

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 79/09; Petition 12.159
Session:	Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)
Title/Style of Cause:	Gabriel Egisto Santillan Reigas v. Argentina
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Paolo G. Carozza. Commission member Victor E. Abramovich, an Argentine national, participated in neither the deliberations nor the decision in this case, pursuant to Article 17(2) of the Rules of Procedure of the Commission.
Dated:	6 August 2009
Citation:	Santillan Reigas v. Argentina, Petition 12.159, Inter-Am. C.H.R., Report No. 79/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANT: the “Committee of Relatives of Defenseless Victims of Social Unrest of the Argentine Republic
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I. SUMMARY

1. On January 29, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition presented by the “Committee of Relatives of Defenseless Victims of Social Unrest of the Argentine Republic (COFAVI),” in which it is alleged that the Republic of Argentina (hereinafter “the State” or “the Argentine State”) was in violation of Articles 4, 5, 8, and 25 in conjunction with Article 1(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), to the detriment of Gabriel Egisto Santillán Reigas (hereinafter “the alleged victim”). During the processing of the case, on December 14, 2005, the petitioners sent a communication informing the IACHR of their withdrawal from this case and requesting that the mother of the alleged victim, Mrs. Mirta Liliana Reigas (hereinafter “the petitioner”), be formally admitted as petitioner.

2. The petitioner indicates that the State is responsible for the death of Gabriel E. Santillán, which occurred on December 8, 1991, when he was 15 years old, as a result of a bullet wound he sustained on December 3, 1991, in circumstances in which members of the Police of the Province of Buenos Aires were in pursuit of unidentified individuals suspected of the theft of a vehicle. The petition also concerns the alleged denial of judicial protection and a fair trial as a result of the lack of due diligence in the proceeding to investigate the facts and punish those responsible for the death of Gabriel E. Santillán.

3. This friendly settlement report, in accordance with Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure, provides a summary of the facts alleged by the petitioner and transcribes the friendly settlement agreement signed on May 28, 2008, by the Minister of Justice and Mrs. Mirta Liliana Reigas, and approved by National Executive Decree No. 171/2009 on March 11, 2009. The agreement signed between the parties is also approved, as is the publication of this report.

II. PROCESSING BY THE COMMISSION

4. On October 22, 2003, the IACHR approved Admissibility Report No. 72/03, in which the petition was declared admissible with respect to the alleged violations of Articles 4, 5, 8, and 25 in conjunction with Article 1(1) of the American Convention, as well as Article 19 of the same instrument to the extent pertinent. That report was sent to the parties in a communication dated November 26, 2003, in which the IACHR placed itself at the disposal of the parties to reach a friendly settlement of the matter, in accordance with Article 48(1)(f) of the American Convention and Article 41 of its Rules of Procedure. In a communication on January 2, 2004, the petitioners expressed to the IACHR their willingness to submit to the friendly settlement process.

5. In addition, the Commission received communications from petitioner Mirta Liliana Reigas on the following dates: October 17 and 26, 2004; March 4, 2005; August 6, 2005; October 18, 2005; December 28, 2005; September 11 and 13, 2006; December 21, 2006; January 17 and 22, 2007; June 4, 2007; July 9, 2007; October 29, 2007; March 20, 2008; July 18, 2008; and January 26, 2009. These were duly forwarded to the State.

6. Meanwhile, the Commission received communications from the State on the following dates: October 25, 2004; September 25, 2004; July 18, 2005; August 1, 2005; November 22, 2005; January 10, 2007; February 12, 2007; December 21, 2007; May 29, 2008; October 17, 2008; and April 17, 2009. These were duly forwarded to the petitioner.

7. On September 23, 2004, the Commission convened the two parties for a working meeting, which took place on October 26, 2004, during the IACHR's 121st regular period of sessions. In addition, a working meeting was held between the parties on December 6, 2006, during a working visit by the IACHR to the Argentine State.

