

Argentina: Civil Code modification and The impact of the Supreme Court Decision

Laura Giunta¹ and Agustina Mitre².

Content

I. INTRODUCTION	2
II. A LATENT THREAT: THE NEW ARGENTINEAN CIVIL AND COMMERCIAL CODE.	2
A) THE ARGENTINIAN TRADITION OF PROTECTION OF LIFE IN THE CIVIL CODE.	2
B) A FRUSTRATED ATTEMPT TO BREAK WITH THE TRADITION OF THE PROTECTION OF LIFE	3
D) THE MEANING OF “CONCEPTION” AS A CENTRAL TOPIC IN THE DEBATE	4
III. PROVINCES’ PROTOCOLS FOR THE “NON-PUNISHABLE” ABORTION TREATMENT	6
A) THE EFFECT OF THE JUDICIAL DECISION “F.A.L. S/SELF ENFORCING MEASURE”	6
B) PROVINCES’ PROTOCOLS: BRIEF MENTION	7
1. PROVINCES THAT HAVE ACCEPTED THE NATIONAL TECHNICAL GUIDE	7
2. PROVINCES THAT HAVE SPECIAL PROTOCOLS	7
3. PROVINCES THAT HAVE FOLLOWED THE SUPREME COURT RECOMMENDATIONS	7
IV. JUDICIAL BATTLE IN CORDOBA: A CASE TO HIGHLIGHT	9
A) THE DECISION OF THE SUPREME COURT OF ARGENTINA IS NOT BINDING FOR THE PROVINCES	10
B) AN APPARENT CONFLICT OF LAW	11
C) THE CONSTITUTIONALITY OF THE LOCAL PUBLIC LAWS/ARGENTINEAN’S NON-EXISTENT INTERNATIONAL RESPONSIBILITY	12
D) ARGENTINA’S NON-EXISTENT INTERNATIONAL RESPONSIBILITY	12
V. CONCLUSION	13

¹ Mendoza’s University attorney

² LLB National University of Tucuman. Currently pursuing a Master Degree in Judiciary and Juridical Law at the Austral University

I. Introduction

The following article provides an analysis of the Argentinian legal system regarding its protection of the human embryo. It will analyze from both the private and the criminal law perspectives.

First is analyzed the recent unification of the Civil and Commercial Civil Code regarding its protection of the unborn.

Secondly, two items related to aspects of a criminal nature are considered. These are the impact of the judgment of the Supreme Court of Justice ("F. A. L. s/measure autosatisfactiva") in the regulation of the abortions not punishable, and finally a successful judicial opinion of great importance.

II. A latent threat: The new Argentinean Civil and Commercial Code.

In order to properly understand the scope of the provisions adopted in the Civil Code's modification about the beginning of Human life and its legal protection, it is convenient to make a brief reference to the previous Civil Code, to the original draft sent to Congress³ and finally to the Digest that was approved and is in the actual Civil and Commercial Code.

a) The Argentinian tradition of protection of life in the Civil Code.

The Argentinean Civil Code, written by Dalmacio Velez Sarfield⁴ established that unborn persons are defined as those conceived in the mother's uterus. Articles 63 and 70 establish that the existence of physical persons begins with conception.

Section 63: Those persons that are not born but are conceived in the mother's womb are called unborn.

Section 70: The existence of the person begins from the moment in which they are conceived in the mother's womb. Before these persons are born, they acquire certain rights, as if they had already been born. These rights are acquired irrevocably if the person conceived in the mother's womb is born alive, even if this would only last moments after being out of the mother's womb.

As noted by the articles above, the Civil Code grants the unborn person the possibility of acquiring certain rights. Such rights are acquired irrevocably if the person is born alive. If the person dies before completely exiting the mother's womb, they are considered to have never existed. In such respect, the fact that the person is born dead operates as a resolute condition⁵ for the rights acquired through heritage, legacy, or donation.

³ See full text of the bill: <http://www.biblioteca.jus.gov.ar/anteproyectocodigocivilcomercial2012.pdf>

⁴ Dámaso Simón Dalmacio Vélez Sarfield was a lawyer and Argentine politician, author of the Civil Code of Argentina in 1869, most of which is still in force.

