

**THE ARGENTINIAN RECKONING WITH THE PAST.  
BETWEEN THE TRUTH, RECONCILIATION  
AND STRIVING FOR JUDGING PEOPLE WHO ARE  
CULPABLE**

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The dictatorship of military junta inflicted on the Argentinian society many injuries, which have been painful till today. Thousands of people were followed, kidnapped, tortured, killed, and children of arrested pregnant women were captured and given to adoption<sup>1</sup>. After lost Falklands-Malvinas War and the decline of bloody regime, victims' families began long way of exposing the truth about crimes committed by the servicemen, and politicians confronted difficult task (or challenge), which was the reconciliation of society.

An Argentinian transition was taking place in context of economic, political and social crisis and also difficult international situation. The authors of publication "Argentina, 15 años después", H. Gaggero, A. Iriarte and H. Roiberg, indicate that at the turn of 70's and 80's new democratic authorities confronted with couple of important challenges. They list i.e. political instability, necessity of subordination the services to civil authorities and fixing their new role in society, breaking through an international ostracism and overcoming of economic crisis<sup>2</sup>. In the space of those years one can notice that the radicals being in power in the 80's concentrated on the political-institutional issues, and ruling in the 90's president Carlos Menem on economic issues.

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<sup>1</sup> This issue is brought up in a film titled "La historia oficial", which won the Oscar award for the best foreign movie in 1984.

<sup>2</sup> Gaggero H., Iriarte A., Roiberg H., *Argentina, 15 años después. De la transición a la democracia al menemismo (1982-1997)*, Buenos Aires 1997, p. 11.

Yet before the final decline of military junta, the authorities allowed to run political parties. They created so called Multipartidaria, that consisted of containing the Justice Party (Partio Justicialista, PJ), Citizen Radical Party (Unión Civico-Radical, UCR), Movement of Integration and Development (Movimiento de Integración y Desarrollo, MID), Christian Democratic Party (Partido Demócrata Cristiano, PDC) and Partido Intransigente, which submitted important document to the authorities on 17<sup>th</sup> of December 1982 after mass demonstration. Some part of its postulates was in R. Alfonsín's manifesto, i.e. a distinction of responsibility grades for committed crimes, a desire to possibly fastest closure of an issue connected with breaking the human rights, a necessity of "self-purification" of the services<sup>3</sup>. Junta submitted similar manifesto, but it met with definite objection. In the face of total calamity in military area, loss of political initiative for the benefit of united then trade unions, politicians and organisations defending human rights who wanted immediate election, ending martial law and reckoning with the past, gen. Bignone announced the accelerated election for the end of 1983.

It is worth to emphasize that arguments in the services were noticed already at the end of 1982, and then they systematically stratified (with an apogee in 1987–1988). When on 19<sup>th</sup> of February 1983 air forces declared initiation of proceedings against Martínez de Hoz, and former director of Federal Police revealed details of repressions' system, the head office of detention centres, some retired servicemen, seeing the situation, called for its "forcible modification" and coming back to *status quo*<sup>4</sup>.

Before giving power back, junta submitted few more documents: in April 1983 – "Documento final sobre la guerra contra la subversión y el terrorismo" and "Acta Institucional". In the first one the servicemen took there the part of responsibility for a "dirty war" (*guerra sucia*), but they emphasized that the services took power "on application" of civil authorities (ruling then Isabela Peron) with great support of the society. At the same time the document denied the existence of secret centres, where were kept and tortured people suspected of sedition (so called *subversión*). The second one claimed that operations performed by the services were supposed to be seen as "acts of military service" and e.i. they could not be punished. In September that year military junta made one more attempt to warranting itself an impunity. It was written in Decree nr 22924 about so called "self-amnesty" saying that crimes committed by the services between 25<sup>th</sup> of May 1973 and 17<sup>th</sup> of June 1982 would not

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<sup>3</sup> Canelo P. "La descomposición del poder militar en la Argentina. Las Fuerzas Armadas durante las presidencias de Galtieri, Bignone y Alfonsín", [in:] Pucciarelli A. (ed.), *Los años de Alfonsín. ¿El poder de la democracia o la democracia del poder?*, Buenos Aires 2006, p. 81–82.

<sup>4</sup> Ibidem.

be punishable<sup>5</sup>. They also passed Decree nr 2726/83 which was to destroy all military documents confirming using repressions and tortures towards citizens<sup>6</sup>. According to P. Canelo, "Documento final" divided the Argentinians - some of them definitely rejected it, others wanted to see in it part of self-criticism. Self-amnesty confronted with mass objection and social rejection<sup>7</sup>.

The issue of self-amnesty and the attitude of politicians from different parties to it, as next years showed, appeared to be decisive for the first president election after long break.