8. On May 29, 2008, the IACHR received a copy of the friendly settlement agreement signed on May 28, 2008, by the Minister of Justice and the petitioner, and contained in Decree No. 171/2009.

III. THE FACTS

9. The petitioner indicates that the State is responsible for the death of Gabriel E. Santillán, as a result of the bullet wound he received in circumstances in which members of the Police of the Province of Buenos Aires were in pursuit of unidentified individuals suspected of the theft of a vehicle. The petitioner also maintains that the State has failed to fulfill its duty to investigate, prosecute, punish, and provide adequate reparation for this homicide, and has consequently denied justice to the victim's family.

10. The petitioner indicates that on the morning of December 3, 1991, an automobile owned by Carlos María Libois was stolen by two individuals who escaped in the vehicle. At approximately 12:20 p.m., Police Officers Jorge Norberto Prado and Marcelo Luis Altamirano of the Third Precinct, Parque San Martín de Merlo, Buenos Aires Police, were driving their motorcycles along Avenida Echeverry in the Merlo District, Buenos Aires Province, when they intercepted the vehicle stolen that morning from Carlos Libois. However, the alleged thieves failed to comply with the police order and instead increased speed, turning abruptly onto Calle Martín Rodríguez. Officer Prado got off his motorcycle and opened fire on the suspects, and a shootout ensued. For his part, Officer Altamirano chased them on his motorcycle for more than 30 blocks along Calle Martín Rodríguez, but was unable to catch them. As a result, the individuals in question have never been identified.

11. The petitioner alleges that Gabriel E. Santillán was walking home along Avenida Echeverry at that time and had started to cross the intersection of that avenue and Calle Martín Rodríguez when he was struck by one of the bullets fired by Officer Prado and fell, seriously injured, onto a pile of rubble. Rubén Raúl López, Gabriel E. Santillán's stepfather, arrived at the scene of the crime, having been alerted by neighbors in the area, and with the help of Rubén Ferraro, a police officer who happened to be in the vicinity, took the alleged victim to the "Eva Perón" Municipal Hospital in the Merlo District.

12. The petitioner states that the alleged victim received first aid at the hospital, including the drainage of both lungs. However, due to the complexity of his injury he was transferred to the "Professor Luis Güemes" Inter-Zonal General Hospital for Acute Cases in the Haedo area of Morón District, Buenos Aires Province. There he was diagnosed as suffering from a gunshot injury, with the entry wound in the right shoulder and the exit wound in the left axilla, as well as bilateral pulmonary contusion, pneumothorax, and paraplegia caused by traumatic injury to the spine. According to the petitioner, Gabriel E. Santillán died five days later, as a result of the gunshot injury.

13. The petitioner alleges that Police Officers Prado and Altamirano employed excessive force in the use of their weapons, bearing in mind that Avenida Echeverry is a commercial area and is often crowded with passersby. There is also a school in the vicinity, and the incident took place right at the time the students were leaving.

14. The petitioner indicates that a criminal proceeding—entitled "Perpetration of crime and resisting authority. Homicide. Assault with arms. Automobile theft and discovery of the automobile. Victim: Gabriel E. Santillán, No. 23.148/91"—was instituted before the Fifth Court of First Instance for Criminal and Correctional Matters of the Morón Judicial District. The petition alleges that the police committed gross negligence in collecting material evidence of the incident, since it was not until 3 p.m. that an officer from the Morón Technical and Judicial Investigations Office arrived at the scene to begin gathering evidence. That effort proved futile because the scene was not sealed off to the public following the shootout; as a result, several curious members of the public, including children, removed from the scene important evidence for solving the case.

