

# Sexualidad, Salud y Sociedad

REVISTA LATINOAMERICANA

ISSN 1984-6487 / n. 26 - ago. / ago. / aug. 2017 - pp.68-84 / Monte, M. / [www.sexualidadsaludysociedad.org](http://www.sexualidadsaludysociedad.org)

## Abortion, sexual abuse and medical control: the Argentinian Supreme Court decision on F., A.L.

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<http://dx.doi.org/10.1590/1984-6487.sess.2017.26.04.a>

**Abstract:** In Argentina, during the 2000s but increasingly since 2005 up to 2016, women and feminist's organizations and lawyers disputed over the abortion juridical regulation at Courts facing conservative resistances. These disputes could be located in a broader process of judicialization of the socio-political conflict over abortion. The Argentinian Supreme Court took a decision over one of these judicial processes on March 13<sup>th</sup>, 2012, F., A.L. This paper analyses the Argentinian Supreme Court decision on F., A.L. regarding non-punishable abortion boundaries, medical and judicial practices and, specifically, sexual abuse and medical control. It also analyses its material effects on a subsequent struggle and judgment in the province of Córdoba.

**Key words:** abortion, feminism, conservatism, judicialization, feminist socio-legal studies

### **Aborto, abuso sexual e controle médico: a decisão da Suprema Corte Argentina sobre F., A.L.**

**Resumo:** Na Argentina, durante os anos 2000, especialmente entre 2005 e 2016, organizações de mulheres e feministas e advogadas feministas disputavam sobre a regulamentação jurídica do aborto em tribunais que enfrentavam resistências conservadoras. Essas disputas podem ser localizadas em um processo mais amplo de judicialização do conflito sociopolítico em relação ao aborto. Em 13 de março de 2012, o Supremo Tribunal argentino decidiu um desses processos judiciais, o caso F., AL. Este artigo analisa essa decisão do Supremo Tribunal argentino no que tange aos limites do aborto não punível, às práticas médicas e judiciais e, especificamente, ao abuso sexual e controle médico. Também analisa seus efeitos materiais sobre uma subsequente luta e julgamento na província de Córdoba.

**Palavras-chave:** aborto, feminismo, conservadorismo, judicialização, estudos socio-legais feministas

### **Aborto, abuso sexual y control médico: la decisión de la Corte Suprema de Justicia argentina sobre F., A.L**

**Resumen:** En la Argentina, durante los 2000 e incrementalmente desde el año 2005 hasta el 2016, organizaciones de mujeres y feministas así como abogadas feministas disputaron sobre la regulación jurídica del aborto en los tribunales frente a resistencias conservadoras. Estas disputas pueden inscribirse en un proceso más amplio de judicialización del conflicto sociopolítico sobre el aborto. En uno de esos procesos judiciales decidió la Corte Suprema de Justicia de la Nación el 13 de marzo del 2012, F., A.L. Este artículo analiza la decisión de la Corte Suprema sobre los límites del aborto no punible, las prácticas médicas y judiciales y, específicamente, al abuso sexual y el control médico. También analiza sus efectos materiales en una disputa judicial posterior en la provincia de Córdoba.

**Palabras clave:** aborto, feminismo, conservadurismo, judicialización, estudios socio-jurídicos feministas

## Abortion, sexual abuse and medical control: the argentinian supreme court decision on f., A.L.

### Introduction<sup>1</sup>

The practice of abortion is criminalized in Argentina through the article 85 of the penal code, in force since 1922. The article 86, however, establishes the following situations of non-punishable abortion cases:

...Abortion performed by a qualified doctor with the consent of the pregnant woman is not punishable in the following cases:

1<sup>st</sup> If it was performed in order to avoid risk to the mother's life or health, and if this danger cannot be avoided by other means.

2<sup>nd</sup> If the pregnancy is the result of rape, or of an attack to the modesty of an insane or idiot woman. In this case, the consent of her legal representative has to be required to perform the abortion practice<sup>2</sup>.

