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Right to stay?: A study of migrants' "settlement right" in Argentina

¿Derecho a quedarse?: Un estudio sobre el derecho al arriago de los migrantes en Argentina

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ABSTRACT

Often, migrants arrive at a place and spend years or even their whole lives living there. They work, socialize, and settle down without necessarily acquiring the new country's citizenship. Some of them could be irregular migrants in legal status, but share the daily life, culture, and mindset of ordinary citizens. Yet, they could still be subjected to expulsion, finding themselves returned to a country that has become strange lands to them regardless of the story their birth certificate tells us.

Recently, the Argentine Supreme Court of Justice decided to expel dozens of these migrants not because they had committed a felony but solely because they hold an irregular migrant status. This paper thus asks whether transnational law presents an opportunity to recast Argentinian migration law by generating a "settlement criteria" that would prevent the expulsion of these long-standing migrants. For this purpose, the paper begins by outlining primary legal sources used in Argentina. The second section continues to engage with secondary sources from the international human rights regime. A third and final section concludes that there are several elements that allows to affirm the existence of the "settlement criteria" for the Argentine case.

Keywords: Expulsion – Argentina – settlement – migrants – law.

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RESUMEN

Frecuentemente, personas migrantes llegan a un lugar y pasan años, incluso sus vidas enteras, viviendo allí. Trabajan, socializan y se arraigan sin necesariamente adquirir la nacionalidad del nuevo país. Algunos de ellos pueden ser incluso migrantes irregulares en cuanto a estatus legal refiere, pero comparten la vida cotidiana, la cultura y la mentalidad de con otros ciudadanos comunes. Aun así, podrían ser objeto de expulsión, encontrándose devueltos a un país que se ha convertido en tierra extraña para ellos, independientemente de lo que cuente su certificado de nacimiento.

Recientemente, la Corte Suprema de Justicia de Argentina decidió expulsar a decenas de migrantes que no habían cometido ningún crimen grave sino por su condición migratoria irregular. Este trabajo se pregunta entonces si el derecho transnacional presenta una oportunidad para reformular el derecho migratorio argentino generando un "derecho al arraigo" que impida la expulsión de estos migrantes de larga trayectoria. Para tal efecto, el trabajo comienza delineando las principales fuentes jurídicas utilizadas en Argentina. La segunda sección continúa analizando fuentes secundarias del régimen internacional de derechos humanos. La tercera y última sección concluye que existen varios elementos que permiten afirmar la existencia de dicho criterio para el caso argentino.

Palabras Clave: Expulsión – Argentina – arraigo – migrantes – derecho.

Introduction

Migration is at the very cornerstone of the history of Argentina. According to the Argentine Census of 1914, a quarter of its population was immigrant (Tercer Censo Nacional, 1914). Both World Wars found Argentina as a safe and prosperous country for those people who were suffering and in need of finding a new place to be in, especially people from Europe. Many scholars have claimed that one of the many reasons why so many immigrants came to the country was related to its legal facilities and the possibilities of easily acquiring a permanent residence permit or, even more, Argentine citizenship (see Hines, 2010; Denardi, 2017).

In September 1812, the authorities of what was called the First Triumvirate released a decreet welcoming immigrants from all over the world (Pizzonia, 2017:77). However, the Argentine Republic, as the political unit that is known today, did not emerge until 1852, when the provinces finally agreed on becoming one political entity under the same constitution and laws. This is an important element because it shows how Argentina, even before being the state we are familiarized with today, was already a country keen on welcoming foreigners. The political entity that was born in the 1850s, did so in a context that was already embedded in an open policy towards migration. An aspect that, even with ups, downs and nuances, largely inaugurated the Argentine tradition towards migrants, refugees and, more generally, people on the move (Seixas, 2008). Evidence of that is the preamble of the Constitution, which reifies: "to all men of the world who wish to dwell on Argentine soil" (Constitución Nacional Argentina, 1994)[1].

However, lately, there has been a series of decisions taken by the Argentine Supreme Court of Justice that have jeopardized these features and, presumably, violated long-standing migrants' basic rights. For example, in December 2021, the Supreme Court confirmed in Qiuming Huang v. National Directorate of Migration the decision of a lower camera to deport Mr Huang, a Chinese migrant who irregularly entered the country in 2014, after "interpreting Argentina's Migration Law in strikingly a restrictive manner" (Odriozola, 2022). Mr Huang did not have any criminal felony on his record, he has set up a business in the country, he has continuedly paid his taxes and social security contributions, he was learning the language and he had a well-established social network including children, a wife, and friends.

