

THE CIRCULATION OF MINORS IN ARGENTINE, A TOPIC IN THE CENTRE OF PRESENT DAY DEBATE ABOUT MINORITY

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Abstract

"The Regional for Latin America of the International Organization for Migrations manifested the existence of a route for internal traffic in which the provinces in north Argentine act as suppliers of women, girls and boys to the districts more in the south."(1)

"Amongst Argentineans we accept without surprise that when the purchase of a child is for "a good result" the subject of money doesn't get in the way; "The result is good" – is said – as if the result absolves the offence." (Fugaretta, 2006) was said at the opening of the First Day relating to the Traffic of Babies and Small Children, organised by the national government this year 2006.

Our observation via experience on the free telephone line 102 "Telephone of the Child" (*) in the province of Tucumán, from work with the northern communities and with applicants and adoptive parents in Buenos Aires are in agreement with these concepts.

To investigate about the conditions that facilitate this and their consequences, is the objective of this presentation, a partial result of investigation in course.

Legal context vs, Judicial Practice

Until the end of 2005, for 16 years, in Argentina a law from the beginning of the century, the Law of the Patronato de Menores (Law 10.903 in force since 1919 until 2006) which in this way named the boys and girls; and the ratification of the International Convention for the Rights of Children of 1989 (Law 23.849) with reserve to article 21 coexisted.

Argentina ratifies the Facultative Protocol for the Convention in 2003. However although subsidiary figures existed, such as "reduction of servants" "illicit association" and "privation of liberties", there is still no penal classification for Trafficking, as the protocol demands. The legal-social debate is arduous, present day, and passes via what is the subject on which the penal figure falls, about "who is being persecuted," and retains this type classing legally. (Moreno, 2006).

The Convention – with a constitutional rank since 1994 – did not manage to modify the judicial practices. These continue in the supposition that the State will have – under the legal figure "personal protection" the function of "paternaje" about cultural, social, family and psychological aspects of the child. The definition of these were left to the free interpretation of each judge the power of the state historically integrated by the most conservative sectors of society, strongly influenced by the Catholic church.

The law covering infancy was modified in 2005 to put it completely at the level demanded by the International Convention (Law 26.061 of Integral Protection of the Children's Rights). It cuts the historic judicialisation of the problem of childhood, contemplates the concept of the child's "centre of life", gives priority to the family of origin, installs the "progressive capacity" of the child to participate in the acts in which he is the protagonist, and consider him as an actor in the procedure which involves him with aptitude to name a lawyer, and recur for himself the actions that affect him. In this way it tries to overcome the dilemma capacity-incapacity and the "secret" about "the family" – based on the law of Paternal

Control, when between the parents there is no disagreement – which today allows the child to oppose both the administrative and paternal decision. Finally, it obliges the State to cover the child's needs considering those intangible funds.

Although it is improbable that its text can be effective law in a medium term, we stress that its character marks an intention to break with tradition that has brought serious consequences to childhood in this country.

The child and his/her family continues today without effective access to the defence and appeal against legal decisions. The figure of "personal protection" insists in the use and customs of the administration of justice.

This 90 year old practice, fixed in the subjectivity of judges and clerks for various generations, has "naturalised" in vast sectors of the community that a child in a situation of poverty, is the same as a child at risk within the family medium.

It is a system that works on the children's backs, which is fed by them, that becomes depersonalised. Someone who enters into the system either has to go or ends up adapting because if not he would not be able to remain. (Dubaniewicz, 2005). Judge Rozanski says "The legal people work by day and cry by night" (Rosanski, 2006). Whoever works with childhood and in situations of violence in Argentine do not have psycho-social dispositives to let him / her work out what happens to them with what happens to other with home they work. Under these conditions they suffer high indexes of burn-out. This provokes mistreatment, cynical intervention and other pathologies in the administration of justice.

Today there are 20,000 institutionalised children in Argentina (UNICEF, 2005). The index of "abandonment" is situated at 5 to 10% and has not changed since the era of the Virreinato. The cause of 80% of the privation of freedom of children, is poverty (Dubaniewicz, 2005). There are still no policies by the administration for the assistance and family re-bonding, Family Fostering is not regulated, nor are there registered plans for defining legally the situation of abandonment and adoptability. (UNICEF, 2005).

Ana María Dubaniewicz says, an investigator in the subject and ex inmate of an institution. "They feel that they are abandoned because they are bad, that they are not wanted because of something they did that they will never be wanted or accepted or loved. Then, the moment comes when they don't love themselves, do not accept anything about themselves (Dubaniek, 2005).

The future? : The inhabitants in the prisons have an average age of 23. 80% spent their infancy in the attendance insitutionalised system (Ministerio Justicia y DD.HH, 2005).

Strong complaints are being made to lower the legal age to commit an offence to 14 years. (Colonna, 2006).

Attendance discipline is followed by penal discipline.