Modifications of non-punishable abortion regulation could be traced back to the inclusion of abortion practice in the penal code. However, it was the feminist struggle that marked a difference in the disputes over the modifications of the aforementioned regulation (Brown, 2008; Anzorena & Zurbriggen, 2013; Bellucci, 2014), opposing itself to conservative resistances gathered around the pro-life movement in a broader process of «reactive politicization of religion» and «strategic secularism» (Vaggione, 2005: 240, 243).

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<sup>1</sup> This article was elaborated in the context of the INCASI Network, a European project that has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie GA No. 691004, coordinated by Dr. Pedro López-Roldán. This article reflects only the author's view and the Agency is not responsible for any of the information it contains.

<sup>2</sup> «...El aborto practicado por un médico diplomado con el consentimiento de la mujer encinta, no es punible: 1º Si se ha hecho con el fin de evitar un peligro para la vida o la salud de la madre y si este peligro no puede ser evitado por otros medios. 2º Si el embarazo proviene de una violación o de un atentado al pudor cometido sobre una mujer idiota o demente. En este caso, el consentimiento de su representante legal deberá ser requerido para el aborto». Article 86 of the Argentinian penal code. The English translation belongs to the author.

Specifically during the 2000s, but increasingly since 2005 up to 2016, women and feminist's organizations and lawyers fought over the abortion juridical regulation at Courts facing conservative resistances. These disputes could be located in a broader process of «judicialization» (Domingo, 2009: 36) of the socio-political conflict over abortion.<sup>3</sup> The judicial process T.S. inaugurated the disputes at Courts during the 2000s. It involved a pregnant woman whose fetus was diagnosed with anencephaly and who requested the induction of labor in a public hospital. The physicians and the director of the hospital denied the practice and required a Court order.

In the T.S. judicial process the woman was defended at Court by lawyers of a women's organization. The process reached the press and got to the Argentinian Supreme Court in 2001. It evidenced the drastic changes on abortion juridical disputes provoked by the claim of a medical-scientific truth mediated by reproductive technology and appropriated by the pro-life movement<sup>4</sup>. Broadly, this judicial process also unveiled how the medical and the juridical discourses took the lead in disputes over the juridical regulation of abortion displacing biographical narratives.

After the T.S judicial process, and increasingly since 2005 up to 2012, women and feminist's organizations and lawyers fought over the non-punishable abortion regulation facing conservative resistances in judicial processes<sup>5 6</sup> involving sexually abused women –as in the F., A.L. judicial process-, sexually abused woman who also had disabilities, a pregnant woman diagnosed with terminal disease and a pregnant woman diagnosed with severe illness. These disputes also involved non-punishable abortion procedural guidelines enforcement.

In these cases women were requesting that the abortion be carried in the public healthcare system. In some situations the physicians, to carry out the procedure, requested a criminal complaint, requested a judicial authorization, initiated a judicial process, and sometimes, suspended the practice because they received a

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<sup>3</sup> In this introduction I present some features of feminist disputes at Courts facing conservative resistances on judicial procedures from 2000 up to 2012 selected from a database constructed for my PhD thesis. In this paper I trace these feminist disputes over abortion regulation at Courts facing conservative resistances since 2000s although it is possible to address these disputes at least since 1990s.

<sup>4</sup> As shown in the leading research of Petchesky (1987).

<sup>5</sup> An analysis of certain features of these judicial disputes could be consulted in Bergallo (2011, 2014), in Morán Faúndes, Monte, Sánchez & Drovetta (2011), and in Ramón Michel (2011).

<sup>6</sup> An analysis of some of these non-punishable abortion judicial processes could be consulted in Hopp (2009), in Puyol, Condrac & Manzur (2011), in González Prado (2011, 2013, 2015), in Milisenda & Monte (2013), in Peñas Defago & Morán Faúndes (2014), in Irrazábal (2015), and in Monte (2015).

Court order. In some other situations the physicians refused the request or did not respond to the request and thus the practice was judicially required. In F., A.L., conversely, the abortion was requested at Court.