1 Translation is from the author. The original text is: "(…) para todos los hombres del mundo que quieran habitar el suelo argentino".

Nonetheless, the Supreme Court understood that instead of ordering the regularization of his status, he should be expelled from the country immediately. Stories like Mr Huang's are far from being an exception. Since the last semester of 2021, the Argentine Supreme Court has confirmed more than a hundred expulsions of people with a long-standing migration history in the country with irregular migrant status (Axat, 2022).

According to Argentine law, migrants without family members (understood as parents, partners, minor children, and/or handicapped children under their legal supervision) in the country, and without the possibility of alleging humanitarian reasons for their stay, could be expelled from Argentina if found guilty of crimes typified under articles 29 and 62.b of the Migration Law (Congreso de la República Argentina, 2003).

Yet, many migrants have neither affective nor social connections with their home countries. Some migrants might move to Argentina, spend their whole lives there, work, socialize and settle themselves without acquiring citizenship. As with Mr Huang, they might have lost contact with their home country, established new connections in Argentina, and adopted it as their new home. Nevertheless, according to the current legal framework and recent decisions of the Supreme Court, they could be still subjected to expulsion and find themselves back in a country that has become unknown to them, forcing them to be uprooted and left in a situation of uncertainty, loneliness, and vulnerability.

Accordingly, this piece sets out to ask a simple yet crucial research question: Does transnational law present an opportunity to recast Argentinian migration law by generating a "settlement criteria" which would prevent the expulsion of migrants whose entire lives are rooted in the country? The hypothesis behind this work is that the absence of an explicit mention of such a right shall not be understood as the absence of the right *per se*. Subsequently, what is explored throughout the following pages, is the blurry boundary that lies between a migrant in law and a citizen in reality. By zooming in on this nexus, it is argued that there are legal and humanitarian reasons to claim the existence of the settlement of migrants could be a reason to impede their expulsion. At the same time, considering the multiple internal and external sources from which law can be derived, it results optimal to embrace a transnational legal perspective on the topic to have a comprehensive and appropriate discussion. This would mean to "include all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do

not wholly fit into such standard categories" (Jessup, 1956:2).

Furthermore, two comments on the validity and relevance of this research need to be made. First, it has to be highlighted that the external validity of this research might not be seen as particularly wide, given that the argument is largely derived from the Argentine normative framework and its jurisprudence. Thus, conclusions drawn are not easily extended to other national cases. Nonetheless, and as it is shown in the second section of this work, a non-minor part of the argument is based on several different instruments that originate within the transnational legal framework that is relevant for many different national cases, especially for the Latin American region. Therefore, even though this work aims to enlighten the possibility of claiming a settlement right for migrants based in Argentina, part of the arguments could be extended beyond the frontiers of the case under study. Second, the research topic of this piece is of immense social and academic relevance: on the one hand, it highlights the human-agency factor behind the migrant and the acknowledgement of the social, economic, and family implications that an unlawful expulsion could result. On the other hand, because by relying on a simplistic yet novel methodology, advances and broadens the discussion of migrants' rights and the migration legal framework.

For that endeavor, the first section is dedicated to mapping the Argentinian legal framework surrounding migration, focusing primarily on norms and jurisprudence both from the national and the international arena. Throughout the second section, other sources of law are scrutinized to analyze if there are reasons to argue that the settlement of a person can impede his expulsion. Lastly, some conclusions are derived from the contrast between the transnational legal sources used and the Argentine migration tradition.

Section 1: Mapping the legal framework

The migration legal landscape in Argentina is a robust one, full of legal instruments derived from national as well as international jurisdictions. Primarily, it is composed of the Argentine Constitution (1994), the National Migration Law №25.871 (2004), the International Convention on the Protection of the Rights of All Migrant Workers Members of Their Families (2003) and the MERCOSUR, Chile and Bolivia Resident Agreement (2018). Throughout the following paragraphs, each of the above-mentioned

instruments is explained and analyzed in light of the discussion being held here.