### 1. PRESIDENCY OF RAUL ALFONSIN<sup>8</sup>.

The specialists divide R. Alfonsin's presidency into three basic stages, in which particular issues were dominating:

- a) 1983–1985 – the emphasis was put on the political-institutional issues. That period was characterised by, e.g. great social mobilization and ended with economic crisis;
- b) second stage – 1985–1987 – was an attempt to overcome economic crisis and carrying into effect so called Austral Plan and also changes in foreign affairs. It ended with the rebellion of servicemen and the victory of the Peronists in by-election to parliament in April 1987;
- c) last two years of R. Alfonsin's presidency, 1987–1989, first of all the decrease of support for him occurred, as well as the loss of political initiative by government and deepening of economic crisis<sup>9</sup>.

In every mentioned stage and during the election campaign in 1983, issues of human rights, truth, reconciliation and problem of subordinating the services to civil structures, decelerating their role and influence on political system, were very important, if not dominating.

Then what decided about R. Alfonsin's victory? Researchers claim that from one side his own merits and "socially attractive" manifesto, from the other side, the mistakes of opponents. He stood decidedly against all forms of authoritarianism. He

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<sup>5</sup> All documents are on the website [www.desaparecidos.org](http://www.desaparecidos.org).

<sup>6</sup> [www.comisionparlamentaria.org](http://www.comisionparlamentaria.org), Comisión Provincial por la Memoria, *30 años con memoria*, p.8.

<sup>7</sup> Canelo P., op.cit., p.86.

<sup>8</sup> More about full presidency of R. Alfonsino in: Nowak A., "Transition in Argentina – presidency of Raul Alfonsino (1983–1989) as an example of delegative democracy", *Political Science Review*, nr 4, 2006. p. 101–118.

<sup>9</sup> Gaggero H., Iriarte A., Roiberg H., op.cit., p. 35

assured that he would judge people culpable for the crime of genocide, proposing three grades of responsibility. He thought that the army would agree for this compromise solution and at the same time it would satisfy the expectations of Argentinian society. The crucial fact was also the exposure by him the military-union pact in April 1983. According to that, the Peronists (who were sure about their victory in president election) promised the servicemen “forgetting” about their guilts, not instuting inquiries about 30 000 missing people and holding previous commanders on their positions. An exposure of that fact was used by R. Alfonsin to distance himself from both inter-parties contrcandidates and authoritarian regime. An important part of his election campaign was the issue of human rights, especially cases of their breaking as well as the problem of regime’s consolidation and including in its creation entrepreneurs, unionist, servicemen and the Church<sup>10</sup>.

Alfonsin’s victory awakened in Argentinian society faith in rebuilding democracy and hope for normalization of country’s situation. At the day of adjuration he announced that he “would bequeath in hands of Justice an important task of evading the impunity”<sup>11</sup>. Raul Alfonsin had then great support of the Argentinians and maybe that’s why he believed that democracy was enough to raise Argentina from economic crisis and to heal social situation, while at the same time being confronted with great challenge of solving military issue, Peronists’ unionized hegemony, huge foreign debt and economic-military inheritance from military dictatorship<sup>12</sup>.

#### 1.1. RETURN TO DEMOCRATIC RULES AND BEGINNING OF THE CONADEP COMMISSION (1983–1985)

Main pressure in those years was put on: rebuilding the rule of law, removing anti-democratic rules inherited from dictatorship and reinforcing guarantee of the compliance with human rights. Soon it appeared to be impossible to create wide social front which would make quick conducting of reforms easier. Trade unions, which role president wanted to limit, cautiously observed his activities. Similar situation was in the services. They reacted for the appeal of “self-purification” with indignation. It was the first sign of army’s disobedience towards democratically chosen authorities. It caused a necessity of revision relations between the services and president.

<sup>10</sup> Romero J.L., *Breve historia contemporánea de la Argentina*, Buenos Aires 2006, p. 249.

<sup>11</sup> Rabossi E., “Veinte años después. Acerca de la Conadep”, *UBA: encucijadas*, nr 30, March 2005, p. 19.

<sup>12</sup> GAP Argentina, *Veinte años de Gobiernos Civiles en Argentina*, [in:] [www.ciudadpolitica.com](http://www.ciudadpolitica.com), p.3.

In his speech on 13 December 1983, Raul Alfonsín regarded self-amnesty of military junta as “morally impermissible and politically irresponsible”. On 29<sup>th</sup> of December 1983 by Decree nr 157 and 158 he ordered instituting the inquiries, both against three first members of the junta<sup>13</sup> and members of the leftist civic guerilla warfare – ERP and Montoneros<sup>14</sup>. It is worth to add that in the Decree nr 158 in Article 3 appeared for the first time mentioned three grades of responsibility for crimes committed on civilians. By the Act nr 23 040 president repealed self-amnesty, and by Decree nr 187 from 19<sup>th</sup> of December 1983 he ordered raising the Commission, which was to explore cases of abductions and murders committed by servicemen. As it appeared later, the Commission and its works divided Argentinian society. Some part of citizens was ready to forget and not scratch injuries done by the junta. At the same time president wanted to hold high position of the army for himself, and as it seems, according to the policy of different grades of responsibility, to maximally limit number of inquiries and legal proceedings for fear of the services’ reaction. That’s why judging the servicemen was handed to the Highest Council of the Services (Consejo Supremo de las Fuerzas Armadas, CONSUFA), which had only six months to begin inquiries (and in many cases was delaying). Also military penal code was quickly reformed - there appeared entries about absolving from penal liability in case of obeying orders of an officer of higher rank. Despite undertaken steps, the issue of services in changed conditions stayed open, and conflict between civil and military institutions not only was not limited, but it deepened even more.