In the interstices between medical and judicial institutions women and feminist's organizations and lawyers faced conservative organizations and lawyers –some of them part of the pro-life movement– and institutionalized conservative resistances. These disputes were located within the medical and judicial institutions involved in the struggles, within other state institutions –for example, the ministries of health or the legislatures-, or in other realms as in the press, in seminars, in publications and in social protests.

Some of these judicial processes reached provincial Supreme Courts and one of these disputes reached the United Nations Human Rights Committee: L., M.R.. L., M.R. was led to the United Nations Human Rights Committee in 2007 by three women and feminist's organizations that presented an individual communication. The United Nations Human Rights Committee decided on 2011. On March 13<sup>th</sup> 2012, the Argentinian Supreme Court decided on the judicial processes F., A.L.

We approach these judicial processes assuming that are an institutionalized site of struggles (Smart, 1989) in which the abortion discursive configuration dispute is enabled, defined and redefined by different judicial decisions (García Romanutti, 2015).<sup>7</sup> Judicial documents and Court's decisions, then, constitute a «file» (Vismann, 2008: 9) of the discursive materiality of these disputes. These judicial processes had specific material effects on subsequent regulations, struggles and judgments.

This paper analyses the Argentinian Supreme Court decision on F., A.L. and its material effects on a subsequent judicial struggle and judgment in the province of Córdoba. The sources of information are judicial documents presented at Court, provincial Court decisions, the Argentinian Supreme Court decision, and in-depth interviews with social actors involved in the judicial process.

### **The Argentinian Supreme Court decision on F., A. L.**

The F., A.L. judicial process involved a sexually abused adolescent, A.G., who disputed at Courts to make non-punishable abortion practice available in the public healthcare system of the province of Chubut. A.F., after starting criminal proceedings against a perpetrator of sexual abuse, demanded a judicial authorization for a non-

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<sup>7</sup> In this sense, we are considering juridical discourse as a place of practices of resistances through which are produced forms of knowledge, and refusing the notions of juridical discourses as a form of liberation, oppression or simply as a negative power (Smart, 1989; 1992; 1995).

punishable abortion practice at the provincial civil Court of Chubut for her daughter A.G. The judge noted that no judicial authorization was required but just the medical judgment and the consent of the pregnant person. Nevertheless, the judge decided to follow the process grounding there were fundamental rights implicated.

Once the process initiated the judge ordered information measures from the Public Prosecutor's Office –which presented a note– and from the Bioethics Committee of the Regional Hospital –which presented an opinion–; and the intervention of an Interdisciplinary Technical Team –whose professionals submitted reports– and of the Forensic Medical Body –whose expert presented an opinion. In addition, the judge ordered the intervention of the Advisor of Family and Disabled –who requested protective measures for A.G. and the family group. Finally, the judge appointed a tutor for the *nasciturus* [unborn children] –who also requested protective measures.<sup>8</sup>

The medical reports are those grounding the sentence in which the judge rejected the judicial authorization and concluded A.G. situation was not comprehended in the non-punishable situations of the article 86 subsection 2 of the penal code since it just comprehends sexually abused women with disabilities. Equally, the judge stated that A.G. situation was not comprehended in the non-punishable situation of the article 86 subsection 1 of the penal code since the psychic health of A.G. was affected but abortion would aggravate her affectation and endanger her physical health.

After considering the affectation of A.G. as stated in the medical reports, the judge ordered protective measures; among them, the inclusion of A.G. in a psychological – psychiatric treatment with guidance to the whole family group. Considering that, the judge required the intervention of the health department of the hospital to include A.G. and her family group in a program of accompaniment, assistance and containment until delivery, and designed a therapeutic companion for A.G. The judge also ordered the intervention of other state institutions.

A.G. intervened in the judicial process defended by official lawyers and questioned the medical reports and appealed the judge decision. At the same time, the judicial process reached the national press, and women and feminist's organizations presented *amicus curiae* [experts presentation before the tribunal] before the provincial Court supporting the abortion petition. The provincial Court of Appeal confirmed the decision rejecting the abortion petition while the provincial Superior

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<sup>8</sup> In addition to medical reports, the judicial file was integrated by other documents of the criminal proceedings against the abuser, including a police report, a police medical certificate, and an ultrasound to A.G., among others.