⁵ Resolute condition is a legal term which means that a certain right can exist until a certain condition occurs. In this case the right to heritage, legacy or donation of the unborn exist until the

The note of interpretation of section 63 ratifies this interpretation when it says: *“Unborn Persons are not persons that would exist in the future, but persons that already exist in the mother’s womb.”*

According to Argentinean law, these sections of the Code make perfectly clear that the beginning of a human being’s existence is at conception.⁶ The term “Conception” shall be understood as “fertilization,” the moment in which the woman’s egg and the sperm are united to create a new human being, with a unique genetic code.⁷

b) A Frustrated attempt to break with the tradition of the protection of life

The original version of the reform project No. 884/2012 contains two different moments at which a persons’ legal protection would start.

Article 19(Reform project) -Beginning of existence. The existence of the human being begins with its conception in the mother’s womb. In regards to assisted human reproduction techniques, life starts when the embryo is implanted in the woman’s womb, regardless of what has been established in a special law for the protection of the non-implanted embryo.

This article proposes two different moments at which a human being would begin to be considered as a person, depending on whether their conception occurred inside or outside of the mother’s uterus. This distinction would imply the existence of a double standard. If the human being was conceived through the union of a man and a woman (procreation) then life begins at the moment of conception. If the human being was created through “human assisted reproduction techniques,” then life begins with the implantation of the embryo in the woman’s body.

As a consequence of this situation, embryos that are a product of human assisted reproduction techniques – since they were not considered human beings before being implanted in the mother’s womb - would remain arbitrarily unprotected and, therefore, they could be used for experiments, donations, commercial purposes, etc.

Even though it was foreseen that a special law would protect them, this law was never created and is not planned in the proposed reform.

One of the main characteristics of the Reform draft was the intention to harmonize civil legislation with international treaties Human Rights, which since 1994 have constitutional hierarchy. This claim allows us to conclude that the project must above all respect the unique definition of the child which has adopted Argentina to ratify the Convention on the Rights of the Child. Argentina, by ratifying the Convention on the Rights of the Child said: "For the Argentina Republic a child means "every human being from the moment from his conception to eighteen years of age ".

unborn child dies in its mother's womb, which is the moment in which the unborn loses all the rights.

⁶ See in this webpage the Argentinean report published in 2012 II. B: “The human right to life in the national legislation and international treaties”

⁷ See in the Argentinean report published in 2012 footnote no. 10.

The Constitution recognizes the child as a person from conception. And it makes no distinction between the conception inside or outside the womb, since that distinction is accidental and does not affect the essence of the new being.

The distinction between types of embryos received numerous criticism from jurists, academics, and the public in general. The critics classified the wording of the reform as unconstitutional, discriminatory, and arbitrary.

A bicameral commission was designated to emit a legislative statement.⁸ After an intense debate the section was finally written as follows:

“A Human being’s existence starts with conception.”

c) Current Civil and Commercial Code

In the new Civil and Commercial Code, the protection of the human embryo has not changed in relation to the prior Code. In fact, its protection has been strengthened by eliminating the concept of "conception in the womb", without distinguishing where conception takes place. The human embryo is worthy of all the protection that the law provides for every human person. In addition, the new Code recognizes the right to food to the unborn: Section 665 of the Civil and Commercial Code.

In a recent court ruling in the case "G.M.G vs. G.J.A S", the Court of Concordia, Entre Rios, dismissed the appeal and thus, confirmed the ruling of the first instance, establishing to the father of the unborn the obligation to deposit a monthly certain sum of money to guarantee to his unborn child its right to food.

d) The meaning of “conception” as a central topic in the debate

Even though the new wording of the article is an improvement over the original and over the current Civil Code’s wording, since it does not make a distinction between the different ways in which conception would take place,⁹ a new problem arises over how to define the term “conception.”

Some jurists, basing their opinion on the position of the Inter-American Court of Human Rights (ICHR) in their judgment of the case “Artavia Murillo”¹⁰ believe that the moment of conception does not coincide with the moment of fertilization, but rather with the moment in which the embryo is implanted in the mother’s uterus.^{11 12} In the

⁸ By means of giving legislative treatment to the Project of reform of the civil Code, a bicameral commission comprised of deputies and senators was created.