Starting with the Argentine Constitution (1994), this document addresses fundamental duties and liberties in a wide sense, but it also tackles specific issues that are linked to the migration framework. As mentioned before, the very preamble of the Constitution states that Argentina is a free and welcoming place for anyone who wants to live there. Besides that, it also establishes that any foreigner living in Argentina holds the same civic rights as any citizen (art. 20) while it claims that the Argentine state will proactively encourage immigration (specifically from Europe) to enrich the country with their knowledge and skills (art. 25). These articles matter as they show the openness of the country towards immigration, a trend toward equality, and a comprehensive approach to this phenomenon. Moreover, it also serves, due to its legal hierarchy, as principles through which the rest of the migration legal scaffolding should be carried out and interpreted (Ministerio del Interior de la República Argentina, 2019).

Along the Constitutional lines, it is important to recall Fos Medina's work (2015). In his research, he looks at the Constitution to build a legal theory surrounding the settlement as a right. According to him, the settlement is composed of three basic core elements: cultural, territorial, and social connection. He acknowledges that the constitution *per se* never mentions the settlement as such. However, he continues, it is important to analyze not only what the constitutional text itself says but also the purpose and meaning behind the words.

Hence, considering the elements that shape the settlement, and adopting a "self-integrated" and "hetero-integrated" interpretation of the rights, duties and principles that emanate from the Constitution (meaning, reading the Constitution by itself and concerning other legal instruments such as provincial Constitutions and international covenants), it is possible to reconstruct a legal theory in support of the existence of the settlement as a right (2015:134). In addition, in a famous piece, Bidart Campos concludes, when analyzing Constitutional rights, that "ultimately, we mean that there are rights 'with rules' and 'without rules' because rights are not depleted in the written catalogue [the constitution]. Outside it, the Constitution can host them if the axiological system is democratically generous" (2002:256).

Then, Fos Medina adds:

> Actually, strictly speaking and using the categories of thought elaborated by Bidart Campos, we could consider the promotion of the settlement as an implicit

> programmatic norm of the Constitution, that is, an obligation of the state arising from a constitutional legal basis that authorizes a state policy, hence, the text of the Maga Carta [the Argentine Constitution] provides a principle to structure in the social order[2] (Fos Medina, 2015:151).

Therefore, a comprehensive understanding of the Constitutional text, in light of what Professor Bidart Campos exposes and considering the "three elements criteria" proposed by Fos Medina, could argue that the Argentine Constitution provide fertile legal soil for the exploration of a right to settlement. Being the articles that mention the preservation of the territory and culture, the connection between people and territory and the territorial consciousness, the most central aspects to support this thesis (Fos Medina, 2015:143-150).

It must be noted that Fos Medina's work mostly deals with settlement for nationals and only to a limited extent to third-country nationals. Nevertheless, this should not be considered a pitfall in the argumentation. Firstly, because if it is considered what has been outlined above concerning the equal treatment that the Constitution (and as it will be shown below in the Argentine Migration Law) provides to national and non-national people, this "gap" would be already solved. Secondly, and as Diego Acosta (2017) explains, the Latin American region has been going through a process of "constitutionalization of human rights treaties" and incorporation of the Inter-American Court on Human Rights jurisprudence (2017:162). At the same time, he argues, there is the pro *homine* principle of interpretation in place, which advocates for the most-favorable, widest, and most extensive protection of human rights (2017:163). Thus, "these three principles (constitutionalization of human rights, conventionality control doctrine, and pro *hominem* principle of interpretation) offer national courts a fertile legal soil to develop norm interpretation with a strong focus on a rights-based approach" (2017:163). Hence, considering these two arguments, it is possible to reconcile Fos Medina's points with migrants' right to settlement as well.

Continuing analyzing the national legal landscape, it is important to recall the National Migration Law from 2003. This has been considered "a human rights-based migration policy that has

2 Translation is from the autor. The original text is: "En realidad, estrictamente hablando y utilizando categorías de pensamiento de German Bidart Campos, podríamos considerar la promoción del arraigo como una norma programática implícita de la Constitución, es decir, una obligación del Estado surgida de una base jurídica constitucional que autoriza una política de Estado, o sea, que el texto de la Carta Magna proporciona un principio para estructurar en el orden social".

helped regularize regional migrant flows" (Cavaleri, 2012:48). Throughout its 126 articles, it sets the principal features of the immigration framework, drawing migrants' rights and duties but also the State's responsibilities.