15. The petitioner states that on the same day the events occurred, a ballistic test was conducted on Officer Prado's service weapon (a Browning 9-milimeter pistol) and on three spent cartridge cases found at the scene, and it was determined that the cartridge cases had been fired from Officer Prado's weapon. In addition, the medical forensic examinations performed on the body of Gabriel E. Santillán were seriously flawed, which contributed to impunity in the killing. The petitioner explains that owing to uncertainty as to which was the entry wound of the projectile and which was the exit wound (due to contradictions between the clinical history at the hospital in Haedo and the autopsy report), the Judge of First Instance for Criminal Matters ordered a second autopsy, and the corpse was exhumed on December 19, 1991, without the knowledge or participation of the family. The second autopsy was performed that very day, and skin and blood samples, as well as the heart and lungs, were taken from the corpse for anatomicopathological tests. The material was sent to the Judicial Forensic Service of the Province of Buenos Aires.

16. The petitioner maintains that on January 14, 1992, the anatomical pathologist of the Forensic Services Bureau of the Judicial Branch of Buenos Aires Province reported that the material received could not be used to determine the entry and exit wounds of the projectile that caused the death of Gabriel E. Santillán. According to the information provided by the petitioner, the skin fragments had dried out beforehand and the lungs were in an advanced state of decomposition due to the lack of precautions in the preservation of the samples after they were taken from the corpse, which prevented a determination of the existence of traumatic injuries.

17. The petitioner states that on the day the victim died, Police Officer Ferraro asked the victim's maternal grandmother to hand over the clothing the alleged victim had been wearing at the time of the incident; otherwise the body would not be released to her. The petitioner further claims that the same Officer Ferraro allegedly threatened the victim's mother on June 6, 1992, and allegedly intimidated her by calling on several of his colleagues to appear at the family's home displaying firearms. The petitioner also explains that during the judicial proceeding, Officer Ferraro denied that he had been present at the medical center.

18. The petitioner states that on September 15, 1993, the Fifth Court of First Instance for Criminal and Correctional Matters of the Morón Judicial District ordered the provisional dismissal of the case, finding that the death of Gabriel E. Santillán had been caused by the shots fired by the thieves, not by the police—a conclusion that, according to the petitioner, was unsupported by the evidence. The prosecutor appealed the decision, apparently because he considered, based on what little medical evidence there was in the case, that the victim's death was caused by the shots fired by Officer Prado, whose testimony was never taken during the proceeding, despite the insistence of the Santillán Reigas family. On February 8, 1994, the Chamber of Appeals for Criminal and Correctional Matters for the Morón Judicial District confirmed the lower court's decision. The petitioner states that on June 16, 1994, the case was closed without the investigation having been reopened as is required when a dismissal is provisional.

19. The petitioner affirms that, by interlocutory order of May 29, 2001, the Second Transitional Court for the Morón Judicial District, currently in charge of the proceedings, approved the destruction of the court record in February 2004. To that end it declared the case to

be at a standstill and ordered its transfer to the District Archive. On July 14, 2006, the petitioner filed a Petition for Nullification and Appeal before the Second Transitional Court for the Morón Judicial District. According to the information provided by the petitioner, as of January 22, 2007, the Transitional Court had not ruled on the matter.

IV. FRIENDLY SETTLEMENT

20. On May 28, 2008, the petitioner—the mother of Gabriel E. Santillán, Mrs. Mirta Liliana Reigas—and the representatives of the State—the Undersecretary for the Protection of Human Rights, Dr. Luis Hipólito Alen; the Special Representative for Human Rights in the Ministry of Foreign Affairs, International Trade, and Worship, Ambassador Horacio Arturo Méndez Carreras; and the National Director of International Affairs in the Human Rights Secretariat of the Ministry of Justice, Security, and Human Rights, Dr. Andrea Gladys Gualde—signed the friendly settlement agreement, which was approved by means of National Executive Decree No. 171/2009 on March 11, 2009. The text establishes the following:

