Migration, mobility rights and the Judiciary: challenges of a policy based on the human right to migrate (Argentina, 2003-2013)

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ABSTRACT. In this paper I propose to evaluate the right of migrants in Argentina though the exercise of their mobility rights (enter, stay, circulate, etc.); it will be performed from the perspective of the protection provided by the Judiciary Branch.

This analysis takes into account two main issues: first, the tension between the recognition of the right to migrate as a human right (article 4, law 25,871) and the power (still existing) to deny entrance or remove people (e.g. art. 29, law 25,871); two, the role of the Judiciary, which since 2003 has new competences to guarantee those mobility rights.

For that purposes, this paper presents and analyses the results of the Ph.D. research, which review the judiciary files submitted by or against the Immigration Board (*Direccion Nacional de Migraciones DNM*) in the City of Buenos Aires. The conclusions show a gap between this based-in-rights law and the protection that should be ensured by the Judiciary.

### 1. Background: Argentina

Argentina is a country which has been traditionally acknowledged as an immigration one. Although in a lesser scale than the experience of the United States or Australia, at the turn of the XIX century, programs for the promotion of European immigration which caused that in 1914 the foreign population reached 30% of the total population were implemented. Notwithstanding such a percentage has been decreasing from then on up to remaining at a 5% since 1991, it was clear since the mid sixties that Argentina worked as a center of attraction for the immigration coming from the Southern Cone (Brazil, Bolivia, Chile, Paraguay, Uruguay): according to the last census performed in 2010, the population coming from bordering countries plus that of the nearby Peru makes up almost 70% of the total foreign population.

In spite of the fact that the inflow of population from bordering countries and Peru has been a constant issue registered since the first census carried out in 1869, the visibility reached by such population since the sixties (due to the decrease of the population from non-bordering countries as well as due to a change in the patterns of settlement which lead it to concentrate in Buenos Aires and its surroundings) started to create serious problems for this group: xenophobia, even at an institutional level, an extended situation of illegality due to the large number of obstacles to regularize the migration status, police raids, very exceptional protection from the Judicial Branch, etc. In the nineties, the situation reached its highest degree of tension, under the last pseudo-migration law (Videla’s Law), approved by the last *de facto* government and in force until 2003.\(^1\) This law

\(^1\) For more background see Hines, 2010; Pacecca and Courtis, 2008.
was very restrictive in terms of rights and under its terms, there was very difficult for migrant persons to achieve a regular status.

Against this background, in 2004 came into force the first milestone of an ambitious project referred to the issue of migrations in Argentina: Law 25,871. Together with the subsequent program of document regularization, so called “Great Land” (“Patria Grande” in Spanish), they constitute the current Argentine Migration Policy.

Particularly, this law has two new and outstanding aspects. The first one is the recognition in respect to migrants and foreigners of a right to migrate (recognized with character of “human right”), together with other rights that even exceed the standards set forth at international level. The consequences for the Argentine state at national and international level, as a consequence of the raising of such standards, were analyzed in a previous work (Garcia, 2010).

The second aspect is the conferment of powers to the Judicial Branch in regard to two great spheres: (i) as a direct operator of the migration policy, e.g. ordering detentions and (ii) as a revisor of the decisions of the Immigration Board (“DNM”), which power, under the former regulatory framework, the judicial practice regarded as exceptional.

Thus, the proposed investigation sought to evaluate the implementation of this new policy and, specially, the effectiveness in terms of human rights for the recipients thereof.

2. Assumptions and some methodological aspects

The exploratory nature of the field work and a recent policy both determine no specific hypothesis but starting points or assumptions for some guidelines. One of such assumptions is that this Argentine policy came to replace a system of ideas about the meaning of migration, not only a law, what make us think that the transition from previous policy appears to be as difficult to implement.

Consequently, a basic starting point was that it would be a gap between the high standards of the current Argentine migration policy and the practices from the DNM, the Border Patrol and other actors. Thus, special attention should be paid, consequently, to the role of the Judicial Branch at amending and enforcing the rights involved.

Another assumption is the importance of the mobility rights in the framework of a migratory policy; they work as a “thermometer” of the situation of rights, since there is a context where the international legal framework and the current international situation – e.g. economical crisis- justifies that each state decides, bounded by very few limits, who enters and who does not. This is a situation that even under the right to migrate recognized by

2 “Article 4: The right to migrate is essential and inalienable to all persons and the Republic of Argentina shall guarantee it based on principles of equality and universality”.

