

SECOND GROUP: MEMBER STATES

ARGENTINA

PRESENTATION BY THE ARGENTINE REPUBLIC

NATIONAL EXPERIENCE IN THE AREA OF MIGRATION

THE HUMAN RIGHTS PERSPECTIVE IN DEALING WITH MIGRATION

In general international law, the migrant question has traditionally been considered as a residual matter in the chapter dealing with foreign nationals, through the analysis of certain general principles of the rights of man. Furthermore, the activities of foreign nationals are regulated under international law from two major perspectives: on the one hand, access to a State's territory and freedom of movement within it, and on the other hand, the economic, professional, and labor activities that they may undertake.

However, given the complexity of the migratory phenomenon and the new circumstances in the international context, as well as the challenges confronted by people in the process of moving to and settling in their destination countries, it would be helpful and appropriate to include the social dimension in the treatment of international migrations.

It is therefore fitting to note that at the present time the migrant question has expanded the traditional framework within which international law dealt with issues concerning foreign nationals. International human rights law is a part of this new dimension.

Furthermore, it is impossible to ignore the linkage in the international community's treatment of questions relating to migration, refugees, and international security, especially in light of the current political context. It is therefore indispensable to approach these subjects from a human rights perspective, in order that the measures taken to safeguard international security do not infringe on the enjoyment of basic rights.

In fact, the Universal Declaration of Human Rights and the principal human rights treaties—the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Racial Discrimination, the Convention on Rights of the Child—include the concept of equality in dignity and rights, without discrimination of any kind, especially on grounds of race, religion, or national origin. Furthermore, several of these instruments provide that every person has the right to move freely in his or her country or outside it, and to freely choose a place to live and work.

MIGRATION AND HUMAN RIGHTS IN THE NATIONAL SPHERE

NEW IMMIGRATION ACT

Law 25.871, the Immigration Act—enacted on January 20, 2004—is a tool for Argentina’s new policy on migration.

This new law, the fruit of joint effort by various governmental and nongovernmental sectors, reflects Argentina’s commitment to guarantee full respect for the human rights of migrants and their families, and establishes readily accessible mechanisms for legalizing migration, in the understanding that legal migration is indispensable for full integration of the foreigner in the receiving country.

In this framework some paragraphs of the Act should be noted:

- **Respect for Human Rights and international commitments on the subject: Art. 3** “The purposes of this Act are a)... to comply with the Argentine government’s international obligations in the area of human rights, integration, and movement of migrants...f) to ensure that any person seeking entry in Argentina has access to nondiscriminatory criteria and procedures in terms of the rights and guarantees set forth in the Constitution, international treaties, bilateral agreements in force, and legislation...g) to promote and disseminate migrants’ duties, rights, and guarantees established in the Constitution, international commitments and legislation, remaining faithful to its humanitarian and open tradition toward migrants and their families....”
- **Right to Migration: Art. 4** “Migration is an essential and inalienable human right, which the Argentine Republic will guarantee based on principles of equality and universality.”
- **Equal treatment: Art. 5** “The State shall provide conditions to guarantee effective equality of **treatment** so that foreign nationals enjoy their rights and comply with their obligations....” **Art. 6** “The State, in all its jurisdictions, shall ensure equal access for immigrants and their families under the same conditions of protection, due process, and rights enjoyed by citizens, especially as regards social services, public assets, health, education, justice, labor, employment, and social security.” **Art. 13** “For the purposes of this Act, discriminatory acts or omissions shall be any that are based on such motives as ethnic origin, religion, nationality, ideology, political or labor opinion, gender, economic status, or physical characteristics, which arbitrarily impede, obstruct, or restrict the full exercise of rights and guarantees on a basis of equality.
- **Right to Education: Art.7** “Under no circumstances shall a foreign national’s illegal migratory status preclude enrollment as a student in a public, private, national, provincial, or municipal educational institution at the elementary, secondary or higher levels. Officials of the **educational** institutions shall provide orientation and guidance regarding the corresponding procedures to correct illegal migratory status.”
- **Right to Health: Art. 8** “Access to the right to health, and to social or medical care for all foreign nationals that require it, shall not be denied or restricted under any circumstances, regardless of their legal status....”