FRIENDLY SETTLEMENT AGREEMENT: Decree No. 171/2009

FRIENDLY SETTLEMENT AGREEMENT

The parties in Case No. 12.159 in the register of the Inter-American Commission on Human Rights—Gabriel Egisto Santillán: The petitioner, Mrs. Mirta Liliana Reigas, and the Government of the Republic of Argentina, in its capacity as State party to the American Convention on Human Rights, hereinafter “the Convention,” acting under the express mandate of Article 99, subparagraph 11, and Article 126 of the Constitution of the Argentine Nation, and in accordance with the provisions of Article 28 of the Convention, and represented by the Undersecretary for the Protection of Human Rights, Dr. Luis Hipólito Alen; the Special Representative for Human Rights in the Ministry of Foreign Affairs, International Trade, and Worship, Ambassador Horacio Arturo Méndez Carreras; and the National Director of International Affairs in the Human Rights Secretariat of the Ministry of Justice, Security, and Human Rights, Dr. Andrea Gladys Gualde, have the honor of informing the distinguished Inter-American Commission on Human Rights that they have arrived at an agreement for friendly settlement of the petition, the contents of which are provided below. They request that the Commission accept the agreement as a reflection of the consensus reached and that it adopt the relevant report, in accordance with Article 49 of the Convention.

I. Background of the Case before the IACHR – The Friendly Settlement Procedure

1. On January 29, 1999, the Inter-American Commission on Human Rights received a petition brought against the Republic of Argentina with regard to the death of 15-year-old Gabriel Egisto Santillán Reigas, which took place on December 8, 1991, as a result of a gunshot wound he received on December 3, 1991, in circumstances in which members of the Police of the Province of Buenos Aires were in pursuit of unidentified individuals suspected of the theft of a vehicle. The petition also referred to the alleged denial of judicial protection and a fair trial as a result of the lack of due diligence in the proceeding to investigate the facts and punish those responsible for the death of Santillán. The petitioners added that Gabriel was the son of Omar

Aníbal Santillán, who was detained and disappeared in May 1977 due to illegitimate actions by the last military dictatorship.

2. The petitioners maintained that the State was allegedly responsible for the violation of the rights to life, humane treatment, a fair trial, and judicial protection enshrined in Articles 4, 5, 8, 25, and 1(1), respectively, of the American Convention on Human Rights, to the detriment of Gabriel Egisto Santillán Reigas, and the subsequent denial of justice, to the detriment of his family.

3. On October 22, 2003, the Commission decided to adopt Report No. 72/03, in which it declared the petition to be admissible. On January 2, 2004, the petitioners accepted the Commission's invitation to begin a friendly settlement procedure in the case. For its part, having concluded a thorough consultation process with the Government of the Province of Buenos Aires, the Argentine State conveyed to the IACHR its willingness to engage in dialogue in order to explore the possibility of a friendly settlement, under the auspices of the Commission.

4. From that point on, various working meetings were held among the petitioners and representatives of the Government of the Province of Buenos Aires and the national State; these culminated in the adoption of this friendly settlement instrument. In that context, the petitioners requested the preparation of legal opinions regarding the possibility of reopening the criminal case; these were endorsed by Drs. Andrés Harfuch and Luis María Chichizola. In light of the conclusions of these opinions, in July 2006 the petitioners asked for a reopening of the case entitled "Perpetration of Crime and Resisting Authority, along with Assault with Weapons, Homicide, and Discovery of Vehicle. Victim: Santillán, Gabriel Egisto," before the Second Transitional Court of the Court of First Instance for Criminal and Correctional Matters of the Morón Judicial District. The case is currently being processed.

II. Primary Responsibility of the Province of Buenos Aires. Attendant International Responsibility of the Argentine State.

1. In a memorandum dated January 12, 2007, the petitioners submitted for the consideration of the authorities a document specifying what they hoped to achieve in a final agreement: a) a recognition of international responsibility; b) the implementation of a seminar to work on, debate, and come up with proposals related to the interaction and coordination between the work of the national State and the provinces, in light of Article 28 of the American Convention on Human Rights; c) monetary reparations; and d) follow-up on case file No. 2378 and the legal proceeding before the Supreme Court of Justice of Buenos Aires Province from the aforementioned file 2378. Subsequently, the petitioners clarified that the current number of the criminal case file is 5-23148-2, and it is entitled "Perpetration of Crime and Resisting Authority, along with Assault with Weapons, Homicide, and Discovery of Vehicle. Victim: Santillán, Gabriel Egisto." They also indicated their intention to monitor legal proceeding No. 3001-2014/99 before the Supreme Court of Justice of Buenos Aires Province, Office of Judicial Control and Inspection, which has to do with possible disciplinary responsibilities related to the actions covered in the aforementioned file 5-23148-2, as well as any impeachment proceedings that may follow.

