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**JURIDICAL CHARACTERISTICS OF HUMAN RIGHTS VIOLATIONS TRIALS IN ARGENTINA**

Human Rights Violations trials in Argentina follow all constitutional guarantees and the principle of due process: natural justice/regular tribunal, open to the public, principle of innocence, sanctity of a trial defense and equality before the law.

**Natural justice/regular tribunal**

It is necessary to emphasize, in first place, that these trials are not conduced by special or ad hoc tribunals, as has been the case in other countries, but by judges previously established by legal procedures, under the constitutional guarantee of natural justice/regular tribunal\(^1\). Judges,

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\(^1\) Under Argentinian doctrine, the concept of “natural justice” refers to a tribunal established by legal procedure before the event that causes the legal process. This concept implies the prohibition of creating ad-hoc or post-facto tribunals, or special commissions, since the juridical body must precede the punishable actions. However, since the expression “natural justice” can have two different meanings, we must include a few comments. First, the concept does not refer to a single person—as the Spanish word ‘juez’ seems to indicate—but to an institution: the tribunal. The judge can be changed after the trial has ended, but what is previously established and cannot change is the tribunal itself. Second, the judge or tribunal is not “natural”—as no human institution is—but socially established. The word “natural” refers to the regular tribunal, that is, to the tribunal designed by law for this specific case.
prosecutors and public defense attorneys who take part in these trials obtain their appointments through public competitive examination, and as lawyers they have the highest credentials. These tribunals are not *ad-hoc*, established specifically to judge particular facts—as, for example, International Tribunals that the U.N. has established for the former Yugoslavia, Rwanda and Sierra Leone—but part of the legal system of the country. The respect for the constitutional guarantee of the natural justice/regular tribunal implies a respect for democratic legitimacy.

**Guarantee of a public trial**

Concerning the guarantee of a public trial, these trials take place in public sessions that can be attended by any citizen or foreign national; the only requisite is that they have to present proof of identity. Representatives of the press can attend all hearings, but in some courts they are not allowed to film or photograph witness depositions (although they are allowed to film or photograph hearings for the reading of requirements, statements by lawyers or sentencing). All hearings are filmed, but the visual records of witness depositions are not opened to the general public, only to prosecutors and defense lawyers.

**Principle of innocence, sanctity of a trial defense and equality before the law**

The Constitution of the Argentine Nation established in its 18th Article the inviolability of the right to defense in a trial, both for the individual person and for his/her rights. The Universal Declaration of Human Rights establishes in its 11th Article that every person accused of a crime has the right to be considered innocent until proven guilty in a public and legal trial, where that person could defend herself. Article 14th of the International Pact on Civil and Political Rights establishes the equality of all persons before tribunals and courts of justice, with the right to public petition and all necessary guaranties, as well as the necessary time and means to adequately prepare his/her defense, and the capacity to communicate freely with a defense attorney of his/her choosing. The American Convention on Human Rights in its Article 8 establishes the right of the accused to the time and means necessary for his/her defense, be it by himself or through a defense lawyer who, if the accused does not have the means to hire one, would be a public defender. All these guaranties have been upheld in the trials for violation of human rights carried out in Argentina.

A paradoxical outcome that should be noted is that, when these trials began, the accused usually preferred private defense attorneys paid by them but, with time, they opted for public defenders (technical defense). The reason for this lies in the fact that private lawyers usually had a clear right wing and authoritarian bias (defenders of Nazis, for example), and their defense strategies were deficient by being plagued with absurd propositions (such as, for example, the idea that the Universal Declaration of Human Rights is unconstitutional). The final outcome is that the Argentine State provides, free from charge, a better defense that the one the accused received at much higher expense. In short, the Argentine justice system provides the best possible defense for these defendants.

**The defendants**

The defendants in these trials are: members of the armed forces, of the security forces, civilian agents of repressive forces, court officials (judges); civilian officials of the dictatorship (ministers of the dictatorship); businessmen connected with repression, and catholic church
priests that committed crimes in collaboration with repressive forces. In the case of the appropriation of children, and of the substitution of their identities, the wives of members of the armed and security forces are also on trial.

In some cases the defendants are excused from attending most hearings; they have the obligation, however, to attend the hearings related to the reading of the accusation, the arguments by the lawyers and the sentencing hearing. In other cases, the tribunals establish that the defendants should be taken to the building where the trial takes place, but they can follow said trial in and adjacent room.

**Stages of the judicial process**

The judicial process has two stages, one of discovery (investigation) and a second of oral debate. The first stage takes place in the Federal Courts of Instruction, under a first circuit judge, and the second at the Federal Oral Courts. At certain point of the discovery, when there is enough evidence, the discovery stage is officially ended and the trial is transferred to the oral trial stage.