- **Right to Information: Art. 9** "Migrants and their families shall have the right to receive information from the State concerning: a) their rights and obligations under current law, and b) requirements for their entry, stay, and exit."
- **Promotion of integration: Art. 14** "The State in all jurisdictions, national, provincial, and municipal, shall encourage initiatives to integrate foreign nationals in the community in which they reside..."
- **Easy access to legalization of migratory status: be a citizen of a state party or associate state of MERCOSUR as a basis for access to legal residency. Art. 23 para. 1).** Since nearly 85% of Argentina's migratory influx comes from states that comprise MERCOSUR, the new Immigration Act provides that a citizen of any MERCOSUR country may apply for legal residence in Argentina. This is a mechanism to facilitate legalization and thus to achieve full integration in the receiving society.
- **Judicial intervention required for deportation proceedings: Title V Chapter I.** Under the old Immigration Act deportation could be ordered and carried out by the National Immigration Office without recourse to the courts.
- **Detention of foreign nationals for deportation can only be ordered by the courts: Title V Chapter II.** The former Immigration Act permitted the National Immigration Office to detain a foreign national for deportation without court order.
- **Criminalization of illegal trafficking in persons. Additional sentence for endangering a migrant's life, health, or person, or when a minor is involved. Chapter VI.** For the first time Argentine migration legislation makes trafficking in migrants a statutory crime. The penalties established are one to six years in prison, which could be extended to 20 years under aggravating circumstances.

Regulations to carry out this Law 25.871 are being developed. The substantial changes from the old law, which was in force for more than two decades, complicate the task of preparing the regulations, which must deal with new situations. Consultations are underway with all government sectors involved, as well as with NGOs interested in the subject. It should be noted that Argentina's current unfavorable economic situation and the high unemployment rate are hardly conducive to the regulation and application of a law of this nature. Regulations are being drawn up based on the premise of respect for the principle of equal enjoyment of rights inherent in all persons as human beings regardless of their nationality, and in this light care must be taken to avoid reverse discrimination, by creating unequal treatment that discriminates against Argentine citizens.

Notwithstanding this situation, until the new regulations are promulgated the Ministry of Interior and National Immigration Office have adopted a series of measures intended to preserve the spirit governing the abovementioned Law 25.871.

These measures include:

- **Suspension of deportations or threats of expulsion for citizens of bordering countries.** Order 2074/04 of the National Immigration Office, issued on January 28

of this year. This rule seeks to protect the rights of those citizens of bordering countries who could legalize their situation under the new Act once its regulations are promulgated. This rule does not apply to expulsions that may have been ordered because of criminal background.

- **To revoke all precautionary arrests or related summons ordered by the National Immigration Office under the authority given it in the rescinded Law 22.439.** Rule 17.627 of the National Immigration Office, issued on April 23 of this year. As noted above, under Law 22.439 the National Immigration Office was authorized to detain foreign nationals for whom a deportation order had been issued. This arrest was for the sole purpose of carrying out the deportation. The new Immigration Act provides that arrests can only be made upon court order. Therefore the National Immigration Office, which based on the provisions of Law 25.871 is not ordering any more arrests or related summons of this type, has also revoked all such measures taken under the old law that were pending execution.
- **Reduction of the processing fees for foreign nationals applying for residence through an Argentine Consulate.** Order 21.085 of the National Immigration Office, issued on June 17, 2004.

In carrying out the immigration policy described above, the National Immigration Office granted 34,182 residence permits between October 1, 2003 and July 20, 2004 (of which 79.5% are for citizens of bordering countries). During that same period 565 requests for residence permits were denied.

These statistics notwithstanding, it is true that the National Immigration Office has a great deal of catching up to do, and the recent regulations call for implementation of new procedures as well as increased and better-trained staff. Therefore, on July 7, 2004 the Executive Branch issued Decree 836/04 intended to alleviate the situation.

The measures established in Decree 836/04 include:

- Declaring an administrative emergency in the National Immigration Office for 180 days.
- Ordering a comprehensive evaluation of the operation of the branches of the National Immigration Office in the interior.
- Ordering establishment of an Area for Immigration Assistance and Information.
- Requiring that residence permit requests submitted in the future be processed within a maximum period of THIRTY (30) DAYS.
- Establishing in the National Immigration Office a National Program for Legalization of Illegal Aliens, with the following objectives:
 - a) To establish a framework of new immigration policies that favor the assimilation and integration of the migrant population.
 - b) Legalization of the migrants' status.
- Authorizing the National Immigration Office to propose appropriate expansion and budgetary adjustments to carry out the actions required under the Decree.