2. Under legal opinion DAI No. 31/07, the Secretariat for Human Rights of the Ministry of Justice and Human Rights of the Nation examined the facts claimed in the petition. In this context it was emphasized that, while the primary responsibility for the events should fall to the Province of Buenos Aires, in the instant case, "...the conditions are in place for the Foreign Ministry to pursue a friendly settlement, assuming an express recognition of the objective responsibility of the national State."

3. For its part, the Government of the Province of Buenos Aires made known in a memorandum dated June 1, 2007, that it rejected the possibility of assuming responsibility in the case. Without prejudice to the foregoing, it expressed its willingness to "...collaborate in following up on the individual case files."

4. Bearing in mind the foregoing, and having considered the circumstances relevant to the case in light of Admissibility Report No. 72/03, in accordance with conclusions offered by the Secretariat for Human Rights of the Ministry of Justice and Human Rights of the Nation in the aforementioned opinion DAI No. 31/07, and taking into account the international nature of the previously acknowledged violations of rights that occurred in the jurisdiction of Buenos Aires Province, the Government of the Republic of Argentina declares its willingness to assume objective responsibility at the international level in its capacity as State party to the Convention. In accordance with the constitutional norms here cited, it requests that the distinguished Commission take as recognized the alleged violations under the terms of the petition and accept the commitments that the State of Argentina assumes herein, under the specific conditions laid out in the following points.

III. Measures to be Adopted

a. Monetary Reparation Measures

1. The parties agree to set up an ad-hoc Arbitration Tribunal to determine the amount of monetary reparations owed to the petitioners, in keeping with the rights acknowledged to have been violated and with applicable international standards.

2. The Tribunal shall be made up of three independent experts, with recognized expertise in human rights and of the highest moral caliber—one appointed by proposal of the petitioners, the second by proposal of the national State, and the third proposed by the two experts designated by the parties. The Tribunal shall be formed no later than 30 days following approval of this agreement by Decree of the Executive Branch of the Nation.

3. The procedure to be followed shall be determined by common agreement among the parties and set forth in writing, a copy of which shall be submitted to the Inter-American Commission on Human Rights. To this end, the parties shall designate a representative to participate in the discussions of the procedure. For purposes of representing the national State, the Ministry of Foreign Affairs, International Trade, and Worship and the Ministry of Justice and Human Rights shall be charged with designating an official in the area with competence in human rights matters in both Ministries.

4. The Arbitration Tribunal's award shall be final and not subject to appeal. It shall contain the amount and type of monetary reparations agreed upon, the beneficiaries thereof, and a determination of any applicable costs and fees incurred in the international proceeding and by the arbitration entity. The award shall be submitted to the Inter-American Commission on Human Rights for evaluation as part of the process of following up on compliance with the agreement, in order to verify whether it is consistent with applicable international parameters. The amounts set forth in the award shall be immune from seizure and shall be exempt from payment of any taxes, contributions, or fees that may currently apply or that may be imposed in the future.

5. The petitioners relinquish, definitively and irrevocably, the ability to initiate any other claim of a monetary nature against the national State associated with the instant case. In addition, they cede and transfer to the national State all litigation rights they may have by virtue of their complaints against the Government of the Province of Buenos Aires, and undertake to sign the respective instrument before a Notary Public within ten working days following the effective delivery of the payment resulting from the arbitration award.