Among its characteristics, it should be mentioned its equal character for national and non-national people, and between regular and irregular migrants (art. 3). It understands migration as a human and universal right (art. 4). It stresses the importance of family reunification as a priority criterion (art. 3). It also establishes that the irregular status of a migrant should not prevent him/her from gaining access to basic rights such as education and health (art. 7 & 8). Lastly, it also highlights the role of the state in providing measures that facilitate the regularization of migrants (art. 16). Thus, the importance of these articles is that they institute that all legal and administrative migration dispositions must be interpreted through a human right, sensitive and comprehensive approach, prioritizing family reunification, without making distinctions between regular and irregular immigrants and acknowledging the role of the state in facilitating the regularization of migrants (Pacecca, 2005; Brumat & Amancay Torres, 2015).

On the other hand, the Argentine government still keeps for itself the sovereign prerogative of expulsing non-nationals that have been found guilty of felonies such as human trafficking, drug smuggling, money laundry (art. 29), or any other crime that is subjected to 5 or more years of imprisonment under the Argentine penal law (art. 62). Nevertheless, it also recognizes that two reasons can exceptionally impede the deportation of migrants: family reunification and humanitarian reasons. Even more, it highlights that when verifying the inhabitancy of an irregular migrant, the Dirección Nacional de Migraciones (DNM)[3] should consider other elements besides their legal statuses, such as the employment situation, family relationship with other Argentinians, and other personal and social conditions (art. 61).

Thus, even though the Argentine government does not resign its right to expulse a migrant, it still constricts itself to certain parameters of (un)lawful deportation while also permitting the analysis of particular characteristics in each case that might also work as impediments. Meaning, that even though Argentina retains the sovereign prerogative of deciding who gets in, under which conditions, accessing which rights and, more meaningfully, when a third-country national needs to leave, this last right is not absolute but has (at least two) clear boundaries

3 Spanish for National Direction of Migrations which is the Argentine governmental agency in charge of migration policies.

(Garcia, 2015). Nevertheless, it must be acknowledged that the law is still problematic in the sense that it does not provide any clear definition of what "social conditions" might mean. This generates that the DNM and the courts of different instances can manoeuvre and provide their interpretation of social conditions in a more or less narrow fashion. Here, it will be argued that "social conditions" could also refer to the settlement record of the migrant.

Lastly, it is important to mention that under article 12 of the law, the Argentine state also commits to respect and accomplish all the legal obligations and duties that may derive from international treaties and covenants that deal with migration and people on the move. This will be an important factor to understand why it is important to also acknowledge and analyze international instruments.

Moving to a more international ladder, the Mercosur, Chile and Bolivia Resident Agreement (2018)[4] was established to facilitate human mobility between signatory states (Cavaleri, 2012). This is an important agreement for the Argentine case, as most of its migrants come from these countries (UN Population Division, 2020). For this work, there are three articles that, even if they do not galvanize new rights or duties considering what has been enumerated until here, are relevant for the discussion. Article 3 of the agreement mentions the provision of equal rights to migrants regardless of their entry status. Article 9.3 guarantees equal access to civil rights between national and non-nationals, whereas article 6 leaves it up to the legislation of each member state on how to proceed with migrants who irregularly inhabitant the country. Once again, the existent norms recognize that both regular and irregular migrants from signatory states of the Agreement should be treated equally and that states should provide the same level of access to civic rights as they do with nationals.

Lastly, the International Convention on the Protection of the Rights of All Migrant Workers Members of Their Families (1990) enacts that the expel of migrants should never be held on a collective basis. Contrarily, it signals that the analysis of the cases should be carried out considering the characteristics and individualities of each case independently (art. 22). However, it does not provide much clearness on how the procedures should be held or which principles need to be considered.