⁹ Article 70 of the binding civil Code established that: “People’s existence starts from the moment of conception in the mother’s womb...” The mention of the mother’s womb can be explained by the fact that when the code was sanctioned in the year 1871, there were no assisted reproduction techniques.

¹⁰ Artavia Murillo and others (“in Vitro Fecundation”) vs. Costa Rica Case. Sentence dictated on November 28th of 2012. http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_esp.pdf

¹¹ Case: Artavia Murillo y otros (“Fecundación in Vitro) vs. Costa Rica. Rulling of 28 de Noviembre de 2012. http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_esp.pdf Point 180: “The

aforementioned judgment of the IHR Court it was concluded that for the purposes of Article 4.1 of the American Convention, the embryo cannot be considered a person. The Court also established that the term "conception" refers to the moment in which the embryo is implanted in the uterus.¹³ This interpretation intends to modify the understanding of the word "conception," confusing the moment of the union of the two gametes -fertilization- with the moment of implantation. This confusion between those two moments redefines the concept of the moment at which human life starts.

Regarding the binding force for Argentina of the judicial decisions handed down by the Inter-American Court of Human Rights for the case "Artavia Murillo," Argentinean jurists in the XIV National Civil Law Days¹⁴ understood that this decision was not able to be applied for two main reasons. First, Argentina did not take part in the IHR Court's decision; and second, the situational facts of the Case do not apply in Argentina since techniques of human assisted reproduction are not forbidden.¹⁵

Court observes that two different interpretations of the term "conception" are highlighted in the current scientific context. One group defines "conception" as the moment of encounter, or fertilization of the egg by sperm. The zygote: fertilization creating a new cell is generated. Some scientific tests demonstrate the zygote as a human body that houses the instructions necessary for the development of the embryo. A second group defines "conception" as the time of implantation of the fertilized egg in the uterus. This, due to the implementation of the fertilized egg in the womb establishes the connection of the new cell, the zygote, with maternal circulatory system that allows to access all the hormones and other elements necessary for the development of the embryo. " Point 186 "(...) the Court emphasizes that the scientific evidence distinguishes two complementary and essential moments in embryonic development: fertilization and implantation. The Court concludes that only upon implantation there is conception. "

¹² In September 2015, there was a ruling of the Argentinian Supreme Court (ASC) in the case "L.E.H and others vs. O.S.E.P." which held that the pre-implantation genetic diagnosis (PGD) is not a mandatory service for Healthcare institutions.

PGD is a research over embryos created by in vitro fertilization that aims to discover the embryos with best genetic for being implanted in the woman's wombs. This practice deserves several critics since the selection criterion is completely arbitrary and discriminative - the ones that will be chosen are those with more viability to live; also this criterion can be used for purpose of "race improvement". Those with malformations or any undesirable characteristic can be deprived of the right to life.

What is most remarkable of this ruling is that the ASC having the opportunity to make an extensive application of Artavia Murillo case they didn't apply it (If the ASC would have decided to apply the fundamentals of Artavia Case, it would imply the lack of recognition of the human condition to the embryo, that in Argentina, has constitutional protection.), even though that the prosecutor did use this international interpretation. Thus, through an explicit interpretation of our superior Court, it has been established that the interpretation of the convention made by the Inter-American Court of Human Rights in Artavia case does not apply for our country.

¹³ Inter American Court of Human Rights, Artavia Murillo and others ("in Vitro Fecundation) vs. Costa Rica Case. Official resume emitted by the inter American Court of the Sentence dictated in November 28th of 2012 (preliminary objections, merit reparations and costs), page 10. http://www.corteidh.or.cr/docs/casos/articulos/resumen_257_esp.pdf

¹⁴ The National Conference of Civil Law reunites Argentinean lawyers that meet once a year in different points of the country with the aim of giving treatment to fundamental subjects of civil law. During these conferences, a book about the exposition and conclusions about the different topics treated is written. The book is published and is part of the juridical doctrine of Argentina. The conference stated that "Artavia Murillo" case dictated by the Inter American Court of Human Rights is not binding for the Argentinean law. www.jndc.com.ar

¹⁵ In Argentina law N° 26862 Of Human Assisted Fertilization was sanctioned on June 13, 2013.

