

TECHNICAL INFORMATION SHEET
CASE 12.182 FLORENTINO ROJAS
REPORT ON FRIENDLY SETTLEMENT Nº [109/13](#)
TOTAL COMPLIANCE
(ARGENTINA)

I. SUMMARY OF THE CASE

Victim(s): Florentino Rojas

Petitioner(s): Dr. Pablo Ignacio Pita and Dr. José Sergio del Franco

State: Argentina

Beginning of the negotiation date: April 14, 2007

FSA signature date: November 23, 2009

Report on Admissibility No. [64/09](#), published on August 4, 2009

Friendly Settlement Agreement Report No. [109/13](#), published on November 5, 2013

Estimated length of the negotiation phase: 6 years

Related Rapporteurship: Rapporteurship on the rights of persons with disabilities; Rapporteurship on the rights of older persons

Topics: Persons with disabilities/Health

Facts: The petitioners alleged that, on July 7, 1973, Mr. Florentino Rojas suffered an accident on his way back to his home after finishing his shift in the mandatory military service that caused him a permanent physical disability of 85%. As a result, Mr. Florentino Rojas had filed through the administrative channel for a military pension which was allegedly denied. In April 1980, he brought judicial suit, which culminated in a judgment of the National Court of First Instance for Actions under Federal Administrative Law No. 5, determining that Mr. Florentino Rojas's injuries were related to his service and sentencing the Argentine Army to grant him a military pension. The petitioners pointed out that the National Chamber of Appeals for Actions under Administrative Law revoked the National Court of First Instance ruling, stating that the accident had not occurred during acts of military service, so that he Mr. Rojas was not owed a pension. They indicated that the Supreme Court of Justice of the Nation rejected the extraordinary appeal filed, for merely formal reasons based n Article 280 of the Civil Code of Procedure, without going into the handling of the judicial proceedings.

Rights declared admissible: The Commission concluded that it was competent to take cognizance of the instant matter and that the petition was admissible, pursuant to Articles 46 and 47 of the American Convention insofar as the alleged violations of the rights recognized in Articles 8 (due process) and 25 (judicial protection), in conjunction with the general obligations set forth in Articles 1 and 2 of the American Convention on Human Rights are concerned.

II. PROCEDURAL ACTIVITY

1. On November 23, 2009, the parties signed a friendly settlement agreement.
2. On November 5, 2013, the Commission approved the agreement signed by the parties, by means of Report No. 109/13.

III. ANALYSIS OF COMPLIANCE WITH THE CLAUSES OF THE FRIENDLY SETTLEMENT AGREEMENT

Agreement clauses	Status of compliance
II. The primary responsibility of the province of Buenos Aires.	Declarative clause
<p>2. The Argentine government understands that Mr. Florentino Rojas should be assisted for humanitarian reasons and to that end regulates a mechanism for determining such exceptional assistance.</p> <p>3. The parties agree to establish an Arbitration Tribunal "ad-hoc", in order that it may determine the amount of humanitarian assistance to be granted to the petitioner, as established in section III of this document, and in accordance with international standards that are applicable.</p> <p>[...]</p>	Total¹
On March 3, 2016, the Ad Hoc Tribunal issued an arbitration award, in which it deemed that the establishment of the State should:	
<p>A. Provide appropriate housing in the area in which he currently resides, in keeping with physical and geographic specifications indicated in the operative section of the award;</p> <p><u>Explanatory decision of the Ad Hoc Tribunal:</u></p> <p>a) the duty to “provide Mr. Florentino Rojas appropriate housing” provided for in section 1 of the operative part of the award dated March 3, 2016 does not impose on the Argentine State the obligation to provide him home ownership (absolute ownership of real property), co-ownership (real condominium ownership of real property), or to grant Mr. Rojas ownership of any real property that would lead to a similar result (e.g. usufruct), and that would give rise—in fact—to a benefit whose economic value exceeds the assistance-based role they are called upon to play;</p> <p>b) the duty to “provide Mr. Florentino Rojas appropriate housing” provided for in section 1 of the operative part of the award dated March 3, 2016, implies the Argentine State’s obligation to provide Mr. Rojas possession of a dwelling—with the features that the same award lists—under a modality such that it allows him to freely exercise <i>de facto</i> power over its inheritance, guaranteeing him the use and enjoyment thereof with the correlative possibility to resist any illegitimate interference or threat. The modality and legal vehicle—contractual, administrative, or of any other kind—that needs to be used in order to ensure this outcome is to be selected by the Argentine State, provided that it complies with the parameters outlined and allows the petitioner’s free and exclusive use thereof;</p>	Total²
<p>B. Ensure services to meet his basic physical and psychological needs, including, among others, home care service, therapeutic support, etc.;</p> <p><u>Explanatory decision of the Ad Hoc Tribunal:</u></p> <p>c) the humanitarian assistance, the content of which was defined in the arbitration award of March 3, 2016, implies a minimum protection or floor—that does not hinder the State from deciding in the end to provide assistance benefits that are broader or higher than those set by this Tribunal—whatever the reasons may be—this, in keeping with the <i>pro persona tenet</i> (Article 29 of the American Convention on Human Rights).</p>	Total³