3 Since the law 25,871, the detentions of migrant people for administrative reasons need a judicial order.
the argentine legislation, remains unclear: together with the right to migrate and the regularization obligation of the Argentine State laid out in the law, it is established that the DNM may expel a person on the grounds that “he/she does not comply with the requisites set forth in the law” (Sec. 29). It is this balance between the rights and powers of the Administration which has to be weighed by the Judicial Branch by means of the new powers that have been recognized to it.

The research was carried out in the City of Buenos Aires (Argentina) for many reasons. On the one hand, Buenos Aires is the main destination for immigrants: the city concentrates almost the 60% of the foreign population; as capital city, also concentrates a major offer of non profit legal services, even private (NGOs) or public ones, which increase the possibility of legal actions. Finally, almost the 90% of the Immigration Board administrative files (regarding residence, visas, etc.) is processing in the headquarters, located in the capital city as well.

In principle, the core of the analysis was juridical, particularly dealing with legal decisions and cases. Due to the exploratory nature of the work, most of the information was collected from direct sources. At the very beginning (2011), my first intention was work only on sentences and other resolutions but surprisingly, I found less than 12 sentences for seven years (2004-2011). This circumstance made me change my perspective about the fieldwork but was an interesting result as well.

The research so was based both on qualitative (judicial and administrative files, interviews with private attorneys and official lawyers, judges, foreigners) and quantitative data (DNM reports, list of removals requested under the Act of Access to public information, etc.). The review of files includes: qualitative review according to a form elaborated from the first 20 files and analysis of the respective judgments. Many files, particularly those from 2004, are not publicly available any more as far as they have been closed and saved (the term in the jargon is paralizado).

Regarding the files, two different forms were designed to cover the two types of cases: filed by or against the Immigration Board. Although it implies a several delimitation of all possible sources of conflict it is not possible to know “first hand”, due to the system of case record in Argentine, whether a file against any public entity involves application of migration policy. These files are processing before federal courts, which in the City of Buenos Aires is the Administrative Law Federal Court (Fuero Contencioso Administrativo Federal).

Some of the information collected from the judicial files was year, nationality of the foreign person, data of her or his entrance to the territory, existence (or mention) of family members, existence (or mention) of criminal records, etc. This information was collected in
the same manner as a lawyer: since I could not obtain permission as a researcher,\textsuperscript{4} I made the file revision by standing in line to access the court and then, asking for “the stack” of the Immigration Board files (in jargon “la pila”, is a way to ask for all files of a certain part).\textsuperscript{5}

In regard to judgments, all the judicial steps are included in the analysis: from the original jurisdiction or first instance up to the Supreme Court, as appropriates. The text of the judgment was divided into three main sections: (i) claim description; (ii) considerations about the rights and interest involved; (iii) final judgment.

The total universe of judicial cases counts on more than 600 files; for this research a review of the 50%, through a random selection, shall be considered representative. The period covers since January 2004 to December 2011 - judicial files submitted since 2004.

Finally, the research project excludes three main topics: (i) proceedings or judgments involving person trafficking; (ii) proceedings or judgments involving migratory crimes; (iii) refugees and asylum seekers. The first two topics respond to extended issues that exceeds a migratory policy in a strict sense; the case of refugees or asylum seekers is an issue that has a particular and older international law regime with higher obligations toward states.

3. Main results

The key question was how the NPMA is being applied: how are the rights recognized for migrants and foreigners being enforced? Which are the rules that the Judicial Branch is settling between those rights and the competences of the DNM? What is the situation in front of the human rights obligations assumed by the Argentine State? Which are the emerging challenges of implementing this new policy?

For such purpose, this proposal focuses on the “movement rights” (strict sense migration policy: admission and entrance, permanence, movement, residing and leaving) at stake in the actions brought before the Judicial Branch. In regard to these different steps of mobility rights, there are not parallel legal actions for every case:

(i) Against the denial of an admission or entrance, a person from the border cannot appeal before judicial court; the claim, according to the law, is an administrative claim that must be made before Immigration or foreign affairs

\textsuperscript{4} My letters and e mails presenting my researching and asking for permission to review the files were not answered, except for one judge that offered to me a space in her court to review the files; previously, she had ordered the files were brought from archive.