In terms of jurisprudence, it is important to recall what the Supreme Court said in the Cuesta Urrutia case in 1944. In this occurrence, the Court

4 The MERCOSUR is a supranational organization whose member states are Argentina, Brazil, Paraguay, and Uruguay.

analyzed whether Mr Cuesta Urrutia, a migrant who had entered the country through an unauthorized border and stayed irregularly, should be expelled or not from Argentina. The Court found that even if the Argentine state had the sovereign power to decide when a non-national could be expelled from the country, that exercise of sovereignty has its limits. Even more, the Court said that if a migrant could prove a continued and "honourable" stance in the country then, the individual could overcome his/her irregular status. Therefore, and as a consequence of the non-total characteristic of the expulsion prerequisite and the revocability of the irregularity of a migrant, Mr Cuesta Urrutia could not be deported. This was, until the recent overturn of the same Court on Mr Huang's case, a leading case on the subject. Indeed, the *stare decisis* doctrine does not apply in the Argentine judicial system (which, shortly, means that higher court's decisions are not binding for lower chambers) however, the Supreme Court's rulings are usually followed by the rest of the courts (Amaya, 2014:61). Hence, and although Cuesta Urrutia did not fully solve the "settlement issue" and the lack of stare decisis principle, the Cuesta Urrutia case still served as an important cornerstone when it comes to migration legal issues.

Thus, it is possible to say, as a partial conclusion from the legal sources described until here, that even if there is no legal instrument that explicitly addresses the full extent to which the settlement can be used as a criterion when the deportation of a non-national is under scrutiny, there are still fragments from the legal framework that can substantially be used towards affirming the possible existence of this principle. All of these fragments may not construct exactly the "settlement" as a legal institution but still provide important bases that "sounds very much like" it. Namely, they are the non-totalitarian state prerogative to expel migrants, non-written constitutional principles, the understanding of people mobility as a human and universal right, the equal approach to the enjoyment of civic rights among national and foreigners regardless of their (ir)regular status, the consideration of social and particular conditions when analyzing the deportation, constitutional principles that and even some of the past Supreme Court's decision are amidst the most relevant features.

Section 2: Going beyond the migratory normative: the human rights rules

An analysis of the legal landscape would not be complete without considering those instruments that might not have migrations at their aim, but that still provide an important legal basis for appropriate and human-sensitive management of them. On this note, the International Covenant on Civil and Political Rights (1976) is particularly distinctive due to its content and because of its constitutional hierarchy in Argentina (Constitution of the Argentine Republic, 1994).

Article 12.4 says that "no one shall be arbitrarily deprived of the right to enter his own country". The vague definition of the phrased, particularly the meaning of "no one" and "his country", caused multiple misunderstandings and dissimilar interpretations as it was not clear whether it was referring to nationals of a certain country, or if it could also include non-nationals[5]. In the case, Stewart v. Canada (UN Human Rights Committee, 1996), the UN Human Rights Council affirmed that the phrase:

> "'his own country' is not limited to nationality in a formal sense, that is, nationality acquired on birth or by conferral, it embraces, at the very least, an individual who, because of his special ties to or claims in relation to a given country cannot there be considered to be a mere alien (…) the language of Par. 12.4 permits a broader interpretation, moreover, that might embrace other categories of long-term residents" (1996, para. 12).

Nevertheless, the Committee also pointed out that when a country does not present "unreasonable impediments" to acquiring its nationality, then this broad understanding shall not apply (para. 12.5).

In 1999, the Human Rights Committee, the UN body in charge of interpreting the Covenant, also dealt with this same issue. According to the Committee, the term "his own country" was a broader concept than the "country of his nationality", however, they also declared that the art. 12.4 "permits a broader interpretation that might embrace other categories of long-term residents (…) other factors may in certain circumstances result in the establishment of close and enduring connections between a person and a country" (Human Rights Committee, 1999, para. 20). The importance of this resolution is dual. On one hand, because Argentina has recognized the jurisdiction of

5 It shall be noticed that the same applies to the terms used in the Spanish version of the covenant, where the term "no one" was translated as "nadie" and "his own country" as "su propio país". Thus, both terms were vague and unclear as well in Spanish.

the Committee so the decision about the definition of art.12.4 is binding. On the other hand, because it does not state, differently from the Stewart v. Canada case, that for those cases where nationality is considerably easy to acquire, this principle shall not apply.