REFUGEE STATUS AND ASYLUM

Argentina does not yet have a law on refugee status. Eligibility for refugees is currently governed by Decree 464, issued in 1984, and lower ranking regulations.

Various drafts of refugee legislation are in varying stages of consideration. Among them is the one that in early July of this year will be submitted by the National Immigration Office to the Ministry of Interior with a view to transmitting it to Congress as a proposal of the executive branch. This draft was prepared by the Committee on Eligibility for Refugee Status, drawing on its nearly 20 years of experience. Its provisions include:

- The same instrument regulates the status of stateless persons, establishing a procedure for identifying them in the light of the Convention relating to the Status of Stateless Persons.
- Identifies the key elements needed to make a fair and efficient decision in keeping with international provisions for the protection of refugees.
- Establishes procedures for admissibility, including those executed at the border, including fast-track procedures for replying to patently unfounded or abusive applications.
- Specifies channels for administrative appeals and access to the courts, setting reasonable deadlines to guarantee due process for the applicant.
- Establishes principles that must be respected with regard to women and unaccompanied minors.

Notwithstanding the foregoing comments it should be noted that although there is no law governing the procedure for recognition of refugees and one is being drafted, the matter is addressed by Decree 464, which since 1984, along with lesser-ranking norms, has regulated refugee affairs in Argentina and complies with the provisions of the Convention of 1951 and the Protocol of 1967.

As a result of the work of the Committee on Eligibility for Refugee Status established by the abovementioned Decree 464/84, from 1985 to July of the present year 2,210 applications were granted, 3,735 applications were denied, of which 675 are in the appeal process, 266 have been withdrawn, 1,694 are on hold for lack of activity by the applicant, and 1,244 are in various stages awaiting resolution.

It should be noted that by virtue of Decree 942/95 the National Immigration Office waives all application fees are waived for refugees.

NATIONAL ANTI-DISCRIMINATION PLAN. IMMIGRATION ASPECTS

Argentina's Ministry of Foreign Affairs, together with the National Anti-Discrimination Institute (INADI) and the Human Rights Office of the Ministry of Justice, coordinated in drawing up the National Anti-Discrimination Plan, which was adopted by National Decree 1086/2005 of September 8, 2005, following up on the commitments made at the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance (Durban 2001).

A noteworthy feature of the plan is the fact that it was prepared not merely as an academic project, but as the fruit of interdisciplinary cooperation among governmental and nongovernmental entities that took part in its drafting, and more than 300 interviews around the country with victims and victimized groups that experience discrimination. The plan also contains a series of specific proposals for implementing measures to combat discrimination.

NATIONAL ANTI-DISCRIMINATION PLAN. TRAFFICKING IN PERSONS, ESPECIALLY WOMEN

The national plan contains some specific references concerning trafficking in women in the chapter dealing with gender discrimination. It states that "Trafficking in women for purposes of prostitution is a despicable business that is growing in our country. In recent years two networks have been uncovered: one trafficking in women from the Dominican Republic and the other in women from Paraguay.¹ For the most part they are young women lured with the illusion of finding work in our country; when they arrive, their documents are taken away and they are reduced to being sex slaves. Women from the Argentine provinces are also victims of trafficking. Our country does not have enough adequate institutional mechanisms to deal systematically with the prevention, investigation, and punishment of trafficking in persons, nor with women who are sexually exploited."

Some of the main proposals of the national plan dealing with trafficking in persons are:

p.24. "To promote enactment of a law to give criminal status in the Penal Code to trafficking in persons, according to the criteria established in the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, thus making these offenses federal crimes."

p. 49. "To establish a specialized prosecutor's office to investigate the crime of trafficking in persons, especially women and children."

p 92. "To pursue public policies to prevent, investigate, and punish domestic and international trafficking in women, guaranteeing protection and physical and psychological rehabilitation for the victims by creating mechanisms for reentry into jobs and the economy."

Conscious of the connection between the fight against trafficking in persons, especially women and girls, and the issue of migration, Argentina has adopted the following measures and rules:

Argentina is a party to the principal international instruments on the subject, and participates actively in international forums—especially in the regional framework of MERCOSUR—in an effort toward greater cooperation and joint work.