\textsuperscript{5} For reasons I will tell later, nobody asked me which part I was acting for. At the end, judicial files are public although not every person can see them.
offices abroad. Admission denial decisions made within the Argentine territory can be appealed, either by administrative or judicial actions (article 74, law 25,871). Against the denial of a residence (either it is transitory, temporary or permanent residences; provisional residence as well –called residencia precaria), the foreign person has administrative and judicial actions. Mostly, it starts with an administrative action and then, once the administrative way exhausted, the judicial revision can be submitted. However, the law permits plaintiffs to apply for a judicial action directly (article 74). 

Regarding the movement of migrants, under law 25,871 a judicial order is required to retain (detention) a foreign person in order to remove her/him; the order is asked by the Immigration Board by submitting a claim against the person to be removed, e.g “Dirección Nacional de Migraciones-Estado Nacional contra Mamani, Pablo sobre recurso directo” (Immigration Board-National State against Mamani, Pablo about Direct Recourse). These claims constitute the main type of judicial cases the Judiciary has to deal with.

Concerning expulsion, the intervention of Judiciary is mandatory in certain cases: whether the Immigration Board detects a foreign person in an irregular

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6 Talking about admission denial, Article 35 says: “The decisions made in accordance with the estimates of the first and second paragraphs of the present article will only be actionable from abroad the country, throughout an application made by the foreigner before the Argentine diplomatic missions or the offices abroad of the National Head Office of Migrations, from where they will be sent to the main office of the National Head Office of Migrations. The term for the application of the appeal will be of fifteen (15) days starting from the moment of rejection”.

7 “ARTICLE 74. Against the decisions of the National Head Office of Migrations with a definitive character or that totally prevent the proceedings of claim or demand of the interested person and against the speakers, of just a formality, that injury subjective rights or a legitimate interest, in these cases, there will be a revision at administrative and judicial offices, when: a) The admission or the stay of a foreigner is refused…”.

8 “ARTICLE 74. Against the decisions of the National Head Office of Migrations with a definitive character or that totally prevent the proceedings of claim or demand of the interested person and against the speakers, of just a formality, that injury subjective rights or a legitimate interest, in these cases, there will be a revision at administrative and judicial offices, when: b) The authorization of permanent, temporary or transitory is cancelled; c) The foreigner is warned to leave the country or his expulsion is ordered…”.

9 “ARTICLE 70. When the expulsion of a foreigner is firm and consented, the Home Office and the National Head Office of Migrations will request to the judicial authority of the jurisdiction to order his retention, throughout a founded resolution, for the only and unique effect to fulfill it. Exceptionally, when the characteristics of the case will justify it, the National Head Office of Migrations or the Home Office will be able to request to the judicial authority the retention of the foreigner even in the case that the expulsion order is not firm and consented. When the retention is carried out and in the case that the retained foreigner adduces to be the father, on/daughter, or spouse of a native Argentine, only in the case that the marriage would had been celebrated before the act that would motivate the resolution, the National Head Office of Migrations will have to suspend the expulsion and verify the existence of the adduced relationship within a fixed limited time of forty eight (48) working hours. If the relationship is confirmed to be true, the foreigner will recover immediately his freedom and it will be started, regarding the same one, an investigation proceeding of migratory regularization. In all cases the time of retention will not exceed the strictly necessary one in order to carry out the expulsion of the foreigners. When the retention is carried out, it will be immediately informed to the court that had ordered it”. (Translation taken from: https://limeres.com/pdf/1307997312Argentina_Immigration_Law_Number_25871_English_Translation.pdf)
administrative situation (e.g. sains papier), a request to regularize the situation must be sent by that office; in case the regularization is not performed, the Immigration Board may demand her/his deportation. However, this expulsion order cannot be automatically executed: apart from the judicial order to detention, in these cases a mandatory intervention by the Judiciary is required in order to evaluate the personal circumstances of the foreign person and his/her family.10 This is call “judicial enquiry” (consulta judicial –Chausovsky, 2004). Although is mandatory, I could not find any of these actions.11

In this framework, the first topic I wish to point out is the role of the Judiciary itself. Before 2004, the federal courts have not an express competence to intervene in migration affairs; so, when this intervention took place, was in exceptional ways (e.g. habeas corpus) for urgent cases and not only in the administrative courts. So in a way, the knowledge about migration issues was spread among different judicial operators and the discussions were very limited, given the exceptional character of the legal actions. The administrative courts have not had a trajectory on dealing with migration issues and much less, cases involving free mobility of people.12

This idea was confirmed by some early judicial decisions issued by the Administrative Courts: some sentences rejected the competence granted by the law 25,871 by arguing that dealing with people’s mobility freedom requires a particular appreciation, and that criminal judges were more familiar with it. However, these decisions were appealed by the Immigration Board before the Administrative Chamber, which confirmed the competence of the Administrative courts based upon the terms of the law.