Tribunal revoked the decision accepting the abortion petition.<sup>9</sup> On March 11<sup>th</sup>, 2010 the non-punishable abortion practice was performed in public healthcare services.

Although the abortion was performed, the acting General Counsel of the province of Chubut –representing the *nasciturus*– questioned the provincial Chubut Superior Court Tribunal decision before the Argentinian Supreme Court claiming that the case had significant institutional implications. According to the General Counsel, the Superior Tribunal of the province of Chubut did not consider that non-punishable abortion regulation involving sexually abused pregnant women excluded women without mental disabilities, and did not consider constitutional and conventional dispositions regarding the protection of life from the moment of conception.

The National General Defender –representing A.G.– stated that all cases involving sexually abused pregnant women –forced pregnancy–, are to be considered non-punishable abortions, and required the Superior Tribunal of the province of Chubut’s decision to be confirmed. The Public Defender of Minors and Disabled –representing the *nasciturus*– required Superior Tribunal of the province of Chubut’s decision to be revoked. Women and feminist’s organizations as well as conservative organizations presented *amicus curiae* before the Argentinian Supreme Court –from now on, the Court. Although the non-punishable abortion was performed the Court made a decision.<sup>10</sup>

In its decision, the Court engaged the controversy around non-punishable abortion regulation founded on the polemic wording of article 86 subsection 2 of the penal code and it regards whether the regulation includes all sexually abused women or just sexually abused women with disabilities. The Court also engaged the controversy concerning non-punishable abortion regulation as a permission or as an exception. Finally, the Court pronounced on medical and judicial practices, on the state responsibility in providing access to non-punishable abortion practice in the public healthcare system and on its conditions.

### **Non-punishable abortion regulation boundaries, medical and juridical practices**

One feature of the Court decision is that it defined non-punishable abortion regulation in reference to international law. Specifically, the Court considered international human rights conventions and treaties, international human rights

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<sup>9</sup> Although with different outcomes, both decisions restrict the protective measures ordered by the judge.

<sup>10</sup> The Court decided on a divided vote. For this paper we are considering the majority vote.



treaties bodies' recommendations and decisions –among them, L., M R.-, and the international responsibility of the state<sup>11</sup>. Moreover, the Court stated that the 1994 Constitutional Convention incorporated international human rights conventions and treaties, but it did not define issues related to abortion.<sup>12</sup> Considering all this, the Court defined non-punishable abortion regulation in cases of pregnancy as a consequence of sexual abuse, stating that it includes sexually abused women irrespectively of their mental capacity.<sup>13</sup>

The Court anchored its definition of non-punishable abortion regulation in cases of pregnancy as a consequence of sexual abuse in constitutional and international juridical grounds of equality and non-discrimination –discrimination being defined as non-reasonable distinctions among sexually abused women-, human dignity –being defined as persons are not to be given utilitarian treatment, which means that any sexually abused women are to be demanded incommensurable sacrifices in order to benefit others or the common good-, and legality and pro-homine –being defined as criminal law being the *última ratio*<sup>14</sup> [last reason], and privileging the reasoning that assigns more rights to human beings before the state.<sup>15</sup> The Court also considered non-punishable abortion regulation in its relation to Argentinian sexual abuse criminal regulation.

Another feature of this decision is that the Court placed non-punishable abortion regulation in the socio-political context in which the judicial process occurred by referring to medical and judicial practices. Specifically, the Court considered healthcare providers' delay, obstruction or negation of non-punishable abortion practices in public healthcare services supported by judicial interventions *contra legem* [illegal]. As barriers for accessing non-punishable abortion practices, they pose a risk for pregnant women's health and life.<sup>16</sup> Thus, the Court extended and defined non-punishable abortion regulation in relation to state responsibility in providing access to abortion in the public healthcare system.