Politicians confronted with difficult challenge, which was to redefine the services’ role and work out new military doctrine<sup>15</sup>. In short time the decisiveness of army was decelerated, hierarchy was modified, there occurred the restructuring of the Ministry of Defence, and for the time of planning military operations specific general headquarters were subordinated to Chief of United General Headquarters (Jefe del Estado Mayor Conjunto, EMCO). The highest military rank was reserved for president. It is worth to add that gen. Viola and gen. Videla, against whom penal proceedings were already conducted, were present at the formal delegation of power and appointment gen. J.H. Arguindegui of a Chief of General Headquarters. It was an apparent manifestation of power and impunity<sup>16</sup>.

Issues, which in time became very important, were both a decreasing salary of servicemen (about 25%) and an expenditure for army (from 4,2% in 1981 to 2,3%

<sup>13</sup> I.e. Videla, Agost, Massera, Viola, Graffigno, Lambruschini, Galtieri, Dozo and Anai.

<sup>14</sup> At the beginning of 1984 he managed by Decree 280/84 an inquiry against former Chief of Police of Province Buenos Aires, gen. Ramon Camps.

<sup>15</sup> Canelo P., *op.cit.*, p. 90

<sup>16</sup> Comisión Provincial por la Memoria, *30 años con memoria*, [in:] [www.comisionparlametaria.org](http://www.comisionparlametaria.org), p.9.

in 1986). After 1983 proportions of distribution of these assets changed. Previously, greater part was obtained by the services. In changed political situation money were directed to the Ministry of Defence and the services themselves felt results of decreased expenditure most painfully. In addition, civil authorities pensioned off i. a. 35 generals and 17 admirals, who were associated too strongly with the past<sup>17</sup>. According to P. Canelo, those reforms were limited mostly only to attempts to discipline the services and could not end with success, because there lacked redefining army's role in political system, and that in turn resulted in feeling uncertainty about their own further fortune<sup>18</sup>.

First, although small and quickly repressed signs of conflict and discontent in the services were to be observed in half of 1984 in province Córdoba. Both of rebellions were signs of a split in the army, horizontal crisis – between rebellious lower rank soldiers and their principals (it was about i.a. not letting members of the CONADEP Commission in barracks)<sup>19</sup>. Gen. Videla stood there up to speak then. He exhorted to give honors to the army which overcome internal enemy, and he was accompanied by gen. S. de Bustamante, praising courage and honour of soldiers who confronted with “international ideological enemy”. The result of these events was the replacement gen. Arguindegui with general Ricardo Pianta, who at the end of August 1984 started to talk favourably about the amnesty. First, although quickly repressed discontent of the services was to appear as only the prelude to events in 1986 and 1987.

After few months of work, in September 1984, the CONADEP Commission published results of its work. It revealed in the report titled “Nunca mas” (“Never Again”) the existence of about 340 centres, in which people suspected of sedition (*subversión*) were kept and interrogated, about 500 cases of illegal adoption of children by soldiers and more than 9 000 victims of repressions<sup>20</sup>. The results of Commission's work were to become indictments against servicemen and to make instituting legal proceedings easier. But attempts to judge people culpable for crimes met with series of difficulties. Although the servicemen gave power back unconditionally (so called *colapso*) and it would seem that their possibilities were very restricted, as well as failure in many areas of activities would make negotiations or blackmail impossible, it appeared that executive authority is so weak that couldn't oppose to pressure of the services. Other issue, as E. Bulygin points, was the fact that Argentinian penal code did not await judgement for crimes committed collectively – by security forces or an army. Other problem appeared to be not putting down in

<sup>17</sup> Fraga, *La cuestión militar 1987–1989*, Buenos Aires 1989, p. 117.

<sup>18</sup> Canelo P., op.cit., p. 91.

<sup>19</sup> Canelo P., op.cit., p. 94.

<sup>20</sup> Rabossi E., op.cit., p. 21.

penal code the crime of genocide. That's why courts could administer justice only for certain cases – kidnappings, tortures or murders. Often CONSUFA itself was undermining credibility of testimonies of junta's victims, e.g. gen. S. de Bustamante claimed that you couldn't condemn somebody only on the basis of testimony of people who were tortured or missing people families<sup>21</sup>.