A second topic is the type of legal actions I found. At the beginning, I have assumed that, approximately, every or many expulsion orders issued by the Immigration Board would be appealed so, the numbers of the expulsion orders would be similar (more or less) to the judicial actions intended by foreign persons.

10 “ARTICLE 61. — When the irregularity of stay of a foreigner in the country is confirmed, and considering the circumstances of the profession of the foreigner, his relationship with a national Argentine, the specified term of staying and other social and personal conditions, the National Head Office of Migrations will have to instruct him in order to regularize his situation in a fixed time limited for that purpose, under the warning to decide his expulsion. When the fixed term has expired and the situation is not solved, the National Head Office of Migrations will decide the expulsion with suspensive effect and will ask the participation and will also be a party before the Judge or Court with jurisdiction over the subject matter of the case, regarding the revision of the administrative decision of expulsion”. (Translation taken from: https://limeres.com/pdf/1307997312-Argentina_Immigration_Law_Number_25871_English_Translation.pdf)

11 I assume that given the great regularization program (Patria Grande for MERCOSUR citizens and a similar for non-MERCOSUR citizens), the Immigration Board considers every application as an “entrance”.

12 Moreover, the competence on charge of federal courts is provisional, since the law creates the “Immigration Courts” but the formal organization has not begun yet. Meanwhile (10 years…), the law also establishes the federal courts would assume that competences.
I assumed this parallelism because, of course, nobody wants to be removed and there exists opportunities to obtain free legal services in the City of Buenos Aires. However, the difference was more significant than I thought: during 2008-2010, the Immigration Board issue 2060 expulsion orders; for the same period, the judicial actions submitted against that office are only 89 (see chart 3, yellow line); which includes other actions not related with deportation. I conclude, so, that most part of the expulsion orders are not appeal.

This topic is related with an issue I pointed out at the beginning: my initial intention was to review only judicial decisions, mainly because they are published in well known databases and newsletters from the Judiciary. However, I found less than 12 sentences for the period 2004 -2011. So, when I went to the Entrance Office (Mesa de Entradas) of the Administrative Courts (there is one office that deliver the files) and asked for the list of legal causes filed by and against the Immigration Board, I had a little surprise when after a few days they delivered to me an important bunch of papers with several lists. From those papers I made my own database and found almost 900 legal actions.

The next charter provides some information about the actions filed by DNM:

![Chart 1: Files suited by DNM, per year](image)

Source: my own elaboration, in base of the list provided by the Administrative Federal Court.

The graphic above, made on the base of the information provided by the Administrative Court, shows that among 2005-2007 no legal actions were submitted by DNM (most of them, request for a judicial order of detention); a suitable explanation is that corresponds
to the period during which the DNM was intervened;\textsuperscript{13} moreover, during that period the deportation processes were suspended in most part.\textsuperscript{14} Additionally, I wondered if these results also meant that no person was removed during that period. However, during 2004-2010, DNM informed the expulsion of the following number of persons:

Chart 2. Number of “judicialized” foreign person removed, per year.

\begin{center}
\begin{tabular}{|c|c|}
\hline
PERIOD & Number \\
\hline
2004 & 12 \\
2005 & 83 \\
2006 & 109 \\
2007 & 147 \\
2008 & 201 \\
2009 & 300 \\
2010 & 314 \\
\hline
TOTAL & 1166 \\
\hline
\end{tabular}
\end{center}

Source: information provided by DNM, 2011.

We can see, comparing both charts, that during 2005-2007, period during which DNM did not claim for judicial detention orders, a total of 339 persons were expelled. It can be explained due to the “kind” of person which expulsion was not suspended: during 2004-2008, a decree suspended almost every expulsion of foreign persons, except those persons subject of some criminal causes. The chart shows, precisely, the number of “judicialized” foreign persons (personas extranjeras judicializadas), that is to say; persons subject to criminal process or already punished.

Now, let’s compare the actions suit by DNM which those submitted against DNM.

\textsuperscript{13} National Decree number 836/2004.
\textsuperscript{14} Immigration Board Disposition number 2079/2004.
In blue, the graphic shows the legal actions suited due to the delay of DNM in answer an administrative request (*amparo por mora*); they are not particularly related with migration issues: in fact, the 346 actions in 2005 were suited by one legal buffet in representation of DNM former employees. In yellow, the chart represents other demands but *amparo por mora*; in this manner the difference between the DNM demands (chart 1, 280 actions) and the claims made against it (chart 3, 168 actions) is a bit high, particularly taken into account the three years during which DNM did not submit any suit.

