

Expanding rights in the current argentinian migration law

An evaluation from Sen's ideas

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Introduction

A central part of the argentinian migration policy is its legal framework. The main law which rules this matter, after the National Constitution, is “Ley de Migraciones” No. 25871. This law (known as “Giustiniani Law”, one of the Senators who impulsed it) passed by the Parliament in December 2003, rescinding the “General Law of Migrations and Immigration Promotion” No. 22439 (known as “Videla Law”) which ruled from March 1981. The goal of this paper is to compare both laws and evaluate the positive and negative changes the current law brought. Does it improve migrants rights? Does it worsen migrants conditions? Are migrants more or less vulnerable? Are they more or less protected?

The case of Argentina is important since it receives many migratory flows from the region, hosting thousands of immigrants within its borders. Argentina has a history of migration. By the end of XIX century, Argentina became one of the principal receiving countries of flows from Europe. During the last two decades, flows from Europe have drastically declined, but immigrants coming from Bolivia, Paraguay, Uruguay, Chile, Brazil and Peru rose. Balan (1992) calls Argentina the “heart of the migration system in the southern cone”.

COUNTRY OF BIRTH	TOTAL
TOTAL	1.531.940
AMERICA	1.041.117
MERCOSUR	1.016.528
Bolivia	233.464
Brasil	34.712
Colombia	3.713
Chile	212.429
Ecuador	2.054
Paraguay	325.046
Peru	87.546
Uruguay	117.564
Venezuela	2.665
Extra-MERCOSUR	24.589
REST OF THE WORLD	490.823

Table1. Argentinian Population Census 2001

Sen and the Expansion of Freedom

The evaluation of the current general law follows some of the Amartya Sen's ideas. He defines development "as a process of expanding the real freedoms that people enjoy" (Sen, 1999: 3). This is a main factor to mitigate vulnerability, to reinforce people capabilities. So, granting rights to immigrants is essential to fight against discrimination, and varieties of unfreedoms, and helps to improve their lives offering a horizon of opportunities.

Migration Policies

Torpey (2000) argues that, since French Revolution, States have the authority to control all movements of people within their borders. They have monopolized the legitimate means of movement. So, States have a fundamental role in the matter. Migration policies are a network of regulations to promote, keep, restrict, incorporate, integrate or assimilate migrants (Mármora, 1997).

International migration policies are not static. They suffered constant modification and change. Public policies are key instruments to organize contemporary societies shaping the way we live, act and think (Shore and Wright, 1997: 4). Through these policies, people are classified, labelled, and granted various rights, statuses, and roles. They construct concepts such as "citizen", "national", "immigrant", "irregular status", "legal resident", and so on.

The current argentinian general migration law, "Giustiniani Law" does expand the protection of migrants. For instance, it grants complete access to education to foreigners, no matter his or her migration status. The former law just granted this to legal residents, and only elementary school to migrants with irregular status. More over, civil servants, school teachers, doctors had the obligation to denounce migrants with irregular status. On the contrary, the current law, obliged them to inform and guide about process of regularization. For instance, by article 23, citizens from MERCOSUR countries (members or associates) have right to legal residence in Argentina. A government program called "Patria Grande" applies this which has been beneficial for about half million people: about 150.000 bolivian citizens got their residence, as an example.

In brief, some improvements comparing the old legal migration order:

- Universal access to all levels of education, not just elementary school (Art.7)
- Universal access to health (Art.8)
- Obligation to inform and guide about rights and means of regularization, instead of denounce irregular migrants (Art. 7, 8, 9)
- Legal residents have the right to family reunification: parents, spouses, unmarried minors or handicapped adults (Art. 10)
- Legal residence to Mercosur citizens (Art. 23)
- Expulsion after a judicial process, not just an administrative act (Art.61)
- Migrants smuggling as a crime (Art.116)

Conclusions and Recommendations

Migration is broadly associated with vulnerability. This link applies mainly to migrants with irregular status. That is because, while legal migrants have usually equal rights as nationals have (excepting some political rights), in many countries those with irregular status are denied basic ones. This was the case of Argentina till 2003 when a new

migration law (Ley de Migraciones No. 25871) was enacted, introducing a major positive change in the matter. The “Giustiniani Law” does expand the protection of all migrants. Unfortunately, this law is an exception in the contemporary world, where States are prone to limit migrants freedoms and to put stricter controls on immigration. Of course, we realize a law is just not enough. Reality does not always match with legal norms. Many obstacles appear at the application level, which have to be withdrawn. Anyway, it is an important step to have a legal framework which respects everybody’s basic rights.

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