Considering that the Argentine Republic has given the Covenant a constitutional hierarchy, and that has recognized the jurisdiction of the Human Rights Committee (República Argentina, 2021:2), the art.12.4, in general, and the interpretation provided by the Committee, in particular, are of extreme relevance. If "his country" refers to a broader type of connection between a person and a state, and if "no one" applies to nationals and non-nationals, which as it was mentioned before the Argentine law does not recognize differences between regular and irregular migrants. Hence, the possibility of recognizing that people like Mr Huang have an inherent right to settlement and rootedness that should impede their expulsion from the country is not only a mere possibility but a matter of legal duties.

To conclude, there is one more legal instrument that might be of much help to understanding why the settlement of a migrant should be considered when analyzing a possible expulsion of a non-national: the right to private life. The American Convention on Human Rights (1969), which also holds constitutional hierarchy in Argentina, states that "no one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation" (Art. 11.2).

The right to private life has been used by other courts when dealing with long-standing migrants who are subjected to expulsion. In this sense, it is pertinent to mention how the European Court has understood the applicability of the right to private life (under article 8 of the European Convention on Human Rights) to set an analogous case. In Beljoudi v. France (1996a) and C. v. Belgium (1996b), the Court analyzed the possible deportation of non-nationals with long-term residencies in the country and who had committed different crimes. In both cases, the Court concluded that the deportation of foreigners who have stayed in the country for a considerable time constitutes a violation of their right to private life. Moreover, in Beljoudi v. France, Judge Martens stated in his concurring opinion that the expulsion of a non-national to "a country where living conditions are markedly different from those in the expelling country and where the deportee, as a stranger to the land, its culture, and its inhabitants, runs the risk of having to live in almost total social isolation, constitutes an interference with his right to respect for

his private life" (European Court of Human Rights, 1996a).

Indeed, the European Court of Human Rights does not have any legal jurisdiction in Argentina whatsoever. But, in any case, interjurisdictional dialogue is a recurrent tool used by different courts throughout the world to understand how the law has been applied elsewhere. The world that we live in, hugely and profoundly signalled by globalization, is one where Courts from different regions and countries form a "judicial network of interpretations of rights that are derived from international instruments and internal law"[6] (Amaya, 2014:70). As Pizzolo states, "interjurisdictional dialogue appears as an instrument to build a much-needed consensus that permits to overpass conflicts derived from the interpretation of human rights" (2016:178)[7]. As has been marked by Jorge Amaya, the Argentine Supreme Court might have shown some reluctance towards interjurisdictional dialogue in the past, but it has transited a path from "unilateral monologue" to a constructive dialogue with other courts, especially for human rights issues (2014:70) just like the one here under discussion.

Furthermore, the Inter-American Commission of Human Rights, similarly, dealt with the applicability and extension of the right to private life concerning the expulsion of migrants under article 11 of the American Convention (1969). In Smith and Armendariz v. United States (2010), the Commission ruled that even though States have the sovereign right to control the entry and residence of non-nationals, the exercise of that right shall not undermine certain protections, claiming that "immigration policy must guarantee to all an individual decision with the guarantees of due process; it must respect the right to life, physical and mental integrity, family, and the right of children to obtain special means of protection". Even more, it ruled that a balancing test should be carried out to assert the "deportee's right to remain in a host country" vis a vis the right of the State to expulse a foreigner (par. 54) and while doing that test, States should consider social considerations on a broader sense (par. 54 and 55). Moreover, in Dominican and Haitian People Expulsed v. Dominican Republic (2014), the Court also arrived at a similar conclusion, as it ruled that deportations should be analyzed on an individual basis to address the particular implications of each affected person.

6 Translation is from the author, the original text says: "una 'red' jurídica de interpretación de los derechos reconocidos por los instrumentos internacionales y el Derecho interno".

7 Translation is from the author, the original text says: "el diálogo interjurisdiccional aparece entonces como un instrumento para construir los consensos necesarios que permitan superar los conflictos sobre la interpretación de los derechos humanos".

Indeed, it is true that the Inter-American Commission has not stated as clearly as the European Court the extension and connotations of the right to private life regarding deportations, particularly if it is considered the concurring decision of Judge Martens for the European case. Nevertheless, the Commission explicitly mentioned that the right to expel a foreigner is not absolute, contrarily, it is restricted by certain boundaries that are inherent to democracies such as, for instance, the social connections of the person in the welcoming country while it highlights the importance of individual analysis to address social particularities. All of these, at the same time, shall be interpreted along with the fact that the Argentine Supreme Court of Justice is also moving towards a paradigm of interjurisdictional dialogue. Therefore, this could be meaningful as other Courts elsewhere have argued and understood that there are elements to prevent the deportation of long-standing migrants, like their sense of settlement and rootedness in a country.

