must pay pecuniary damages, non-pecuniary damages and expenses to the two surviving victims within one year of notification of this Judgment.¹⁸¹ In addition, the State must reimburse expenses to the Victim's Legal Assistance Fund within ninety days of notification of this Judgment.¹⁸²

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 28, 2018: *The State complied with reimbursing the Legal Victim Assistance Fund of the Inter-American Court of Human Rights in the amount provided in the Judgment.*¹⁸³

May 14, 2019: *The State fully complied with publishing and disseminating the Judgment.*¹⁸⁴ *The Court kept open the proceeding for monitoring compliance with: 1) publicly acknowledging responsibility; 2) providing free and immediate psychological care to the victims; 3) implementing permanent human rights programs; 4) providing yearly progress reports regarding the Hospital improvements; 5) designing a pamphlet describing the health rights of the elderly; 6) designing a general policy for comprehensive protection for the elderly, and 7) paying the pecuniary damages, non-pecuniary damages, and costs and expenses specified in the Judgment.*¹⁸⁵

VII. LIST OF DOCUMENTS

A. Inter-American Court

181. *Id.* ¶ 262.

182. *Id.* ¶ 261.

183. Poblete Vilches et al. v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Resolves," ¶ 1 (Nov. 28, 2018).

184. Poblete Vilches et al. v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Resolves," ¶ 1 (May 14, 2019).

185. *Id.* ¶ 4.

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(Ser. C\) No. 349, \(Mar. 8, 2018\).](#)

[Poblete Vilches et al. v. Chile, Merits, Reparations, and Costs, Concurring Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. \(Ser. C\) No. 349, \(Mar. 8, 2018\).](#)

3. Provisional Measures

[Poblete Vilches et al. v. Chile, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Sept. 21, 2017\).](#)

[Poblete Vilches et al. v. Chile, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 25, 2016\).](#)

4. Compliance Monitoring

[Poblete Vilches et al. v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 28, 2018\).](#)

[Poblete Vilches et al. v. Chile, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 14, 2019\).](#)

5. Review and Interpretation of Judgment

[None]

- B. Inter-American Commission*

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Poblete Vilches et al. v. Chile, Admissibility Report, Report No. 13/09, Inter-Am. Comm'n H.R., Case No. 339-02, \(Mar. 19, 2009\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Poblete Vilches et al. v. Chile, Report on Merits, Report No. 1/16, Inter-Am. Comm'n H.R., Case No. 12,695, \(Apr. 13, 2016\).](#)

5. Application to the Court

[Not Available]