What was happened? Why it was a great difference between my 12 sentences and the 900 legal actions? And how the difference between actions suit by DNM and those against DNM can be explained? Even excluding the legal actions that in no way may correspond to migration issues,\(^\text{15}\) the number of legal actions was still high in comparison with the sentences.

The problem resulted to be what kind of sentences is published: only those sentences delivered by the Chambers actually obtain publicity; what is to say that only sentences that were appealed are included in the databases I referred. Consequently, the next question was: why the foreign person to be removed did not appeal the judicial order? For a moment, I thought that maybe the Judiciary was managing the things in a very satisfactory way for foreign people…

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\(^{15}\) For example, due to the subject matter is “employment”, which corresponds to DNM former employees. When a demand is submitted before the Administrative Court, a subject matter by nomenclature is assigned.
The answer just begun to gains shape when the revision of files commenced: the legal actions submitted by the Immigration Board (mainly, asking for a judicial order for detention), were carried out without the participation of the person to be removed. In some cases, the person just got knowledge of the expulsion when she/he was detained. In many others, the person just knew at the moment she/he went to the Immigration Board to inquire about how the application was going. Consequently, nobody was there to appeal when was necessary.

On the other part, most of the claims submitted against DNM were rejected due to formal reasons: *amparo*, is a very quickly action but judges understand it in a very exceptional way - in a broad sense, if the right or the circumstances the person alleged are not quite obvious, the action is rejected- and they were very few appeals against the rejection. Facing this circumstance, lawyers started to suit regular process, quite longer; these processes actually take years and many of them still have not been resolved and consequently, they were not appealed either.

Finally, I’d like to address a last point: what do judges say in their sentences? Are they acting as an instance of revision for the DNM actions? Are they guaranteeing foreign person rights?

Most of the request for detention submitted by DNM was granted in an automatic (bureaucratic, formal) manner, so I’ll focus in the very few demands that were denied:

(i) **Denial because the administrative process was unfinished.** In two cases from different judges (Court n. 2 and Court n. 11) the request made by DNM was denied because the administrative process (within which the person must take notice of the expulsion order) had not finished.

(ii) **Notification was posted in the door of the domicile.** Although it is an extended practice by DNM, I found two cases, issued by different judges, in which the request for detention was denied because the notification made by DNM was not valid; the person, judges said, has not a real opportunity to know about the process.

(iii) **Notification received but unknown person.** I found one case in which the denial was based upon the argument the person that received the notification made by DNM expressed she did not know the person the notification was addressed to;

(iv) **some denials because the person was notified in prison,** issued by the same judge; this a discussion about the capacity of the person in prison, that exceeds this work;

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16 The rejection of an *amparo* action does not imply a judgment on the “justice” of the claim; consequently, another action can be suited.
Judicial denials because the person to detain for removal has Argentine relatives. This is the most important reason for denial because in fact, the law establishes that in case a person alleges to have Argentine relatives, the detention must be automatically stopped.

Article 70 says that when retention is carried out and in the case the foreigner alleges to be the father, mother, son, daughter or spouse of a native Argentine, the DNM will suspend the expulsion and verify the existence of the adduced relationship within 48 hours. In case the relationship is confirmed, the foreigner will recover his/her freedom immediately and a proceeding for migratory regularization must be carried out. In despite of this “automatically”, DNM sometimes ignores this regulation, particularly when the reason for removal (causa impediente) is prior to the relationship (e.g. women punished with 5 months of prison in 2005 whose son was born in 2007). However, this is a difficult situation since almost any crime has the entity to cause the removal, whenever the child was born or the marriage took place. In particular, for traffic drug crimes, DNM has established that the existence of family relatives “does not purge” the crime, so article 70 is not applied and exceptions are quite hard to achieve in these cases.

Despite of these denials based upon invalid notifications, no judge intended to notify the foreign person. Court number 4 has established a rule according to which, after the judicial order is issued, DNM has to notify the decision to the Public Defense Office (Defensoría General); this is particularly important because the person is absent from most part of this process and the Defense Office also exercises the representation of absent people in general. However, this rule also tends to be omitted; in one case I found (in which the judge sent the file to the Defense Office himself), the operator requested denied its participation on formal reasons.

