European Master’s Degree in Human Rights and Democratisation

European Inter-University Centre for Human Rights and Democratisation

“Public Space as a Social Conflict”
Regional and International approach of the Argentine Case

Cristiana María Domínguez
Supervisor: Jean-Paul Jacqué
2011-2012
Dedicated to the ones I love the most,

My mother, who I always keep in my heart...

My father, for his eternal support and example of struggle...

My brother, whom I deeply admire...
Acknowledgments

Many have contributed their bit for this investigation to be possible.

I would like to express my gratitude to Pablo Saavedra Alessandri and Horacio Piombo, who recommended me to fulfil these studies, to the Inter-University Centre of Human Rights and Democratisation (EIUC) for providing me this opportunity, to María del Carmen Falbo, since without her approval I would have hardly attended the Master, to Florencia Bonetti and Graciela Martres for their unconditional logistical support, to Aníbal Acosta, for his tenacious long distance collaboration, and to those who cooperated in several aspects: Enrique Capdevilla, Juan Montero Aroca, Guido Aguila Grados, Joseph Campos Torres, Gustavo Calvinho, Germán Bauché and Dario Bonetti.

To my father and my brother, for their long distance support…
Abstract

Argentina leads the ranking of its region, occupying the first position in terms of citizen participation in social protests.

Accordingly, public space proves to be a daily point of conflict. On the one side, stand those who exercise the rights to freedom of expression, to freedom of assembly and to petition the authorities; in short, the right to protest. On the other side, stand those whose freedom is affected as their circulation is obstructed by the blocking of roads, bridges, avenues and accesses.

Beginning with a historical-quantitive analysis, this investigation will continue with a reflection of the related regulations, the academic reception and the case law activity at a national scale. On a different level of analysis, it will portray a regional, European and universal approach on the subject.

The issue of the protests is approached from both its peaceful and violent aspects, from the point of view of tolerance and illegality, without ever losing sight of the role of the State. This investigation is an attempt to reconcile international concepts and standards in order to reach a fair balance of interests.
Abbreviations

ADRDM / American Declaration of the rights and duties of man
ACHR / American Convention on Human Rights
ECHR / European Convention on Human Rights
ECtHR / European Court of Human Rights
ECJ / European Court of Justice
IACHR / Inter-American Commission on Human Rights
IACtHR / Inter-American Court of Human Rights
ICCPR / International Covenant on Civil and Political Rights
ICESCR / International Covenant on Economic, Social and Cultural Rights
ICERD / International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW / Convention on the Elimination of All Forms of Discrimination against Women
CAT / Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC / Convention on the Rights of the Child
WG / Working Group on Arbitrary Detention
p. / Page
pp. / Pages
para. / Paragraph
paras. / Paragraphs
Infra / see indicated note below
Supra / see indicated note above
# Table of contents

INTRODUCTION................................................................................................................. 9

CHAPTER I
EMERGENCE OF PIQUETES AND ITS QUANTIFICATION OVER TIME........... 11
   A) On its emergence...................................................................................................... 11
   B) Quantification of the Protests............................................................................... 18
   C) Conclusions............................................................................................................ 25

CHAPTER II
ARGENTINE LEGISLATION AND ACADEMIC APPROACHES................. 27
   A) Argentine Constitution............................................................................................ 27
      A.1) Analysis of the provisions............................................................................. 28
      A.2) Right to petition the authorities................................................................. 28
      A.3) Right of assembly and association............................................................. 30
      A.4) Right to freedom of expression................................................................. 32
      A.5) Right to freedom of movement................................................................. 34
   B) Argentine Penal Code............................................................................................. 36
   C) Academic approaches............................................................................................ 39
   D) Conclusions............................................................................................................ 42

CHAPTER III
ARGENTINE CASE LAW.............................................................................................. 43
   A) Argentine Judgments............................................................................................. 43
      A.1) The Schifrin case......................................................................................... 43
      A.2) The Alais case............................................................................................... 45
      A.3) The Gatti and Natera Case.......................................................................... 47
      A.5) Case “Grigor and Peralta”.......................................................................... 49
      A.6) Case “Márquez, Diego – Reports Roadblock”. Appeal............................. 50
A.7) Case “Squadron 56 Gualeguaychú of National Gendarmerie – Roadblock” ................................................................. 51

A.8) “Ruling on the matter of jurisdiction”, Supreme Court of Justice of the Nation ......................................................... 52

B) Decision of Court of Arbitration “Ad hoc” of the Mercosur. Freedom of movement in context of international accesses. Uruguay ........................................... 53

C) Conclusions .................................................................................................................. 56

CHAPTER 4
USA AND PERU CASE LAW .................................................................................. 58

A) United States of America ......................................................................................... 58

B) Peru .......................................................................................................................... 59

C) Conclusions .............................................................................................................. 61

CHAPTER 5
INTER-AMERICAN HUMAN RIGHTS PROTECTION SYSTEM ............... 62

A) Inter-American Commission on Human Rights - Approaches to public demonstrations ........................................................................... 62

B) Inter-American Court of Human Rights ............................................................. 69

B.1) Advisory Opinion 5/85 ...................................................................................... 70

B.2) Judgments ........................................................................................................... 71

C) Conclusions .............................................................................................................. 72

CHAPTER 6
EUROPEAN CASE-LAW ....................................................................................... 74

A) European Court of Human Rights ...................................................................... 74

B) European Court of Justice .................................................................................... 77

C) Conclusions .............................................................................................................. 79

CHAPTER 7
UNIVERSAL HUMAN RIGHTS PROTECTION SYSTEM ....................... 80
Public space as a social conflict: regional and international approach of the Argentine case

Dominguez, Cristiana Maria

https://doi.org/20.500.11825/704

Downloaded from Open Knowledge Repository, Global Campus’ institutional repository