

MEDIATION IN SOCIAL CONFLICTS IN ARGENTINA

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Projects, practices and policies Projects, practices and policies – developments from the world of mediation

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1. Introduction.

During the nineties, social conflicts commenced to bring a new method of protest in Argentina: many of the routes and freeways were cut off by the protesters all along the country. This new type of protest had as main characters the residents of local communities that were called “*piqueteros*” or protesters.

The government maintained different attitudes in relation to these movements or “*piquetes*”, from the negotiation to the repression. Since 1996 these conflicts have been judicially scrutinized.

In June of 2002, the repressive response from the police concluded with a couple of protesters killed, apparently as a consequence of the police reaction to the “*piqueteros*”. This fact clearly reoriented the governmental policy, adopting a more legalist attitude towards this type of protests.

In 2008 a bill was filed with the National Congress that contains the mandatory mediation for the social conflicts exteriorized by means of a “*piquete*”. The bill provides the creation of a Mediation Commission to intermediate in the conflict. The purpose of the bill was to provide a tool to the government to intervene in the conflict to (i) solve the problem, and (ii) protect the rights of any party involved, directly or indirectly, in the protest.

2. Background of the treatment of the social conflicts in Argentina during the last decade.

The last decade emerged in Argentina multiple claims of rights that put the Judicial Power in the hook. At the end of the nineties many social protests and popular social movements brought manifestations with a high level of violence and physical and verbal aggression. The demands from the protesters were on unsatisfied necessities of the population due to the high rates of poverty and unemployment that brought certain economic policies that ignored their negative consequences for the low classes.

These claims were based on the lack of food, jobs, up to housing. These and other factors made that the social protest emerged in different manners, not just through the “classic” institutions (i.e. strikes, union protests, etc.) but rather through a new method: the cut of the route/freeways or “*piquete*” and a new social actor or the “*piquetero*”.

Since the end of the nineties as of today numerous cuts of routes and freeways took place along the country, which evidenced the disconformities of certain sectors of the population that faces poverty and isolation from the community.

The first reaction of this type took place in 1996 in the Province of Neuquén, a southern province of Argentina. In 1997 the statistics show that 104 cuts of routes and freeways took place in Argentina, and the numbers increased during the subsequent years. In 1998, one (1) route/ freeway was cut per week, in 1999 one (1) per day, and in 2000 Argentine suffered at least one (1) cut per day. In 2001, the average raised to between four (4) to five (5) cuts per day. In 2002 the statistics showed an average of 194 cuts per month and in 2003 of 118 cuts (average) per month.

In addition, in 2005 a new conflict emerged with the Republic of Uruguay. Local residents commence interrupting the routes that link Argentina and Uruguay due to the decision of the Uruguayan government to set up two pulp mills (paper-processing plants or “*papeleras*”) close to the Uruguayan side of the Río Uruguay that impeded the international transit between both countries. By the end of 2005, massive protests raged along the Uruguayan-Argentine border. Argentine *piqueteros* had blockaded the two bridges that connect both countries, impeding the passage of tourists, supplies, and

merchandise. Subsequently the cuts off increased during 2008 and 2009 due to the conflict between the farmers and the government, the routes were interrupted 2,923 times between April of 2008 and March of 2009.

The status of this situation, with routes affected almost permanently by this type of protest, conducted to a change of response from the government and even from the judges, criminalizing these protests under the idea of a democracy jeopardized by unemployed activists.

This criminalization was based on the violation to the Criminal Law Code, and thus judges jailed protesters and social activists, and opened investigations to determine the financing sources of these protests. In addition, the Congress strengthened the behaviors of protesters and activists from the criminal law standpoint, with a clear intention to terminate with this type of protests.

As from the very beginning the “piquete” implied a conflict of rights between the so called right to petition and the right of free circulation (both with constitutional rank since provided in the National Constitution). Generally speaking courts rejected this type of protest, through the prevalence of the right of free circulation. Consequently the cut of routes and streets, were considered as a criminal offense subject to criminal sanctions, particularly by application of section 194 of the Criminal Code related to the obstruction of the public roads.

3. The bill to mediate in this type of conflicts.

In the legislative scenario, certain bills were filed in relation to the possibility to set up a mediation instance. The bill known as “Mediation for social conflicts” was filed on March of 2008, and is currently under the analysis of the commission of criminal law legislation.

As from the arguments that support the bill, it is clear the obligation of the government to react before this type of protest that affect the rights of third parties (i.e. free circulation, property, etc.). However, the key issue is the way to get involved, and

“how” the government can provide a reasonable answer without falling into the violence or force to dissuade the protest.

Among the main points that the new bill brings for the analysis we can refer to:

- Creation of a Mediation Commission to intervene in conflicts based on social, political, unions, and students claims, with exteriorizations that affect third party rights that do not participate in the protest, when the solution of this conflicts shall be determined by the National Government (i.e. cuts of routes, popular mobilizations, interruption of the ground, naval or aerial transit, the take over of public or private buildings, etc.);
- The Commission will be under the scope of the Ministry of Justice, Security and Human Rights;
- In case the conflict determines the involvement of the national justice, the correspondent authority or the court shall communicate this circumstance to the Ministry of Justice to appoint the members of the Commission;
- The Commission will immediately remit their delegates to the place of conflict to initiate the mediation;
- Concluded the mediation the parties to the conflict will sign a form indicating the outcome of the process, that will be Denver to the correspondent court with venue in the case;
- The bill also incorporates the following provision to section 34 bis of the National Criminal Code: *“When the conducts provided in the Code have been committed through a meeting of people that petition or express their claim before the respective authorities without incurring in violence, nor using guns, the authority with venue will compel them to cease in their behaviors and will notice to a mediation commission that will understand in the case to avoid that third party rights will be affected”*;
- In addition, it is provided that the usage of the force will be forbidden before the Commission becomes involved in the process, nor within the process of mediation, unless those protesting incur in acts of violence;
- In case a settlement in met, those acts related to the conflict will not be punished. If there is no settlement, the authority will compel the protesters to cease in the affectation of third party Rights, otherwise the public force may be used to make the protesters cease in the criminal conduct.

The bill proposes institutional mechanisms that procure to harmonize positions and reduce violence. It is also consider that the governmental authority may follow alternatives to prevent, dissuade and solve the conflict, before incurring in the repression and criminal law punishment. The purpose of this principle is to delay a repressive reaction, but also to restrict of the acts of the protesters to avoid affecting third party rights.

The bill excludes those cases where groups incur in violent acts against third party, since the Government shall guaranty the life and personal integrity.

Finally, the purpose of this bill is to bring an alternative of solution to a very sensible and real problem in Argentina, but also pretends to create a model to handle the social conflicts from a democratic perspective.

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