#### 1.2. FROM MILITARY PROCESS TO THE REBELLION IN BARRACKS (1985–1987)

In following years of his presidency, R. Alfonsín continued restrictive services policy. From one side he cared about disciplining “innocents” (*inocentes*) and show-trials of “culpable” people (*culpables*)<sup>22</sup>. Although an issue of judging culpable people seemed to be easy, situation became more and more complicated in the course of time, and the services more and more ran to the side of “not cooperation” and getting an autonomy of their actions. The process at the Supreme Court finished with life imprisonment for gen. Videla and gen. Massera, four years of prison for Agosti, 16 for gen. Viola and 8 for gen. Lambruschini. There were 66 murders, 306 kidnappings, 97 cases of using tortures and 26 robberies convicted gen. Videla, gen. Massera accordingly 3, 69, 12 and 7; Agosti sentenced for 8 cases of abuse and 3 robberies, gen. Viola for 86 kidnappings, 11 cases of using tortures and 3 robberies and Lambruschini for 35 kidnappings and 10 cases of abuse. Other members of juntas were acquitted<sup>23</sup>.

Human rights organisations (e.g. the Mothers from May Square, the Grandmothers from May Square) were upset by that sentences, and they considered punishments as inadequate to done acts. It didn't change the fact, and it should be emphasized, that those processes were the first civil proceedings against former dictators in history of Latin America. On the one hand they became cornerstones for democracy, signs of regim's decline, on the other hand they contributed to increase of the servicemen' discontent.

Legal proceedings, lasting constantly from 1985, resulted in great discontent of lower rank servicemen, who didn't feel responsible for crimes and considered themselves only as obeying generals' orders. Distinctive for this period was an issue of Alfredo Astizo, lieutenant of navy in ESMA, convicted for kidnapping and shooting

<sup>21</sup> Bulygin E., *Procesos penales por violación de Derechos Humanos*, [in:] <http://islandia.law.yale.edu/sela/sbulygin.pdf>, p.VI-6.

<sup>22</sup> Pion-Berlin D., “Entre la confrontación y la adaptación: los militares y la política gubernamental en la Argentina democrática” [in:] López E., Pion-Berlin D., *Democracia y cuestión militar*, Buenos Aires 1996, p. 65–68.

<sup>23</sup> Ageitos S.M., *La historia de impunidad Argentina (1976–89): desde las actas del Proceso a los indultos de Menem*, Ko'aga Roñeteta, 1997, p. 27–28.

under age Dagmar Hagelin. It finished by famous phrase of gen. Borrás that “state can’t live further with an open wound and it should be finally dotted”<sup>24</sup>. By that the foundations were built for the other two, right then edited, laws of president R. Alfonsín<sup>25</sup>.

One might have noticed weird situation or maybe even an agreement – civil authorities limited maximally a number of legal proceedings (resigning from manifesto of reckoning with the past and convicting culpable people in favour of “political pragmatism”), in return of that military authorities were to keep inferiors’ moods on a tight rein<sup>26</sup>. The prelude to so called “Full Stop Law” (“*punto final*”) were Instructions from 24 April 1985, which plead unguilty those who while detaining and torturing were obeying principals’ orders. Admittedly they met with great social objection (marches and demonstrations took place constantly from July)<sup>27</sup>, but both civil and military authorities defended them by saying e.g. that you couldn’t be under charge for too long. Still unsolved was the issue of the services’ role in political system, new defensive doctrine was not precised and each service tried to enforce its vision of future rules. The servicemen supported “Full Stop Law”, in turn human rights organisations and even some UCR politicians considered them as “an ethical capitulation of executive authority”<sup>28</sup>. Despite that, it came into force on 22<sup>nd</sup> December 1986. There was submitted e.g. 60-day-period in which it was allowed to bring new suits<sup>29</sup> and it was emphasized that the “Full Stop Law” didn’t include issues connected with “stealing children” and casual robberies. It was a very clever act, because holidays and vacation were coming, which meant that number of new inquiries would be maximally decreased. Such an apparent attempt to legalize impunity met with completely opposite result. Not only did the courts suspend leaves and break in their functioning, but also they radically accelerated investigations and giving bills of indictment. All in all they began about 400 new cases<sup>30</sup>.

<sup>24</sup> Verbitsky H., *Civiles y militares*, Buenos Aires 2003, p. 174–182.

<sup>25</sup> More about Dagmar Hagellin, her kidnapping and death [in:] <http://www.yendor.com/vanished/junta/acosta.html>; <http://www.desaparecidos.org/arg/tort/acosta/eng.html>; <http://news.bbc.co.uk/1/hi/world/americas/1420618.stm>; <http://www.hrw.org/english/docs/2001/07/27/argent503.htm>.

<sup>26</sup> Canelo P., *op.cit.*, p. 101.

<sup>27</sup> Adolfo Pérez Esquivel called Instructions “impunity, capitulation and hidden amnesty”.

<sup>28</sup> On 24<sup>th</sup> of March 1987 on next anniversary of military coup d’état there was a march in which about 15 000 people took part.

<sup>29</sup> According to great social resistance the period of bringing new suits was prolonged from 30 to 60 days.