The Court understands that, as long as non-punishable abortion is permitted, the state –as guarantee of administrating public healthcare services– is respon-

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<sup>11</sup> This is, the state responsibility generated by the non-compliance of the international human rights treaties bodies' recommendations and decisions once the state accepted its jurisdiction.

<sup>12</sup> Points 7 and 9 of the Court majority vote.

<sup>13</sup> Points 6 to 18 of the Court majority vote.

<sup>14</sup> *Última ratio* is a principle that implies reducing the extension of criminal punishment. It has modern-liberal grounds.

<sup>15</sup> Points 15, 16 and 17 of the Court majority vote.

<sup>16</sup> Points 8, 19, 20, 21, 22, 23 and 24 of the Court majority vote.



sible for providing appropriate, accessible and secure healthcare assistance.<sup>17</sup> The Court, thus, expanded its pronouncement including the conditions for accessing non-punishable abortion practice in the public healthcare system. It considered that non-punishable abortion practice requires the intervention of a qualified physician and the pregnant woman, avoiding the demand for other professionals to intervene in the situation, but also physicians' consultations or diagnostics that may threaten sexually abused women<sup>18 19</sup>.

The Court stated that accessing a non-punishable abortion practice does not require judicial authorization.<sup>20</sup>

### **Non-punishable abortion, sexual abuse and medical control**

One more feature of the Court decision is that it considered specifically the conditions for accessing non-punishable abortion practices in cases of pregnancy as a consequence of sexual abuse. Specifically, the Court pronounced on the necessity, or not, of presenting criminal charges against the perpetrator of sexual abuse or sexual abuse judicial proofs in order to access the non-punishable abortion practices in healthcare services. It stated that, in cases of pregnancy as consequence of sexual abuse, sexually abused pregnant women are not obliged to present criminal charges against the perpetrator of sexual abuse or sexual abuse judicial proofs in order to have access to non-punishable abortion in healthcare services<sup>21</sup>. It stated that in these cases:

...it is necessary that the victim of that illicit act, or her legal representative, state before the professional by certified manifestation that the illicit act is the cause of pregnancy; considering that an imposition of other type of procedure is not proper since it means to incorporate additional requirements to those strictly established by criminal legislator [...] Requirements for sexual abused victims to qualify for abortion practice [...], designed to identify false cases, delay the necessary care, and increase the probability

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<sup>17</sup> Point 25 of the Court majority vote.

<sup>18</sup> It adds these practices contravene international treaties against women's violence and, eventually, configure institutional violence.

<sup>19</sup> Points 22 and 24 of the Court majority vote.

<sup>20</sup> Points 8, 21, 23 and 26 of the Court majority vote.

<sup>21</sup> Point 27 of the Court majority vote.

of unsafe abortions, or, they could even imply the denial of the realization of the practice due to advanced pregnancy...<sup>22</sup>.

Although the Tribunal realizes the possibility of false cases, it considers that the risk of irregular conducts of some individuals [...] cannot be reason enough to impose on victims of sexual crimes barriers that violate legitimate rights or that constitute risks for their health<sup>23</sup>.

The Court, then, specifically considered sexually abused women requesting an abortion practice just need to state before de physician by certified manifestation that pregnancy is a consequence of sexual abuse and eliminated any other type of medical requirement.

After considering the conditions for accessing non-punishable abortion practice in healthcare services and specifying the conditions in cases of pregnancy as consequence of sexual abuse, the Court exhorted national and provincial governments to approve procedural guidelines in order to remove the barriers of access to non-punishable abortion practices in public healthcare services. It established that these guidelines must contemplate standards guaranteeing the information and confidentiality of women demanding the practice, avoiding administrative procedures or long waitings that delay the attention and reduce the security of the practice, removing requirements that are not specified by a physician, and articulating mechanisms that allow the solution of disagreements about medical practices between the demandant woman and physicians.<sup>24</sup>

The Court also stated that healthcare providers have the right to consciousness objection, although the sanitary institution must permanently guarantee the access to the practice.<sup>25</sup>

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<sup>22</sup> «...como necesario que la víctima de este hecho ilícito, o su representante, manifiesten ante el profesional tratante, declaración jurada mediante, que aquel ilícito es la causa del embarazo, toda vez que cualquier imposición de otro tipo de trámite no resultará procedente pues significará incorporar requisitos adicionales a los estrictamente previstos por el legislador penal [...] La exigencia de que las víctimas de violación, para calificar para el aborto [...] diseñados para identificar casos fabricados, retrasan el cuidado necesario y aumenta la probabilidad de abortos no seguros o, incluso, pueden llevar a la negativa de la práctica porque el embarazo está muy avanzado...». Point 27 of the Court majority vote, pp. 26-27. The translation into English belongs to the author.