4. Concluding remarks

The right to migrate, the effectiveness of the human right to migrate, still faces many challenges: practices of DNM are still stronger and the law brings many exceptions that attempt against the enforcement of that right. The Judiciary has made some punctual efforts to control the DNM actions but in general, judges act as notaries that validate what DNM has done. Nevertheless, the organization of a Public Defense Office in 2008, called Migrant Commission (Comisión del Migrante), allow me to predict better results.¹⁷

¹⁷ My judicial file revision was made until 2010, when the office had been working for only 2 years. Moreover, until June 2014, the Migrant Commission only has competence for administrative claims.
Exceptionalism still seems to be the rule: the number of expulsion orders issued by DNM is, only for the period 2008-2010, more than 2,000 (DNM, 2012);\(^{18}\) the orders effectively executed are of 859 (DNM 2012, 2012.b). Among them, 815 executions correspond to \textit{judicialized} foreign persons, which are easier to expel because the removal process start while they are in detention.

That is to say, that only 44 persons were “found” and expel. What happened with the other expulsion orders? During the same period, DNM submitted (only in the City of Buenos Aires, of course), 245 legal actions asking for a judicial detention order.

<table>
<thead>
<tr>
<th>Chart 4. Comparison DNM acts</th>
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<tbody>
<tr>
<td>Number of expulsion orders</td>
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<tr>
<td>Number of legal actions suit by DNM</td>
</tr>
<tr>
<td>Number of person removed (criminal matters and others)</td>
</tr>
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\(^{*}\) The number of persons removed by no criminal reasons (44) was not provided by years, so is estimation per year.

These numbers show, firstly, that the \textit{removing policy} is rising; second, not every expulsion order is connected with a judicial order for detention. I cannot not even consider that removal due to criminal reasons does not need an order for detention (e.g. because most of the persons are under imprisonment), since I found that 65 files, more or less, submitted by DNM corresponding to criminal causes.

So, what can I say about the difference between the expulsion orders and the actions to execute them? This is where \textit{exceptionalism} comes to play: DNM tends to issue an expulsion order in every case that \textit{legally} correspond but later, an exception (mostly because of family or humanitarian reasons) is granted. This is the answer I got when I ask to the current director of the Immigration Board how that office managed the duality between the right to migrate and all the removal causes: “we make exceptions” (Arias Duval, 2012). This exceptionality, however, does not extinct the removal order (that is just suspended), evidence that even the law still contains several rules we have to concern

\(^{18}\) The number is in ascent: in 2008 were issued a number of 292 expulsion orders; in 2009, 746 and in 2010, 1022 (DNM, 2012).
about and finally, as a public policy, exceptionalism does not seem the most recommendable.

Of course, I do prefer this law rate of removal executions; actually, I have the feeling that removal orders have another intention: as a call of attention, a way to keep people going to DNM with new documents, new proofs, etc.  

In the other hand, I found some continuity in the performance of judges: previous researches showed that judicial actions until to 2004 (before the law 25,871) were rejected mostly by formal reasons (Ceriani, Morales, Ricart, 2006), e.g. for exceeding the “limits” of what can be discuss within the legal action. I found similar (or the same) reasons to reject actions under the new law, even when the competence of the judges were explicitly recognized. In this point, the internal practices of the courts were stronger, again, than the law: the term to reject a legal action at once is called as an application of “la plancha” (“planchar” is a synonym to “kill” the action; is a paper form for rejection with the same reasons in everyone).

Another continuity I found is the expulsion due to causes contained in the former law (Videla’s law) in two ways: (i) a person that was removed under the former law and is currently rejected because this previous removal; in many cases the cause upon which the former removal was based does not exist anymore; (ii) a person whose expulsion was ordered under the former law but it was not executed (e.g. because the DNM was unable to find the person); the expulsion is often “revalidated” under the new regime of the law 25,871.

Finally, the inexistence of judicial revisions under article 61 (the one that obligates DNM to submit some expulsion orders to the Judiciary) is a very alarming issue that must be amended in the short term.

Consequently, there are still many steps to achieve the enforcement of the human right to migrate; sometimes the right to migrate seems to be closer to a right to “take a shot”: you, migrant, try to find a suitable administrative category; then try not to fall in any cause of exclusion; then try to provide enough proofs of all that; if not, maybe exceptionalism or humanitarian reasons worked it out.

5. References

The application before DNM is far from being easy: it requires time, money and patient; many public documents are required and they have different periods of validity; often, when a foreign person collected everything, the first document expired.


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