<sup>30</sup> Pucciarelli A.R., “La República no tiene Ejército. El poder gubernamental y la movilización popular durante el levantamiento militar de Semana Santa”, [in:] Pucciarelli A. (ed.),



During two months of act being in force and “movement” in judiciary, a number of “guilty” servicemen was definitely bigger. The services confronting new proceedings of course didn’t like that. General Ríos Ereñú admonished even of radicalisation of lower rank servicemen’s moods. Society however demanded “truth, judgement and infliction”<sup>31</sup>. Yet in February colonel Aldo Rico submitted critical document in which he described situation of the services, the strategy taken by the generals about the processes. After some time it became the manifesto of rebellious servicemen’s group. Their basic aim was to obtain the guarantee of amnesty for all servicemen taking part in war against the subversives, and weakening the position of some generals (e.g. Ríos Ereñú)<sup>32</sup>.

At the Easter time in 1987, rebellious servicemen (so called *carapintadas*) under Aldo Rico’s command decided to leave conciliatory policy and take over the initiative, evoking *ipso facto* serious political crisis. They occupied barracks Campo de Mayo and demanded the end of investigations and the revision of those already finished. As researchers point, as opposed to other similar insurrections, it didn’t undermine institutional order itself, and servicemen themselves didn’t have support of any of society’s sectors. First of all, it was about questioning the activity of higher rank servicemen by lower rank soldiers<sup>33</sup>. Argentinian society answered by spontaneous support for democracy and saw that situation as an attempt of coup d’état. There appeared also a group, both in government and outside of it, which claimed that the amnesty is the only possible solution of military issue.

On the one hand, none of generals supported *carapintadas*, but also did nothing to finish insurrection. Ríos Ereñú himself proposed developing new consensus in the form of an act, which would have taken into account three grades of responsibility. Rebellious Aldo Rico demanded four postulates: not judging rebellious soldiers, throwing out general Ríos Ereñú and his close co-workers, the assurance of bringing into force an act exculpating soldiers “who had just obeyed orders” and finishing the media campaign aiming to discredit the services<sup>34</sup>. The result of that week was bringing into force next act nr 23521 on 5<sup>th</sup> of June 1987 about so called “due obedience” (*obediencia debida*), according to which servicemen were divided into those who gave orders, those who obeyed orders and those who exceeded authority in obeying

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*Los años de Alfonsín. ¿El poder de la democracia o la democracia del poder?*, Buenos Aires 2006 p. 118.

<sup>31</sup> Pucciarelli A.R., op.cit., p. 117.

<sup>32</sup> Ibidem, p.119.

<sup>33</sup> Bulygin E., op.cit., p. 59–61; Romero J.L., op.cit., p. 250.

<sup>34</sup> Pucciarelli A.R., op.cit., p. 132.

orders. Additionally general Ríos Ereñú was taken away from power and replaced with gen. Dante Caridi, next 15 generals were pensioned off. “Full Stop Law” resulted in instituting 750 new processes, and “Due Obedience Law” annulled 430. There were totally 20 trials, from which only 7 finished with sentencing verdicts<sup>35</sup>.

For those who wanted judging people culpable for crimes it was first important sign of weakness of democracy in Argentina. Raúl Alfonsín, as researchers point, got stuck between his own human rights policy and a need of decreasing liberty of army<sup>36</sup>. On the one hand, he defended rebellious servicemen, claiming that he avoided bloodshed and *ipso facto* reinforced democratical institutions. On the other, different solutions, for example forcible, could have revealed the weakness of Argentinian democracy and its ideology. It was a kind of an impasse – the services couldn’t gain unconditional amnesty, and civil authority – discipline army.

### 1.3. FIASCO OF R. ALFONSIN’S HUMAN RIGHTS POLICY (1987–1989)

Deepening economic crisis and the way of finishing servicemen’ rebellion in 1987 resulted in electoral failure of the radicals in the by-election to parliament. Basically unsolved issue of *carapintadas* had its continuation. In January 1988 Aldo Rico, reluctant to subordinate, ran away one more time from barracks and stirred up next rebellion, then in Monte Caseros in province Corrientes. That event didn’t really have great meaning, because it didn’t meet with support of servicemen. Definitely more important were events in December 1988, when colonel Mohammed Ali Seineldin (who fought in Falkland-Malvinas War and was considered as real leader of *carapintadas*) led to next insurrection. He demanded wide amnesty, reforms and “bigger respect of society”, raising salaries, appointment M. Saineldin of general and finishing “drive” for *carapintadas*. What’s interesting, even important sectors of the services agreed with him. There was also exposed an issue of soldiers salaries. It was said that army behaved then as a trade union fighting for rehabilitation of its members and raising salaries of workers<sup>37</sup>. Weakened authority agreed for demands of rebellious servicemen – salaries were raised and gen. Caridi was replaced with general Gassino.

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<sup>35</sup> Bonner M.D., “Defining Rights in Democratization: The Argentine Government and Human Rights Organizations, 1983–2003”, *Latin American Politics and Society*, 2004, vol. 47, nr 4, p. 61.