The acceptance of the interpretation of the term conception as referring to the moment of the implantation of the embryo would carry with it multiple threats toward the non-implanted embryo, which would not be granted legal protection. Therefore, this interpretation would open the door not only for genetic manipulation but also for abortion practiced through so-called emergency contraception¹⁶ and the use of misoprostol during the early days of pregnancy.¹⁷

Due to this danger, it was suggested during the aforementioned National Civil Law Days that the code should read as follows: *“The human being’s existence starts at the moment of conception, understood as fertilization, whether it occurs inside or outside of the mother’s womb.”* This wording is in harmony with the Argentinean Law in a more profound way, due to the fact that it truly protects every human being, without any kind of distinction, from the first moment of its existence.

All that is left is to know the fate of the Argentinean Civil Code Project of Reform.

III. Provinces’ protocols for the “non-punishable” abortion treatment¹⁸

a) The effect of the judicial decision “F.A.L. s/self enforcing measure”

On March 13, 2012 the Argentinean Supreme Court of Justice established in the decision “F.A.L. s/self enforcing measure,”¹⁹ not only that abortion is not punishable when the pregnancy is a result of rape, but also that a judicial authorization or a previous police complaint is not required for the abortion to be performed. The court went even further when it expressed that there is a *woman’s right* which enables her to seek an abortion in such cases.²⁰ Moreover, the Court urged the National state and the Provincial states²¹ to establish protocols that would regulate access to non-punishable abortion. The Court urged that judicial power not be used to hinder access to abortion.²²

Two years after the Court’s decision, we see that the National and Provincial authorities differ in their implementation of this decision and that this implementation also varies

¹⁶ See the Argentinean Report published in 2012 “Unconstitutionality of the practice of Hormonal Emergency Contraception” page 177

¹⁷ See the Argentinean report published in 2012 section III.2 Lesbians and Feminists or the decriminalization of abortion”, page 162

¹⁸ About the regulation of non-punishable abortions, see the Argentinean Report published in 2012. Section III.B.II “Project of Regulation of section 86 of the Argentinean Penal Code” page 152.

¹⁹ See in the Argentinean report published in 2012 section III.D “A non-precedent decision of the Supreme Court,” page 157.

²⁰ The Court uses the term “right” in the consideration numbers 18,9,23,24,28,29 and 31.

²¹ The Legislative system of Argentina includes the National Laws which are obligatory for all the Provinces, and particular Laws that are given by a certain Province which is binding only for that Province.

²² The court does not “order” the Provinces in the Resolution part of the decision, but only “urges” them. That is to say, the words are simply a suggestion with no binding force.

among different jurisdictions. Only thirteen of the twenty five Provinces of Argentina have established protocols for the practice of non-punishable abortions²³ which harmonize with the Court decision.²⁴

b) Provinces' protocols: brief mention

1. Provinces that have accepted the National Technical Guide

Some of the Argentinean provinces have not established their own protocols for non-punishable abortions but have adhered to the technical guide set forth by the National Health Ministry.²⁵ Some of these provinces are:

- **Chubut (law XV 14/2010)**
- **Santa Fe (Ministerial Decision 612/2012)**
- **Tierra del Fuego (Ministerial Decision 392/2012)**
- **Jujuy (Ministerial Decision 8687/2012)**
- **Chaco (Law 7064/2012).**

2. Provinces that have special protocols

There are also provinces that had already established their own Protocols before the sentence of the Supreme Court of Justice. These provinces are:

- **Río Negro (Law 4796/2012)** which has a special protocol and refers to the dispositions of the National Technical Guide as a subsidiary.
- **Neuquén (Ministerial Decision 1380/2007)** has a special protocol.

3. Provinces that have followed the Supreme Court recommendations

The final group of Provinces is made up of those that have followed the recommendations of the Supreme Court of Justice. These provinces are:

- **Salta (Decree 1170/2012)²⁶**

²³ Argentina has 25 jurisdictions: 24 that correspond to the local jurisdiction of the 23 provinces that compose Argentina and one National-Federal jurisdiction that belongs to the City of Buenos Aires.

²⁴ Some of them had done this by means of provincial laws and others, through the resolution of the different local Health Ministries.