<sup>23</sup> «Que si bien este Tribunal advierte la posibilidad de configuración de “casos fabricados”, considera que el riesgo derivado del irregular obrar de determinados individuos [...] no puede ser nunca razón suficiente para imponer a las víctimas de delitos sexuales obstáculos que vulneren el goce efectivo de sus legítimos derechos o que se constituyan en riesgos para su salud». Point 28 of the Court majority vote, p. 27. The translation into English belongs to the author.

<sup>24</sup> Point 29 of the Court majority vote.

<sup>25</sup> Point 29 of the Court majority vote.

Additionally, the Court established that the state authorities should guarantee that the sexual abuse victims will be provided with opportune and adequate attention that includes:

...a comfortable and secure environment that guarantee privacy, confidence and avoids unnecessary repetition of the traumatic experience...<sup>26</sup> [...] Besides the sanitary, police, educative and other type of authorities must be trained to provide orientation and information to sexually abused victims that allow them an opportune and adequate access to healthcare benefits recognized in the legislation...<sup>27</sup>.

This judicial decision consolidated a juridical discourse regarding non-punishable abortion, sexual abuse and medical practices that had material effects in subsequent regulations, situated struggles and judgments.

### Córdoba's judicial backlash

During 2012 and 2013, fourteen provinces and the city of Buenos Aires, updated or approved their procedural guidelines through their executives, ministries of health or provincial legislatures; and some of them adhered to the National Technical Guideline for the Integral Attention of Non-Punishable Abortion enacted by the National Ministry of Health in 2010.<sup>28 29</sup> Most of them refer explicitly to the Court decision on F., A.L. and in the procedures in the cases of sexually abused pregnant women demanding non-punishable abortion practices in health-care services, they just require the woman certifying before the physician that the pregnancy is a consequence of sexual abuse.

After the Court decision on F., A.L. the Ministry of Health of the province of Córdoba enacted the resolution 93/12 on March 30<sup>th</sup>, 2012. This resolution refers

<sup>26</sup> «...deberá asegurarse, en un ambiente cómodo y seguro que brinde privacidad, confianza y evite reiteraciones innecesarias de la vivencia traumática...». Point 30 of the Court majority vote, p. 28. The translation into English belongs to the author.

<sup>27</sup> «Asimismo deberá capacitarse a las autoridades sanitarias, policiales, educativas y de cualquier otra índole para que, en caso de tomar conocimiento de situaciones de abuso sexual brinden a las víctimas la orientación e información necesaria que les permita acceder, en forma oportuna y adecuada, a las prestaciones médicas garantizadas por el marco normativo...». Point 31 of the Court majority vote, p. 29. The translation into English belongs to the author.

<sup>28</sup> This guideline was updated in 2015 by including the Court features, and the juridical modifications operated after the sanction of the Gender Identity legislation.

<sup>29</sup> An analysis could be consulted in Bergallo (2014), and in Deza (2015).

explicitly to F., A.L. and contains the Guideline for patients requesting non-punishable abortion in provincial public healthcare services. In the cases of sexually abused pregnant women demanding non-punishable abortion practice the guideline only requires the woman certification before the physician that pregnancy is consequence of sexual abuse.