<sup>36</sup> Bulygin E., *op.cit.*, p. VI-10.

<sup>37</sup> Romero J.L., *op.cit.*, p 265.

## 2. THE PRESIDENCY OF CARLOS MENEM

Hyperinflation and catastrophic state of Argentinian economic, social discontent, lack of support for president R. Alfonsín, unsolved by previous authorities problem of the services and lasting for years processes of servicemen resulted in high level in the victory of Carlos Menem. Few stages like in previous president case may be distinguished. The characteristic feature of two cadencies of C. Menem was opting for solving economic crisis:

- a) in first two years of his presidency, C. Menem put emphasis on wide reforms and privatisation;
- b) next years, 1991–1994 occurred the liberalisation of economy, structural reforms were done and president's rights definitely increased (so called hyper-presidentialism);
- c) third stage was the second presidential tenure of C. Menem – some results of previous reforms were revealed, great social disproportions and an increase of unemployment, which resulted in appearing of oppositional hot spots in society.

If it's about civil-military issues, one may indicate two most important problems which president confronted with. First of them is ceaseless demand of the services for finishing reckoning with the past, second was about distinction in the army and *carapintadas* and their position in the services. Next years the services policy lost its importance and limited itself to including the army to foreign and economic policy of Argentina<sup>38</sup>.

### 2.1. SUBORDINATION OF THE SERVICES TO CIVIL AUTHORITIES (1989–1991)

During election campaign, and then at the beginning of his presidency C. Menem opted for “national pacification” (*pacificación nacional*) by “integral solution of problems which Argentina confronted with”<sup>39</sup>. Begun unclear dialogue with *carapintadas*<sup>40</sup> led to reprieves, both of servicemen taking part in insurrections and those who were earlier condemned of breaking human rights. There left unsolved conflict inside the services – between the general headquarter and rebellious *carapintadas*.

<sup>38</sup> Sain M.F., “Las Fuerzas Armadas y la política argentina”, *Argentina Reciente. Ideología y política contemporáneas*, nr 2, Buenos Aires 2004, p. 104-105.

<sup>39</sup> Sain M.F., “Vaivenes y eficacia de la política militar del primer gobierno de Carlos Menem (1989–1995)”, *FASOC*, nr 2, 1997, p. 15.

<sup>40</sup> More: Sain M.F., “Vaivenes...”, *op.cit.*, p. 18.

On 6<sup>th</sup> of October 1989, president declared (by decrees 1002/89, 1003/89, 1004/89 and 1005/89) first reprieve, which involved accordingly: servicemen, policemen and civilians breaking human rights during dictatorship; servicemen responsible for leading to conflict and failure in Falklands-Malvinas; rebellious servicemen and *carapintadas* participating in three mentioned rebellions in barracks and members of guerilla<sup>41</sup>. At the same time he reinforced position of the generals. The command was handed to “neutral” servicemen and he allowed of military proceedings against *carapintadas*, who were demoted in most cases. There was also sizeable politicization of the services – from that moment they would put the pressure and act almost as a trade union defending its sectoral interests.

One may notice one more interesting thing. Aldo Rico, responsible for first rebellions opted for political, even party, fight for his sector’s interests. In turn, colonel M. Saineldín preferred a way of violence, which in turn chose big part of *carapintadas* as well. On 3<sup>th</sup> of December 1990 they occupied the general headquarter of the Services, a factory of tanks TAMSE, a regiment Patricios and I Corps. Opposite to weak position of president R. Alfonsín at the end of his cadency, forces subordinated to president C. Menem obeyed his order and repressed rebellions. It was the biggest disobedience of the services after 1983. President described those situations as an attempt of coup d’état, and servicemen themselves were quite effectively politically neutralized (e.g. M. Saineldín was condemned for life imprisonment<sup>42</sup>).

However, despite existing situation and with huge social objection, president reprieved with decrees 2741/90, 2742/90, 2743/90, 2744/90 2745/90 and 2746/90, on the 29<sup>th</sup> of December 1990 next people. That time it was directed accordingly to: members of Junta – Videla, Viola, Camps, Massera, Agosti, Lambruschini; former chief of Montoneros – Mario Eduardo Firmenicho and i.a. Norma Kennedy, Martínez de Hoz, gen. Suárez Mason, who were condemned either for acts of state terrorism or economic crimes<sup>43</sup>.

According to M. Sain, this solution had two basic consequences – final end of processes and *ipso facto* breach with judicial revindication of the past, as well as an essential closure between president and the services, which resulted in effective control of the army<sup>44</sup>. This acting of president issued by a superior – by decrees, not by normal legislation process – met with a lot of criticism from human rights organisations.

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<sup>41</sup> [www.desaparecidos.org](http://www.desaparecidos.org)

<sup>42</sup> Romero J.L., op.cit., p. 283.