²⁵ See the Argentinean report published in 2012, page 154.

²⁶ Procedure guides for the assistance of victims of sexual crimes and for the Assistance of non-punishable abortions in public hospitals. Congressional Record 26/03/12.

The Protocol adopted in this province is particularly contradictory because, despite its adherence to the Supreme Court's decision, it simultaneously maintains that the decision is not binding. The Decree reads as follows:

“NOTED: Decision dictated by the Supreme Court of Argentina in the case “F.A.L. s/self enforcing measure”; Dossier no. 259. XLVI, y;

CONSIDERED:

That in the above mentioned decision, the Supreme Court interpreted article 86, section 2, of the Penal Code establishing that an abortion performed on a women who has been a victim of rape is non-punishable, without distinction of the victim's mental capacity.

That the Court has urged National and Provincial authorities which deal with this subject to implement and put into practice this policy, by means of laws, hospital protocols addressing non-punishable abortions, and integral assistance for every victim of sexual violence.

That it should be established first, that *judicial decisions in the constitutional system of Argentina only have obligatory effects for the concrete case judged*. From this principle we can conclude *that the exhortation of the Court constitutes a recommendation, and, therefore, it does not have the power of a mandate over the provincial authorities, even less in the respect of establishing procedural norms, for example, in order to access an abortion, it is not necessary to make a police report or take judicial action to prove that one has been the victim of a rape.*

That regardless of what has been explained, the institutional importance of the judicial decision cannot be denied, due both to the special and relevant field at issue in the decision and the importance of the Court which issued that decision.”²⁷

Therefore, even though it has been established that the Court's decision is not obligatory, the province of Salta established a protocol that regulates the practice of non-punishable abortions in accordance with the Court's recommendation, simply based on the institutional importance of the Court's decision. By sanctioning this protocol the province has ignored the national and

²⁷ <http://www.mapalegislativo.org.ar/index.php/legislacion/por-territorio/salta/85-persona-por-nacer/1806-decreto-11702012-guias-de-procedimiento-para-la-asistencia-de-victimas-de-violencia-sexual-y-atencion-de-abortos-no-punibles-en-hospitales-publicos>

international binding norms that recognize the beginning of life as the moment of conception. With the approval of this protocol the Province of Salta ignores the protection of life since conception, as the Argentinian laws and international convention lay down.²⁸

- **Entre Ríos (Ministerial Resolution 974/2012)**

The ministerial resolution of the Province of Entre Rios refers to the decision of the Supreme Court of Justice by means of the same arguments that the province of Salta uses when expressing the following: “That in our judicial system the decisions of the NSCJ are only obligatory for the individual case that was put on trial, without denying the importance of decisions issued by the Supreme Court of Argentina.”²⁹

This decision can be objected to for the same reasons as the previous one.

- **La Pampa (Decree 279/2012)**

The province of La Pampa agrees with the decision of the Court based on the same arguments above mentioned, therefore, the same criticisms can be applied to its decision.

- **City of Buenos Aires (Ministerial Resolution 1252/2012)**

The province of Buenos Aires agrees with the decision of the Court based on the same arguments above mentioned, therefore, the same criticisms can be applied to its decision.

- **Province of Córdoba (Ministerial Resolution 93/2012)**

The Ministerial Resolution of this province was declared unconstitutional; therefore, analysis of it will be made in another section.

IV. Judicial battle in Cordoba: A case to highlight

The Province of Cordoba, in the same way as the other above mentioned provinces, established its own protocol by means of Ministerial Resolution No. 93/2012. The Province followed the recommendation of the Supreme Court (without failing to recognize, at the same time, that the decision of the Court only had binding force for the case for which it was handed down).

The Ministerial Resolution states:

²⁸ See the Argentinean report Published in 2012 “The protection of the right to life in Argentina. Guarantee of binding force in all the Human Rights system “

²⁹ <http://www.mapalegislativo.org.ar/index.php/legislacion/por-territorio/entre-rios/70-persona-por-nacer/949-resolucion-974-aprobando-guia-de-procedimiento>

“The Court [in the case “F.A.L. s/self enforcing measure”; dossier No. ° F. 259. XLVI.], (...) urges the provincial (...) authorities, to implement and make enforceable, by means of laws which are in accordance with the terms here established, hospital protocols addressing the correct procedure for non-punishable abortions, and assistance for every victim of a sexual crime.