On April 12<sup>th</sup>, 2012 the pro-life NGO Portal de Belén filed a lawsuit initiating an *amparo* process at provincial Civil Courts against the government of the province of Córdoba to impede the enforcement of the provincial procedural guideline in provincial public healthcare services<sup>30,31</sup>, which opened the scenario for a conservative judicial backlash. Women and feminist's organizations and lawyers and several *amicus curiae* intervened in the judicial process in defense of women potentially affected by the resolution of the case.<sup>32,33</sup>

The judge accepted the lawsuit, and suspended the enforcement of non-punishable abortion procedures in the cases of sexually abused women. The judge discussed non-punishable abortion regulation specifically stating that non-punishable abortion, as an exception, needs to be proved. According to the judge, the woman's certification before the physician that a pregnancy is the consequence of sexual abuse is insufficient to guarantee that a punishable abortion is not performed. The judge stated that

...although it is not possible to absolutely affirm that the deponent [the woman claiming to have been sexually abused] lies (the «false cases» referred in the majority vote [of the Supreme Court decision in F., A.L.]), it is not possible –for the same reason– to absolutely affirm that the deponent tells the truth [...] Interested people [women requiring abortion practice] could not tell the truth, and [...] commit one of the most severe

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<sup>30</sup> An analysis of Portal de Belén's intervention in this judicial process could be consulted in Milisenda & Monte (2013).

<sup>31</sup> This pro-life NGO constituted during the 1990s and initiated a judicial procedure against regulations regarding sexuality and reproduction in 1998 (Peñas Defago & Morán Faúndes 2014). In addition to the judicialization, pro-life organizations conservative resistances since the 1990s are also located in other state institutions, as the legislatures. Equally, these conservative resistances could be traced in a range of issues regarding sexuality and reproduction, for example, contraception, sexual education or equalitarian marriage. An analysis of the constitution of pro-life NGOs in Argentina could be consulted in Morán Faúndes, Peñas Defago, Monte & Sgró Ruata (2015).

<sup>32</sup> An analysis of women and feminist organization dispute in this judicial process could be consulted in Monte (2015).

<sup>33</sup> An analysis of other judicial processes initiated after the Court decision on F., A.L. could be consulted in Gebruers & Gherardi (2015).

crimes, as it has been analyzed [...] it is not about punishing a crime, but to avoid its occurrence [...]. For that reason, it is necessary to adopt a larger requirement<sup>34</sup>

Considering this, the judge understands that the requirement for non-punishable abortion practices in cases of sexual abuse is the verification by an Interdisciplinary Team –integrated by qualified physicians– that the pregnancy results from sexual abuse. He exhorted the government of the province of Córdoba to adequately conform to this decision. This is, the judge conservatively redefined abortion politics by reinforcing medical control and sustained a rationality according to which women are incapable of establishing the truth of their sexual experience.

In this sense, it is possible to address how juridical discourses were transformed in convergence with the scientific discourse of, for example, medicine or psychiatry exercising power in disciplinary and control modes. As part of this form of power exercise, Smart (1989)<sup>35</sup> states that juridical discourses have a claim of truth with certain material effects. Following Foucault, Smart (1989) understands by truth the set of rules by which truth and falsity are separated and specific effects of power are attached to the truth.

Defining a group of knowledge as science is to claim a truth that can be compared with partial truths and non-truths that epitomize non-scientific discourses. Other knowledge is disqualified and accorded a minor status, a lower value. If we accept that juridical discourses have a claim of truth that is indivisible from the form of power it exercises, then we assume that law exerts power in its material effects and in the disqualification of other forms of non-legal knowledge (Smart 1989).

As a material effect on judicial disputes, this judicial decision imposing medical control over women's sexual experiences constitutes a backlash, that is, a «counter-use of legal discourses» (Smart, 1989: 138) to disqualify women's sexual experiences narratives and to re-establish disciplining and control on abortion and, specifically, on women's sexuality.

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<sup>34</sup> «...y si bien no puede afirmarse con carácter absoluto que la declarante mienta (los “casos fabricados” a los que hace referencia el voto mayoritario), tampoco –por la misma razón– puede afirmarse con carácter absoluto que la declarante diga la verdad [...] los interesados podrían faltar a la verdad y [...] *cometer un delito, de los más graves*, como ya se ha analizado». First instance tribunal decision, August 24<sup>th</sup>, 2012, pp. 380-383. The translation into English belongs to the author.