<sup>43</sup> C. Menem’s reprieves included totally 44 people. See: Bonner M.D., op.cit., p. 61.

<sup>44</sup> Sain M.F., “Vaivenes...”, op.cit., p. 15-16.

## 2.2. NEW FORMS OF ACTIVITIES OF ARGENTINIAN SERVICES (1991–1994)

C. Menem, by many reprieves, “solved” problem of reconciliation issuing by a superior authority and found new form of activity for the Services – sending the services to Iraq and also taking part in UN peace-keeping operations. For purpose of rapprochement with the United States of America, he decided to subordinate the services to foreign policy – he solved nuclear problem, called project “Condor II”<sup>45</sup>.

However state’s reform itself resulted in new frictions between president and army. Expenses from budget were reduced (to 1,74% GDP), part of public enterprises were privatized, employment was reduced and they replaced obligatory military service with the voluntary one<sup>46</sup>. In 1992 they also separated an area of national defence and internal safety. In the Act 24059 they listed institutions – federal and provincial police, national military police and prefecture of navy as responsible for the protection of freedom, life, inheritance of citizens and their rights. The services were omitted on purpose. However there were left loopholes, according to the article 27 of the Act, in which army could intervene: to serve police and safety forces with logistical help, and they could take control of situation in country<sup>47</sup> in case of not effective working of internal safety system,.

## 2.3. THE PARADOXES OF C. MENEM’S SERVICES POLICY (1994–1999)

Despite reprieves and changes in the highest military positions, an issue of repressions used by junta still created difficulties for the army. Public admitting by e.g. former captain Scilingo to put detained people to torture and throwing alive people to sea ( so called “*vuelos de la muerte*”) resulted in next nonsense. No charges could have been made to these people. They were unpunished because “Full Stop Law” was in force about “due obedience”, as well as reprieves established by president C. Menem<sup>48</sup>.

In face of revealing those horrible facts and the impunity of servicemen, there began the national debate, in which took part all social groups, political parties, human rights organisations and the government. Then general M. Balza, in speech on 26<sup>th</sup> of April 1995 submitted self-criticism, took on himself institutional responsibility for crimes committed by junta, confirmed usage of tortures and breaking

<sup>45</sup> Sain M.F., “Vaivenes...”, op.cit., p. 18–20

<sup>46</sup> Romero J.L., op.cit., p. 283.

<sup>47</sup> Sain M.F., “Las Fuerzas Armadas...”, op.cit., p. 112–113.

<sup>48</sup> More: Verbitsky H., *El vuelo*, Buenos Aires 2006.

human rights. According to M. Sain, he established by that the first step to include the services to democratical order<sup>49</sup>.

It is worth to add that despite the impunity of servicemen in Argentina there appeared “the light in tunnel”. According to international law, it was possible to institute processes in Europe and to file a petition for extradition and give verdicts *in absentia*<sup>50</sup>. It was a kind of paradox – only in Argentina people culpable for crimes were unpunished, and proceedings against them were provided for example in Spain or Italy<sup>51</sup>. By the end of 1990’s there was an intensification of activities in favour of judging culpable people, which positively influenced on crucial 2001<sup>52</sup>, when the period of servicemen impunity was definitely finished. On the 8<sup>th</sup> of April 2001 the Court of Appeal considered “the children of missing people’ right of historical truth about parents”, and in the High Court of Justice OAS Argentina regarded the rule that getting to know the truth was not a subject of limitation. There started an avalanche of statements of claim for “the right of Truth” (so called *juicios por la Verdad*<sup>53</sup>) and investigations about “stealing” children of missing people and their adoptions by families cooperating with junta<sup>54</sup>.

Analysing C. Menem’s presidency one can consider it on the one hand as a betrayal of the rules of human rights protection and democracy, but on the other hand it was used as a tool to calm down country and stop bloodshed. Two laws established yet by R. Alfonsín, and then corrected by C. Menem’s reprieves suspended for few years issues of responsibility for crimes. Policy of C. Menem led to subordination the services to civil institutions. However, as M. Sain emphasizes, it wasn’t the result of policy which would redefine the role of the army in political regime, but the result of specific situation in which Argentina was<sup>55</sup>.

<sup>49</sup> Sain M.F., “Vaivenes...”, op.cit., p. 16.; Romero J.L., op.cit., p 283.

<sup>50</sup> Parenti P., *Nuevas perspectivas en el tratamiento penal de las violaciones de DDHH en Argentina entre 1976 y 1983*, [w:] [http://www.lainsignia.org/2002/mayo/der\\_012.htm](http://www.lainsignia.org/2002/mayo/der_012.htm).

<sup>51</sup> E.g. activity of judge Baltasar Garzón Real, who in November 1999 began a trial against 98 Argentinian officers in Spain. In turn in Italy began a trial for missing more than 70 people of Italian descent.

<sup>52</sup> Significant cases of i.a. “Schwammberger” and “Priebke”.

<sup>53</sup> It is worth to add that yet in 1992 there was established National Commission on the Right to Identity; more: Bonner M.D., op.cit., p. 64–66.

