

DEBATE ON ABORTION IN THE ARGENTINE CONGRESS

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On November 4, a bill on abortion was discussed in the Criminal Law Committee of Deputies' Chamber of Argentina. What was proposed was abortion free, legal and costless. "Free" means that it can be done at any stage of pregnancy, "legal" that it is allowed and promoted by law, and "costless" because the public health system will pay for the abortion.

The bill called "Voluntary Interruption of Pregnancy"³ seeks to legalize abortion even to the time before birth, depending on the circumstances. The main topics are:

- **Abortion as a woman's right;** in its first article, the bill prescribes, "*Every woman has the right to decide the voluntary interruption of her pregnancy*"⁴. This articulation aims to transform the legal concept about abortion, influencing the collective unconscious by using synonyms for the word 'abortion', but with a softer or neutral connotation: "the voluntary interruption of pregnancy." The language aims to transform abortion into a right, recognized and protected, undisputed and almost absolute. On the premise of self-determination of the body and sexual and reproductive rights of women, the alleged right to abortion would appear as a superior right to the right to life of the conceived person in the womb. And therefore the woman would have the right to decide over the life of another human being.

- **Free Abortion until the first twelve weeks** of gestation, all the way to birth, under the following factual circumstances: "*a) If the pregnancy is the result of rape, accredited by a police complaint or a simple affidavit. b) If the woman's health or life is at risk. c) If there are serious fetal malformations.*"⁵

- **Abortion in girls under 14 years old and mentally disabled women:** "*The consent of at least one of their legal representatives is required, or in his absence or inexistence, of their de facto guardian. In all cases the child must be heard and the satisfaction of her superior interests and the full respect of her rights and guarantees are considered essential*"⁶. This phrase can be interpreted as a path for the practice of abortions on minors of 14 year or less, who without the consent of their parents, ask for the practice of the abortion. Under the premise of the superior

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³ See the complete bill:

<http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=2249-D-2014>

⁴ Idem Art. 1

⁵ Idem Art. 3

⁶ Idem Art. 8

interest of the child, an abortion - asked for by the pregnant minor- would be provided. This interpretation leaves the child entirely helpless, subject to the serious future consequences of a decision based essentially upon the child's immature judgment. Let us recall that the Argentine state made an express reservation to the convention of the rights to the child recognizing that the child is a person from conception to age 18.

- **Costless access** to abortion into the public health system, which implies that the public health program will pay for abortions since in Argentina the public health system is costless for all users and covered with the taxes that the citizens must pay. One might ask what about the right to religious freedom, because our taxes will be necessarily directed to subsidizing a practice that many citizens consider objectionable. Somehow it is requiring that the whole society should accept abortion, promote and further contribute to it. Those who are against abortion know that when they pay taxes they are contributing to the realization of a practice that goes against their conscience. Twenty years ago, the United States Supreme Court ruled, in *Harris vs. Mc.Rae*, that taxpayers were not required to fund abortions.

The bill provides abortion for the private system too.

- **Religious freedom limited** for doctors and medical personnel, who must express their opposition in the first 30 days of enactment of the law. After this period they will be required to perform abortions. Moreover, every institution must ensure these practices to women who want an abortion. It is incomprehensible the contrast between on the one hand making absolute the right to sexual and reproductive freedom on one hand, and on the other limiting the right to life and religious freedom.

- **Repeal of the crime of abortion** in the Argentine Penal Code. Currently abortion is a crime, it means the life of the unborn is considered a legal right susceptible of protection. While in practice, this crime has very low rates of conviction, keeping it unlawful and elaborating public policies to protect the unborn child serves an important educational purpose. Although in certain cases and for reasons of criminal policy the law does not to apply a penalty- as in the case of not punishable abortion- it does not make abortion a legal right.

An interesting data extracted from the Direction of Statistics from the Judicial Power of Tucumán⁷ reveals that with a total of 5.300 criminal convictions, only 3 convictions were about abortion. This means that only a 0.057% of criminal convictions in Tucuman are for abortion. This data reveals that only a few cases of abortion reach criminal justice, only those whose violence and inhumanity cannot remain unpunished. In fact there may be many more cases of abortion than those actually reported since such vulnerable victims do not initiate the respective criminal action. Since it is difficult to know exactly how many abortions are practiced, it is important for health policy that measures be implemented that attack the causes of the commission of abortions. Allowing abortions to mask the consequences of failed social policies is unfair and cruel.

⁷ Tucumán is a province of Argentina which is in the north-west of the country and it has 1.500.000 habitants.

All these measures were proposed by the bill introduced in the parliamentary committees. The bill could not receive action due to lack of quorum and it did not have further discussion. But the issue is not finished; it will be a matter of political agenda and opportunism to introduce this debate in the Parliament again. The important thing is that during the debate the interest of the whole society have to be taken into account, specially the interest of the most vulnerable, the unborn persons who are recognized as persons and therefore deserving of legal protection.