<sup>35</sup> A debate on Smart's approach to Foucault's work to define juridical discourses could be consulted in Munro (2001).

## Further thoughts

As presented in this article, during the 2000s women and feminist's organizations and lawyers disputed over non-punishable abortion regulation at Courts facing conservative resistances. In these judicial processes we approach practices of administration of justice in its productive dimension, as capable of organizing the discourse of truth through a reference cut –what can the discourse be about-, a qualification of the subject enunciator –who and under what conditions can tell the truth– and a distribution of effects –the statement of what is held to be true and the decision of the judge (García Romanutti, 2015).

In the judicial process F., A.L. we observed how through different judicial decisions the judge initiating the judicial process ordered a series of informative measures involving medical reports and interventions that seemed to reveal some scientific truth about the body of A.G. These medical reports and interventions are those that allowed the judge to define abortion grounding from the medical *expertise* on the body of A.G. Then, the judge decided the abortion request was punishable, forced the continuity of pregnancy and institutionalized, through protective measures implying compulsory medical interventions over A.G., a scrutinized medical control.

The provincial Court of Appeal sustained this decision, while the provincial Superior Tribunal revoked it. The judicial process reached the Argentinian Supreme Court that decided on Marc 13<sup>th</sup>, 2012. The Argentinian Supreme Court decided abortion was not punishable and, therefore, permitted. It also stated that, non-punishable abortion medical practice does not require judicial authorization and, in cases of sexually abused woman, it does not require the presentation of criminal evidence. Thus, it de-judicialized and excluded judicial control over the practice of abortion.

The Argentinian Supreme Court also stated non-punishable abortion practice just requires the intervention of a qualified physician and the pregnant woman. Specifically, it stated in cases in which pregnancies are the product of sexual abuse it is just necessary for women to state before the physician by certified statement the pregnancy is a consequence of sexual abuse. The Argentinian Supreme Court judgment was of particular importance because of its material effects on subsequent struggles, regulations and judgments. Among these, the judicial process Portal de Belén in the province of Córdoba.

The judicial process Portal de Belén was initiated by the pro-life NGO organization Portal de Belén to question de provincial non-punishable abortions' procedural guideline approved by the Ministry of Health. The judge decided non-punishable abortion regulation is an exception and, then, accessing non-punishable abortion

in cases of pregnancy as consequence of sexual abuse requires the intervention of an Interdisciplinary Team to prove the sexual abuse. Then, the judge disqualified women's sexual abuse experience narrative and re-established medical control over abortion provoking a backlash on the Argentinian Supreme Court decision.

All medical reports and interventions ordered by the judge of the province of Chubut to define the extension of criminality, but also the intervention of an Interdisciplinary Team ordered by the judge of the province of Córdoba to prove the sexual abuse unveil the effects of the convergence of medical-scientific discourses on the juridical regulation of abortion. Particularly, in the convergence of the medical-scientific discourse in the juridical regulation of abortion it is possible to notice how the forms of medical knowledge operate in disputes over the juridical regulation of abortion allowing abortion's bodies to be subjected to medical supervision (Sheldon, 1997)<sup>36</sup>.

Broadly, this judicial process evidence, as Sheldon (1997) argues, that the shifting of juridical boundaries to reduce criminality does not necessarily imply the empowerment of an area of freedom, but can enable other forms of control mediated, in these judicial processes, by medical intervention. This implies an analysis of the juridical regulation of abortion that allows asking what forms of power continue to operate in the space that was cleared by the retrocession juridical boundaries, but enabled by them. In other words, it shows the retraction of criminal power as a modification in the political rationality that could reconfigure forms of control.

Received: 08/08/2016

Accepted for publication: 07/11/2017

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<sup>36</sup> In this conclusion I am following Sheldon (1997) just to point specifically issues related to medical control. Her research not only is located in another sociopolitical context and refers to another type of abortion juridical dispute but also covers a broader debate related to governmentality, which I am not expanding here.



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