<sup>54</sup> [www.comisionparlametaria.org](http://www.comisionparlametaria.org), Comisión Provincial por la Memoria, *30 años con memoria*, p. 15-17.

<sup>55</sup> Sain M.F., “Vaivenes...”, op.cit., p. 21.

### 3. 2001 CONSEQUENCES AND CURRENT STATE

The crucial moment was year 2001 and so called issue of Poblete's family and appropriation by military marriage of daughter of José Poblete and Gertruda Hlaczik, Claudia Victoria. Judge Gabriel Cavallo regarded that keeping and falsifying documents of little Claudia Victoria were crimes not included in amnesty acts. He claimed also that "Full Stop Law" and "Due Obedience Law" broke international rules (e.g. American Convention on Human Rights, Pact from San Jose, the Vienna Convention) and the article 29 of changed in 1994 Constitution of Argentina. One more time he emphasized that crimes committed by military junta were in a category of "crimes against humanity" (so called *crimenes de lesa humanidad*) and they are not subject of limitation<sup>56</sup>. After some time it was confirmed by the Congress (12<sup>th</sup> of August 2003) and the Supreme Court of Argentina (14<sup>th</sup> of June 2005). At the moment of announcing verdict, president N. Kirchner stated that the belief in jurisdiction was restored and the verdict was a "shout of clean air"<sup>57</sup>.

The presidency of N. Kirchner reinforced previously given direction of the policy of reckoning with the past, and he made from human rights one of the bases of his presidency. One of his first decisions was to pension off both part of the generals and police. A week after taking the office, he received in the Presidential Palace (Casa Rosada) human rights organisations and on 12 December 2003 he decided to create the National Memory Archiwe. On 28th anniversary of the coup d'état ESMA was transformed into the Museum of Memory. Also portraits of gen. Videla and Bignone were then taken off from Colegio Militar in El Palmar. During celebrations, admiral Jorge Godoy in ESMA submitted honest and deep self-criticism. According to BBC, it didn't meet with favour of part of generals who left ESMA's building<sup>58</sup> before the end of Godoy's speech.

### 4. SUMMARY

Processes against servicemen from 1980's could not be interprete only as a failure of R. Alfonsin's government. It should be taken into account that they were first civil proceedings against military junta in history of Latin America. Exposuring the truth

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<sup>56</sup> Guembe M.J. *La Invalidez de las Leyes de Amnistía en Argentina*, Fundación para el Debido Proceso Legal, Instituto de Derechos Humanos de la Universidad Centroamericana "José Simeón Cañas", 2001, p. 4.

<sup>57</sup> [www.bbc.co.uk/spanish](http://www.bbc.co.uk/spanish), 14<sup>th</sup> of June 2005.

<sup>58</sup> [www.bbc.co.uk/spanish](http://www.bbc.co.uk/spanish) 4<sup>th</sup> of March 2004.

by the CONADEP Commission was crucial. Pleading guilty by, e.g. gen. Balze meant also a change in servicemen attitude to the time of military dictatorship. Looking from the perspective of years, “obediencia debida” and “punto final” were regarded as a denial of democracy. However mentioned laws were consistent with R. Alfonsín’s manifesto. He didn’t want to sentence everybody, but just chiefs.

It seems that the process of reconciliation in Argentina hasn’t been finished, not to say that it was interrupted during the C. Menem’s presidency. That amnesty and “forgetting” policy one may explain as a way of closing some cycle of confrontations and scratching wounds. However, the amnesty can’t relate to the crimes against humanity and their own nation. As J.E. Méndez rightly points, the process of reconciliation is long-term, it assumes both the repentance of culpable people and forgiveness of the society. This is the closure of some stage in history of society and it can’t be realized by few decrees. Then amnesty issued by a superior has definitely opposite result than the desired one<sup>59</sup>.

Maybe the presidency of N. Kirchner would let for healing old wounds. Argentina has whole arsenal of means needed to begin again investigations of causes of each missing person. Despite the years goes by, an issue of breaking human rights in Argentina is still alive and although the Mothers from May Square stopped Thursday’s marches to the head office of president in Buenos Aires<sup>60</sup>, big marches against forgetting and impunity are still quite common.

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<sup>59</sup> Méndez J.E., “Derecho a la Verdad frente Grave Violaciones de Derechos Humanos, [w:] Curtis C., Abregú M. (red.) *La Aplicación de los Tratados sobre Derechos Humanos por los Tribunales Locales*, Buenos Aires, p. 531.

<sup>60</sup> On 26<sup>nd</sup> of January 2006 r. there was the last one march of the Mothers from the May Square. There occurred totally 1500 marches, and their president, Hebe de Bonafini, stated that they had no more enemy in Presidential Palace. Other organisations didn’t join her and they still organise marches and concerts of objection demanding exposing the truth about children; [www.bbc.co.uk/spanish](http://www.bbc.co.uk/spanish), 26 January 2006.



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