That in our judicial system the decisions of the NSCJ are *only obligatory for the particular case* that was on trial.

That regardless of what had been explained, and ***taking into account the social and institutional importance of the decision and its implications for public health treatment, it is convenient to dictate norms or procedure guides. Such norms would protect the health rights of the women that seek a therapeutic abortion.***”

Nevertheless, the validity of the aforementioned protocol was questioned in court, and declared unconstitutional by the Third Chamber of Civil and Commercial Appellations (Court of Appeals) (Hereinafter “the Chamber”). The Civil Association Portal de Belen³⁰ was the organization that brought an action for injunctive relief which put this Protocol into trial.

The Chamber made an exemplary decision with respect to the protection of the unborn child’s rights. It is important to emphasize the following arguments used by the Court:

- a) The decision of the National Supreme Court of Justice has no binding force over the provinces.
- b) There exists an apparent conflict of rights.
- c) The local public law is constitutional.
- d) The Argentinean state has no international responsibility.

a) The decision of the Supreme Court of Argentina is not binding for the provinces

The Chamber understood that the Supreme Court was beyond the limits of its authority in the FAL case. The court said “it is convenient and necessary to expand the terms of this pronouncement...” making clear that its intervention is only intended as a means of clarifying the existing confusion. The Court recognizes that, when urging the provinces to dictate protocols for non-punishable abortions, it turns away from its specific area of authority (which is to dictate a sentence in the case before it), and attributes to itself legislative functions.

³⁰ Action of Amparo No. 2301032/36 “Portal de Belén Association Civil vs. Superior Government of the Province of Córdoba for Amparo/ Appeal.” It is also important to point out that the civil association Portal de Belén had a judicial success in a case that was taken to the Supreme Court of Justice about emergency hormonal contraception. See the Argentinean report Published in 2012; section II.C “A Judicial precedent of enormous importance.”

The Chamber reminds the Court itself that in certain other decisions, the Court had admonished the inferior Courts that their sentences are not binding and are not obligatory for the local Courts when referring to the local public law.³¹

Based on these points, the Chamber adopted a decision contrary to what had been urged by the Supreme Court, based on local public norms and expressing that “we cannot help noticing in the local norms a larger emphasis on the obligation that State institutions have to respect and protect the right to life of the unborn child, particularly, in terms of health policies.”

b) An apparent conflict of law

The Chamber considers whether there was a conflict in the law.³²

By means of its analysis, the Chamber demonstrates that in Argentina abortion can *never be considered a right*. It established that section 86, point 1 and 2 of the Penal Code, established excuses for acquittal. This means that, in these cases, the law still considers the act a crime, but based on criminal policies, the normal punishment for these cases is not imposed. Therefore, in Argentina *abortion in any of its forms is considered a crime*, regardless of the cases in which this crime is not punished.

As it has been demonstrated that abortion in the case of sexual assault is still a crime, and that, therefore, the right to abortion does not exist, it follows that no one has the right to demand that the Health System provide the necessary conditions for a “safe abortion.”

It is clear that, when referring to two people who have identical human dignity, the right of one of them cannot be considered prevalent over the rights of the other without dehumanize him/her. In this respect, the Chamber remarked that every time that torture, slavery or extermination of people has been justified in human history it was argued that those who were being persecuted were not actually people.

Argentinean law has always recognized not only the human dignity of the unborn but also their rights. As a way of supporting its decision the Chamber quotes section 1 of the Convention on the Rights of the Child, which was given constitutional hierarchy by section 75 point 22, which establishes that “every human being from the moment of conception and up to the age of 18 years is defined as a child.”³³ The Supreme Court in its jurisprudence granted the unborn the quality of person.³⁴

Finally, the Chamber concluded that the apparent conflict of law does not actually exist, and that the unborn child has the right to respect its dignity as person.

³¹ Judicial decisions No. 304:1459.

³² Article 4.2.

³³ See also the Argentinean report published in 2012 in section II.B “Human right to life in National legislation and in International treaties”.