In trials for violation of human rights, big files where dealt with during the discovery stage (they were called “Megacausas”), usually one file for each branch of the armed forces. These big files usually included smaller trials divided by clandestine centers of detention. Since the files for these trials were so big, and the investigation so complex, only partial trials were prosecuted, that is, only one clandestine center of detention was sent for an oral trial and, in some occasions, only related to a limited number of victims and offenders; the processes for other centers were left open to more investigation. This procedure allowed for partial advances, since waiting for a complete investigation for one big trial would have meant, in actuality, that there would not have been any trials.

Federal Oral Courts (OTF for the Spanish acronym) have three magistrates, although in some cases, when trials take too long, a fourth magistrate has been appointed in case of absence or illness by one of the other magistrates. There are also public prosecutors and defense lawyers, private plaintiffs, such as survivors and relatives of the disappeared, human rights associations, social organizations (guilds, for example) and official institutions (such as the Secretary of Human Rights of the Argentine Nation). In this context it should be pointed out that the Argentine juridical system allows for the plurality of demands, both from official prosecutors and private lawsuits. This system, that is not unanimous in the comparative legislation, has among its main virtues the possibility to provide judges with more evidence and thus reducing the risk of a nullification of the trial or a biased decision due to a one deficient prosecution.

Above these TOF stand two courts of higher rank: the Chamber of Penal Cassation and the Supreme Court of Justice. These courts of superior rank act as appellate courts, revise the legal process and the doctrine established by the inferior oral courts.

**Process period**

Even though at the beginning the trials registered delays due to procedural issues, in recent years the pace of these trials has picked up. This is due to the practice of presenting cases based upon common denominators (for example, the place or zone where the alleged crimes took
place), which reduced the multiplicity of trials in which the same witness had to declare several
times. On this issue, the Federal Chamber of Penal Cassation issued, on February 28, 2012,
Decision 1/2012 (complex processes-practical rules), which established rules for the
simplification of the trials, such as: video recording and other audiovisual media that are
incorporated to other debates or cases; inclusion of the reading of testimonies made for other
stages or processes; use of telecommunication technologies, such as videoconferences, when a
witness could not appear before the judge due to health issues, or when it would be imperative to
guarantee the security or dignity of the victims-witnesses, or when they resided in a distant place
or outside of the country. In accordance with this decision, in some cases depositions were taken
by videoconference from witnesses that live outside of the country, or in a province located far
from the place where the trial is being held. In these cases, the judicial practice is that the
tribunal designates an official who travels to the place where the deposition is taking place, to
guarantee that this procedure is carried on in accordance to the law.

**Locations where the trials take place**

These trials take place in different provinces, and are usually housed in public
courthouses. When the courtrooms are too small, some social and sports clubs have been leased
(as in the crimes committed in the *Campo de Mayo*) or university auditoriums have ben used (as
in San Rafael, Mendoza province, for example).

Usually the courtrooms provide separate seating for relatives and friends of the
defendants, on one side, and the general public on the other, to avoid disorder (in different floors,
or separated left and right). In some cases, defendants are separated from the public by
bulletproof glass.

**Sentencing**

Regarding the execution of sentences, many convicts are under house arrest, because they
are at least 70 years old, or because they suffer from some illness. This rule has exceptions, as in
the case of the former dictator Jorge Rafael Videla, who was sent from house arrest to a military
prison and, recently, at 86 years of age, to a common prison. It is important to note that some
public opinion is demanding that all convicts in these trials serve their sentences in common
jails.

Another example of the absolute respect for constitutional guarantees is the fact that, if
the guilty sentence is not firm, many courts allow the defendant to remain free until the sentence
is better founded and becomes *Res judicata*. Due to their advanced age, some defendants died
during the trial process, and some committed suicide when they were about to be arrested.

**The Value of Truth**

The development of these trials allowed for the incorporation of new evidence, both in
the discovery and oral stages. Even victims that had not come forward denounced their suffering,
or persons that had not denounced the disappearing of relatives finally did it. The investigations
produced documents thanks to search orders authorized by judges.

Another advance produced by these trials is that, based on testimony given by victims,
new discussions on these events take place. When the systemic nature of the sexual violence
experienced by those kidnapped (women and men) was made explicit, some trials for this type of
crime were set up. Also, these statements have heightened the debate concerning the definition of sexual violation as an autonomous crime or as a type of torment. There is not a unified criterion on this issue.

Concerning the significance of the trials, we must highlight their effect on the importance of the value of truth. The argentine society does not simply bury its past—as has been done in other countries—but, on the contrary, wants to unearth it, face the consequences and confront its sorrow.