6. Without prejudice to the foregoing transfer in its favor, and in any event, the national State declares that it reserves the right to recover from the Government of the Province of Buenos Aires the amounts actually paid out to the petitioners, as determined by the Arbitration Tribunal, by subtracting those amounts from the totals that might correspond to that province under the federal co-participation law and/or any other lawful means.

b. Non-Monetary Reparation Measures

1. The Government of the Argentine Republic pledges to publish this agreement—once it has been officially approved by the Inter-American Commission on Human Rights, in accordance with the provisions of Article 49 of the American Convention on Human Rights—by means of a notice in the “Official Gazette of the Argentine Republic” and in a nationally distributed newspaper. The text of the notice shall be agreed in advance with the victim's relatives.

2. The Government of the Argentine Republic undertakes to invite the Government of the Province of Buenos Aires to report on the status of the following cases being heard by courts in the provincial jurisdiction until their final conclusion:

a. Case 5-231148-2, entitled “Perpetration of Crime and Resisting Authority, along with Assault with Weapons, Homicide, and Discovery of Vehicle. Victim: Santillán, Gabriel Egisto,” before the Second Transitional Court of the Court of First Instance for Criminal and Correctional Matters of the Morón Judicial District, Buenos Aires Province.

b. Cases 3001-2014/99, entitled “Ministry of Justice. Santillán, Gabriel Egisto. Case report No. 23.148/91,” and 3001-465/05, entitled “Executive Power of Buenos Aires Province – Sub-Secretariat of Justice Remits Case 12.159—Santillán, Gabriel Egisto,” both before the Supreme Court of Justice of Buenos Aires Province.

3. The Government of the Argentine Republic commits to carrying out its best efforts to hold an academic event, as soon as possible, on questions having to do with the interaction and

coordination between the Federal State and the Provincial States in the area of compliance with international obligations, in light of the provisions of Article 28 of the American Convention on Human Rights.

IV. PETITION

The Government of the Argentine Republic and the Petitioner enter into this agreement expressing their full acceptance of its content and scope, and mutually value the good will that was evident in the negotiation process. To this effect, they attest that in order to finalize this agreement it must be approved by National Executive Decree, at which time the Inter-American Commission on Human Rights will be asked to ratify the friendly settlement agreement reached, through the adoption of the report stipulated in Article 49 of the American Convention on Human Rights.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

21. The IACHR reiterates that, in accordance with Articles 48(1)(f) and 49 of the Convention, this procedure has the objective of “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The State’s consent to pursue this avenue shows its good faith to honor the purposes and objectives of the Convention, based on the principle of *pacta sunt servanda*. The IACHR also wishes to reiterate that the friendly settlement procedure provided for in the Convention allows individual cases to be settled in a non-contentious manner. In cases involving a number of countries, it has proven to be an important, effective vehicle that can be used by both parties to arrive at a solution.

22. The IACHR notes that the fourth clause of the second section of the friendly settlement agreement includes a stated recognition of objective responsibility at the international level as a State party to the Convention, as well as recognition of the alleged violations in the terms of the petition. The Commission appreciates the Argentine Republic’s recognition of responsibility for the failure to comply with its international obligations with regard to the rights enshrined in Articles 4, 5, 8, and 25 in conjunction with Article 1(1), of the American Convention on Human Rights.

23. The Inter-American Commission has closely monitored the development of the friendly settlement arrived at in this case. The Commission highly values the efforts the parties made to reach this settlement and declares that it is compatible with the object and purpose of the Convention.

VI. CONCLUSIONS

24. Based on the foregoing considerations and in keeping with the procedure provided for in Articles 48(1) (f) and 49 of the American Convention, the Commission would like to reiterate its deep appreciation for the efforts carried out by the parties and its satisfaction that the friendly settlement agreement reached in this case is consistent with the object and purpose of the American Convention.

25. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement that the parties signed on May 28, 2008.
2. To continue to monitor and supervise each and every point in the friendly settlement, and in this context, to remind the parties of their commitment to regularly inform the IACHR as to compliance with this friendly arrangement.
3. To make this report public and include it in its annual report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 6th day of the month of August, 2009.
(Signed): Luz Patricia Mejía Guerrero, President; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Paolo G. Carozza, members of the Commission.