³⁴ C.S.J.N, 11/01/2001, judicial Decision T, page 5 – C.S.J.N, 5/03/2002, judicial decisión T 325, page. 292 and C.S.J.N, 22/05/2007, Judicial decisión T 330, page 2304

c) The constitutionality of the local public laws/Argentinean's non-existent international responsibility

The Chamber also analyzes the local public laws of the Province of Cordoba, focusing on their constitutionality.³⁵

The Chamber begins by mentioning article 4 of the Province's Constitution which declares that from the moment of conception life shall not be violated and which imposes on public powers the duty to respect and protect it. The Chamber also makes reference to article 19 which recognizes that every person has the right to life from the moment of conception, as well as article 59 which-when referring to the health system-also includes the protection of every person against biological, social and ambient risks, from the moment of conception."

The Court goes on to analyze the articles with the help of the National Constitutional System, and concludes that these articles are in accordance with the National Constitution.

The Court quoted local law 6222 on Public Health which, in article 5 point b, imposes on every person who is engaged in a profession or activities that are related to people's health the duty to respect the patient's right to physical and spiritual life "from the moment of conception." Consequently, in article 7, point d it is forbidden "to practice, collaborate, encourage, or induce any practice that would, by any means, interrupt a pregnancy."

The Chamber understands that these local norms are also constitutional because they are not in any way contradictory to the National Constitutional law. Such law protects life from the moment of conception and recognizes the unborn child the quality of a human being. The decision of the National Parliament to not impose a punishment on certain cases of abortion does not in any respect obligate the Province to do the same, nor can it be hierarchically higher than the local Constitutional order of protecting the unborn children's life.

Having established that articles 4 and 59 of Cordoba's Constitution and also that the articles above mentioned and Cordoba's local law 6222 are in concordance with the National Constitution of Argentina, the Chamber concludes that the Ministerial Resolution 93/2012 is unconstitutional due to the fact that it is in contradiction with the local juridical law.

d) Argentina's non-existent International Responsibility

Cordoba's judges expressed that "the only agreement of obligatory obedience that Argentina has signed as regards the supranational protection of human rights is the one related to the conformity of the judicial decisions of the Inter American Court of Human Rights **in the cases in which Argentina had been part**"³⁶(emphasis added).

³⁵ Article 4.3.

³⁶ Article 4.6.

In accordance with the above mentioned arguments the Third Chamber of Civil and Commercial Appellations declared every ministerial Resolution that regulates non-punishable abortions in the city of Cordoba to be unconstitutional.

V. Conclusion

If we could make an overall conclusion of the events that occurred in Argentina from 2012 until today, it could be concluded that in civil matters Argentina is making progress towards a better protection of the right to life. However, in penal matters there appears to be pushback.

The new wording of the Reform Project of the Argentinean Civil Code gives one hope that there is a possibility of reinforcing the protection of the right to life from the moment of conception, and even expanding it through removing the distinction between lives that begin inside and outside the mother's womb.

In regards penal issues, following the judicial decision of the Supreme Court of Argentina in the F.A.L. case, a backlash has been observed, due to the fact that a number of provinces, following the Court's recommendations, had established a Protocol for non-punishable abortions.

Regardless of what has been said, there are provinces, such as Mendoza and Tucuman, that had not approved any Technical Guides for non-punishable abortions (despite the pressure exercised by pro abortion groups, and thanks to the action and lobby of Pro life NGOs in the provincial Congress). When this is coupled with the victory obtained in the case of Cordoba, we are led to believe that the tendency toward non-punishable abortions is reversible.

Furthermore, it should be emphasized that during 2013 and up until now,, no provincial Protocol was established nor was any legislation presented in the Congress that would aim to make free abortion legal in all cases and throughout Argentina.³⁷

Therefore, even though the effects of the last decision of the Court were dangerous, the acceptance of this decision by the provinces (and by the people of Argentina) was not unanimous and opposition has been expressed.

There is still much to do but there are legislators and organizations that are willing to be the voice of those who call for a country increasingly respectful of human rights.

³⁷ In Argentina there was a modification of the Civil Code that will be enacted in August 2015. This modification preserves the status of the unborn as a person, although it permits surrogacy, which ignores the right to identity and also in vitro fertilization, which implies an action that potentially affects the life of the conceived person.