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WOMEN'S HUMAN RIGHTS IN THE FRAMEWORK OF ARGENTINE DOMESTIC LAW: TREATMENT SINCE THE RETURN TO DEMOCRACY¹

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I. INTRODUCTION

Argentina's return to constitutional rule on December 10, 1983 also represented its definitive incorporation into the international systems for the protection of human rights.

On issues specifically relating to women, of special significance is the crucial decision that resulted in the ratification, in 1985 by Law No. 23,179, of the Convention on the Elimination of All Forms of Discrimination Against Women. This treaty, pursuant to the 1994 constitutional reform, acquired constitutional rank, along with other human rights instruments, as provided in Article 75(22) of the Constitution. The treaty thus became part of what Bidart Campos calls "the bloc of federal constitutional law."²

Several legislative measures were adopted for the implementation of this convention, due in large part to the active participation of women's groups, which represented significant progress. These include laws regarding joint custody, equal rights for children born out of wedlock and civil marriage. The so-called "quota law," Law No. 24,012, is especially notable. This law guarantees the participation of at least thirty percent women on the lists of candidates for national

1. This issue is developed in María Teresa Flores, *La Igualdad Real de Oportunidades*, INVESTIGARÉ, May 1997.

2. GERMÁN BIDART CAMPOS, *Tomo VI, La Reforma Constitucional de 1994*, in *TRATADO ELEMENTAL DE DERECHOS HUMANOS* 555, (1995).

elective offices.

As noted above, the constitutional reform of 1994 has been quite important. The reform included important language in Article 37, incorporated into Chapter 2 of the Argentine Constitution, which is entitled "New Rights and Guarantees." Paragraph two of Article 27 states: "real equality of opportunities between men and women in access to elective office and party positions will be guaranteed by affirmative actions in the regulation of the political parties and in the electoral regime." It ties this concept to the power of Congress, established in Article 75(23) of the reformed Constitution, to "legislate and promote affirmative actions and measures that guarantee effective equal opportunity and treatment, and the full enjoyment and exercise of the rights recognized by th[e] Constitution and the international human rights treaties in force, in particular with respect to . . . women. . . ."

Evidently, affirmative actions, such as those incorporated through Article 37, require that society in general become aware of the political rights of women, their responsibilities, and the need for their active participation in democratic processes.

In Argentina, Law No. 24,012 replaced Article 60 of the National Electoral Code and provides: "The lists submitted shall contain at least thirty percent women candidates for the elected offices and in proportions such that there is a possibility of being elected. A list that does not meet these requirements will not be made official."

Adhering to this system, several Argentine provinces have already issued similar statutory provisions, among them, Chaco, Law No. 3,747, and Mendoza, Law No. 5,888. These provisions also prescribe that the lists of candidates "must contain at least 30% women candidates for the elected offices and in proportions such that there is a possibility of being elected." The province of Santa Fé provides, by Law 10,802/92, that in any list of candidates submitted by the political parties, "at least one-third shall be women, in an interspersed or successive manner." In addition to recognizing quotas, the province of Buenos Aires, through Law No. 11,733, also guarantees at least thirty percent participation of women in government.

Although in most cases the duration of the law that prescribes the "affirmative action" is undetermined, the law of Mendoza states: "The relevant provision on the percentage of women on the lists shall apply to the six elections following the promulgation of the present law." The international legal instrument, i.e., the Convention on the Elimination of All Forms of Discrimination Against Women, states that special measures of this type will cease "when the objectives of

equality of opportunity and treatment have been achieved.”³

Measures such as those mentioned above are important achievements for women; however, there have been so many centuries of such harsh discrimination, in addition to the struggle of the large marginalized sectors, that the path ahead will require all the more strength, intelligence, and solidarity. In this context, we also should recall that many women suffer dual discrimination based on gender and poverty.

Evaluating the overall situation of women in our time is complex given that contradictory elements co-exist. For example, all of the work carried out and lessons learned from women's participation in the social and political movements in the Americas during the 1980s, and their importance in the processes of return to democracy, have not been translated into a greater access to decision-making positions or a real increase in political space within the government.

At the present time in Argentina, although a statutory framework exists that recognizes the equality of human beings and includes anti-discriminatory principles,⁴ sociocultural standards have yet to be permanently modified. Women still encounter enormous difficulties gaining access to leadership positions and continue to earn lower real wages than men. Single women supporting households have difficulty obtaining loans to purchase homes and displaced persons or refugees must deal with even greater inconveniences as they place themselves or their children in a new environment.

II. THE CONSTITUTION OF THE CITY OF BUENOS AIRES

In conformity with the provisions of Article 129 of the Constitution of Argentina reformed in 1994, the city of Buenos Aires adopted its own Constitution, or Organizational Statute. This Constitution was endorsed by the city's Constituent Convention on October 1, 1996.

Since the Buenos Aires Constitution is the most recent Argentine constitutional text, it is valuable to analyze whether its provisions display a gender perspective, and whether it encourages the full enjoyment of women's rights or whether, to the contrary, it fails to take a position on the issue.

The preamble sets forth as the priority objective of the Constitution for the City of Buenos Aires: “. . . to promote human development in a democracy founded on freedom, equality,

3. A/RES/34/180, December 18, 1979, Convention on the Elimination of All Forms of Discrimination Against Women, Article 4.

4. Haydeé Birgin, *Ciudadanía y Justicia. Nuevos Recursos e Instrumentos para la Acción Ciudadana*, in *MUJERES EN LOS '90* 67-90.