¹ See IACHR, 2017 Annual Report, Chapter II, Section D. Status of compliance with Recommendations and Friendly Settlements in individual cases, paras. 270 - 278.

² See IACHR, 2022 Annual Report, Chapter II, Section C. Advances and challenges on negotiation and implementation of friendly settlements, Available at: [4-IA2022_Cap_2_EN.pdf \(oas.org\)](https://www.oas.org/en/ia2022/Cap_2_EN.pdf)

³ See IACHR, 2019 Annual Report, Chapter II, Section G. Friendly Settlements, Available at: <http://www.oas.org/en/iachr/docs/annual/2019/docs/IA2019cap2-en.pdf>

C. Provide “economic assistance” of two and half minimum wages to live, which the tribunal considered as humanitarian assistance, to be paid periodically as a life-long pension, in addition to the charity pension that he currently receives;	Total⁴
C. Pay the honoraria for the arbitration proceedings in the amount of US\$2,000 (two thousand dollars) to the attorneys who acted as arbiters, which will be distributed as they deem appropriate; D. Pay the petitioners for the honoraria incurred for international litigation in the amount of US\$3,800 (three thousand eight hundred dollars), which are to be distributed as they see fit, and; E. Pay Florentino Rojas for the legal fees incurred for the proceedings before the IACHR in the amount of US\$2,000 (two thousand dollars).	Total⁵

IV. LEVEL OF COMPLIANCE OF THE CASE

3. The Commission declared full compliance with the case and the ceasing of the follow-up of the friendly settlement agreement in the 2022 Annual Report.

V. INDIVIDUAL AND STRUCTURAL OUTCOMES OF THE CASE

A. Individual outcomes of the case

- The State provided nationwide medical care coverage, a wheelchair, and two walking sticks.
- The State provided economic assistance in the form of an adjustable living allowance.
- The State provided the victim with a monthly pension.
- The State paid the international litigation fees incurred by the petitioners.
- The State deposited the amount of ARS \$ 2,400,000 (two million four hundred thousand Argentine pesos) in an account in the name of Mr. Florentino Rojas for the construction of a home.
- The State granted a monthly subsidy to Mr. Florentino Rojas in the amount of ARS \$50,000 (fifty thousand Argentine pesos) to pay for the required home care.

⁴ See IACHR, 2018 Annual Report, Chapter II, Section G. Status of compliance with the recommendations issued by the IACHR in merits reports and friendly settlement agreements approved by the IACHR, Available at: <http://www.oas.org/es/cidh/docs/annual/2018/docs/IA2018cap.2-es.pdf>

⁵ See IACHR, 2018 Annual Report, Chapter II, Section G. Status of compliance with the recommendations issued by the IACHR in merits reports and friendly settlement agreements approved by the IACHR, Available at: <http://www.oas.org/es/cidh/docs/annual/2018/docs/IA2018cap.2-es.pdf>