At the national level, we encourage close interagency cooperation so that the various governmental actors with a stake in the subject join forces to optimize their resources and capabilities. In this vein, in late 2004 there was an important step forward with the designation of the National Focal Point for Trafficking in Persons, which fell to the Comprehensive Assistance Office for Crime Victims in the Prosecutor General's Office. In

1. See International Organization for Migration, *Migration, Prostitution, and Trafficking with Women from the Dominican Republic in Argentina*, Buenos Aires, 2003.

the discharge of his responsibilities in this area, the Prosecutor General submitted a draft of an Act for Elimination of Trafficking in Persons to the Senate in August 2005. (Reference number OV 230/05)

Other recent actions taken in this area include:

I. Regional actions – MERCOSUR

- Trafficking in persons, especially women and children, was considered at the Ninth Specialized Meeting on Women of MERCOSUR –REM- (Asunción, May 22-23, 2003). As a result of this effort, it was agreed to include paragraph 9) in the Joint Communiqué of June 18, 2003 by the Presidents of MERCOSUR, Bolivia and Chile, which states the following:

“They expressed great concern about the growing problem of trafficking in persons, especially women and children, which is not only a violation of human rights, but also closely linked to such threats as illegal trafficking in persons, drug trafficking, and the expansion of international criminal organizations. In this regard they recommend that appropriate entities in MERCOSUR include this item on their agendas and initiate a rapprochement with a view to working together and in coordination on this subject.”

- At the Eleventh Specialized Meeting on Women of MERCOSUR (Buenos Aires, April 15-16, 2004), upon Argentina’s initiative, the delegates agreed “to introduce the gender perspective in border areas and crossing points, in order to begin working with targeted activities in this matter, especially in the areas of health, environment, violence, and trafficking in persons.”
- To execute this decision various Border Commissions have addressed the subject with participation of authorities on women’s affairs in the respective communities and the Foreign Ministry.
- At the suggestion of the Thirteenth Specialized Meeting on Women of MERCOSUR (Asunción, May 2005) the Joint Communiqué of the Presidents of MERCOSUR and Associate Members of June 20, 2005 contained the following paragraph on the fight against this scourge:

“They welcome the work of appropriate entities of MERCOSUR whose agendas embrace the serious crime and growing problem of trafficking in persons, especially women and children, seeking through joint and coordinated efforts the strengthening of policies to combat this scourge, which is linked to the expansion of transnational criminal organizations.”

FORUM FOR DIALOGUE AND POLITICAL AGREEMENT OF MERCOSUR AND ASSOCIATED STATES

MERCOSUR and associated states have been moving forward with ambitious agreements in the area of migration. Many of these are subsequently "bilateralized" by the various member states.

Bilateralization of the "Agreement on Residence for Nationals of States Party of MERCOSUR"

During the "Meeting for Discussion of Border and Migration Issues between Argentina and Brazil," held in Buenos Aires on July 15, 2005, participants discussed bilateral application of the "Agreement on Residence for Nationals of States Party to MERCOSUR."

On November 29, 2005, in Buenos Aires, Argentina and Brazil signed the "Operational Agreement between the National Immigration Office of the Republic of Argentina and the Foreign Citizens Department of the Federative Republic of Brazil for the Application of the Agreement on Residence for Nationals of States Party to MERCOSUR," which will take effect on April 3, 2006.

This agreement authorizes free circulation and residence for citizens of both countries, on an equal footing with the citizens of the country in which they reside. It also represents a major change in the migration policy of the countries of the region, because for the first time there is the decisive step of permitting free circulation and residence for citizens of the states party, based only on citizenship.

This is a most noteworthy step forward for the region in terms of migration policy, and it is now necessary to sign and soon put into effect the Residence Agreement for citizens of MERCOSUR, Bolivia, and Chile.

National Program for Legalization of Migrants (*Patria Grande*)

Pursuant to Article 17 of the Immigration Act N° 25871, Argentina took steps to legalize the status of foreign migrants. That initiative resulted in the "National Program for Migrant Legalization," through Order N° 53253/2005 of the National Immigration Office, which benefits all foreigners who are citizens of the states party and associated states of MERCOSUR, because the sole criterion for legalization is the applicant's nationality.

Argentina's Immigration Act (25.871) and the MERCOSUR Legalization and Residence Agreements are fully compatible with Order N° 53253/2005 of the National Immigration Office (National Program for Legalization of the Immigration Documents of Citizens of the States Party and Associated States of MERCOSUR), also called "*Patria Grande*", which uses nationality as the criteria for legal residence. In other words, one must be a citizen of a MERCOSUR state party or associated state.