Thus, here it is argued that it would be wrong to assume that, as for the Argentine case, the absence of international sources that explicitly address the rights and procedures of non-nationals facing deportation would mean that what remains is a legal loophole. Contrariwise, and as it has been shown in this section, the international legal landscape is full of recommendations and dispositions that tend to establish the settlement criteria as a juridical step that the Argentine Republic ought to consider in these particular cases.

Section 3: Concluding words

Migration is a vast field of knowledge. It is in essence multidisciplinary, multistakeholder, and transnational. This research focused on one of the thorniest topics regarding people on the move: their expulsion. Even though deportation of migrants has been largely explored, some gaps continue to somehow remain unexplored. The extradition of a person always brings an element of vulnerability, but this is especially the case for those who are sent back to places where there is no social net to be backed up and to rely on. During the last months, the Argentine Supreme Court has released a series of decisions where dozens of migrants, who might not have acquired Argentinian citizenship but who still lived for years in the country, were expelled. Separating them from their families, children, and friends. These people end up finding themselves as aliens in places they are supposed

to belong to but that in reality, they do not. Thus, not only creating an overturn in Argentina's migration tradition but also forcing long-standing migrants to be in a situation of vulnerability.

This work has addressed the ways in which the existent norms, legislation and jurisprudence have dealt with the topic in question. As shown, indeed, there is no legal source from the national or the supranational level that directly and explicitly tackles this subject whatsoever. Nevertheless, digging deep into the transnational arena that Argentina is embedded in, it was possible to track back several different components that are of key prominence.

First, it has been shown that the sovereign right of a country to expel non-nationals has clear established boundaries such as the non-refoulment principle or family reunification. Nevertheless, other parameters can be considered to impede the expulsion to happen, such as the "social conditions" of the immigrant. Here, it has been argued that "social conditions" can (and should) also include the settlement condition of the migrant.

Second, by digging into the Argentine Constitution, this work has also shown how there are several different elements from which is possible to derive a "legal theory" to support the existence of a right to settlement. This right would not only apply to Argentine nationals but, when analyzed in combination of principles emanated from the Constitution and other legal instruments (such as the Argentine Migration Law), also to third-country nationals.

Third, this piece has extensively looked at different legal instrument from which it is possible to derive a series of principles to support the thesis here expressed. These principles are: the human-rights, universal and human-sensitive approach adopted in extensive national legislation, the equal civic rights approach among nationals and non-nationals regardless of their (ir)regular status, the need of individual analysis of each case that might derive in extradition, the awareness regarding the social components that surround migrants, their lives, and the impact of their deportation, the apprehension on a broad sense of the right to inhabit their own countries and, lastly, the assimilation of private life as a right that non-nationals also hold.

Moreover, (transnational) law does not occur on an empty vessel, contrarily, it takes place in a certain country, with a certain set of traditions and history. In this sense, none of the previous arguments should be addressed without understanding the long-standing Argentine tradition of openness and friendliness towards migration that can be found even before the political constitution of the country, its willingness to regularize migrants

with irregular status and the human rights perspective of its migration laws. As in any other republican system, Argentine judges are not expected to, and should not, create legislation but to follow the existent legal framework. The law is the law, but it is also a matter of interpretation and that interpretation, for the Argentine case, cannot be held in isolation of those structuring and historical principles.

In light of this evidence and coming back to the research question that this work aims to reply and the hypothesis here articulated, it is possible to positively reply to the inquiry: there exist legal grounds to affirm that the settlement of a migrant can be considered as a criterion to prevent someone like Mr Huang to be sent back to a place that is unknown to him. Likewise, the Argentine Supreme Court of Justice has made a series of steps that not only ignore important pieces of the transnational legal landscape that Argentina is placed in but, even worse, pushes long-standing migrants into a (more) vulnerable situation.

Securing that no one is deprived from entering to his/her country is an endeavour that does not stop with co-nationals. Contrarily, it is a principle that goes beyond the site that someone has been born to include those places where people put down roots, create social bonds and find themselves.

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