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COMITE PARA LA DEFENSA DE LA SALUD, LA ETICA PROFESIONAL Y LOS DERECHOS HUMANOS, ASOCIACION CIVIL - Personería Jurídica N° 000153
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SUPPORT, ASSISTANCE AND PROTECTION TO WITNESSES OF CRIMES AGAINST HUMANITY

**Some reflections about our
practice**

**CODESEDH
BOARD OF DIRECTORS
INTERDISCIPLINARY TEAM**

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Some reflections about our practice

During the last few years, especially since the historical moment in which the National Congress first and the Supreme Court of Justice afterwards, ended the cycle of impunity established through the laws of "Full Stop" and "Due Obedience". In this framework, the Argentinian society began to follow a way where the transcendent value of the memory set herself up in the fundamental support of the respect to human dignity, that is to say, the right of people to the consolidation of democracy through Truth and Justice.

When in December of 1983 the institutional cycle of the dictatorship - initiated with the military putsch which has been guilty of acts of genocide and which also counted with a large civic participation and commitment - ended, the opening towards a reparative stage of the National State appeared on the political horizon with the creation of the CONADEP (National Commission on the Disappearance of Persons) and her subsequent report "Never Again".

The hundreds of concentration camps where for a long time a sinister story contained in the individual memory and in the circles of high commitment for the defense of human rights. In these places, torture and extermination covered the mind and body of women, men and children of an indescribable suffering; where the omnipotence of the torturer and the murderer faced, most of the time, the force and resistance of whom remains in the lawsuits expressing justice, freedom and the fair dreams of the people.

The Argentinian society expresses day after day her recognition and tribute to the thousands and thousands of citizens who never came back from their abduction, torture and disappearance. Other thousands of people went to regiments, police stations, jails or other places of repression with the purpose of destroying the force of their convictions, alienating them mentally or provoking exclusion from the political, social or professional life and from the actions reached to defend human rights.

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The military dictatorship and her civilian members, - businessmen, judges, doctors amongst others – came up with the mildest of her defeats: institutional reestablishment and impunity protecting its responsibilities in the crimes against humanity.

With the trial against the Military Juntas initiated in the year 1984, the silence surrounding the genocide began to crack partially; the people mainly responsible for it was charged of several and abundant crimes, but they had also to sit down and face their image of executioners without a soul, in front of the brave and worthy decision of hundreds of witnesses, the majority of them being survivors of concentration camps or being able to testify on the abduction and subsequent forced disappearance of family members, neighbors or colleagues.

As the Minister of the Supreme Court of Justice, Dr. Raúl Eugenio Zaffaroni, recently said when paying tribute to the Court who was going to assume this stage of the history “Without the witnesses, no trial for crimes against humanity would be possible”. This expression reinforces the value of the testimonial evidence in this kind of criminal trials.

Beyond some questionable sentences, the judgment of this Court contained a fundamental aspect reflected in point 30: the continuity of the trials in the whole chain of responsibility for reported crimes. As a few years went by, the laws of “Full Stop” and “Due Obedience” came after, completed by the presidential amnesties, initiating a long period of impunity.

The capacity of resistance and report showed by human rights organizations during the dictatorship acquired renewed vitalities added to numerous social, political, quagmire, cultural, professional, student organizations facing up to the repeated attempt to install impunity and reward through it the people guilty of genocide.

In this context, the democratic forces of the Republic began to assume the commitment of keeping the memory alive and of exploring all the ways of truth. Amongst them, it is important to emphasize on the Trials for the Truth, the extraterritorial judicial activity founded in the principle of the universal justice in matters of human rights; the scientific improvement in the identification of kidnapped and disappeared children or the investigations of forensic anthropology. In this context the permanent and indeclinable

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will of thousands of survivors ready to deepen their commitment in every dimension is valued and turns out to be concurrent with the objectives of overcoming impunity.

The word of the witnesses and their relatives required a fourth of century to reoccupy the place they had adopted with their struggle and diversity of opinions and positioning. The witnesses became an essential part of the trials for crimes against humanity, accusing the people responsible for genocide in front of the judges, Federal Courts and due to its public character in front of the entire society, relating, in the framework of the due process and the defense, their bloodcurdling stories about violation of human rights including their ability of resistance and commitment.

The implication of the witnesses is even more important, indeed, at the same time they assume a deep feeling of exercising citizenship and social representation. Their experience represents a socially legitimized conduct and constitutes a renewed hope of building towards the young generations, the reason and the mysticism to which the justice, although slow and with a big effort, predisposes us in the construction of a fairer society, supportive and respectful of human rights. A special mention, as an emblematic symbol of this fight and an ineludable conduct is the always remembered Adriana Calvo.

Likewise the henchmen of the dictatorship – inside or outside the State – consistent with their terrorism of State practices perpetrated the kidnapping and the disappearance of Julio López, principal witness in the trial against the ex-Commissioner Miguel Osvaldo Etchecolatz. The demand for its clarification, appearance alive and trial at those responsible is attached to each of the hundreds of trials taking place in most of the country.

In this context, the assistance for the witnesses victims of State terrorism has to contribute to strengthen the activity of whom assumes this role, not only in an individual vision of the concrete experience of his declaration, but also in a perspective including emotional, social, political, family factors as well as a necessarily reparative process. This activity should be distinguished from the one that is meant to preserve the witnesses' security and whose competence belongs exclusively to the institutional sphere of the State's organisms.

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The interdisciplinary teams, that since the dictatorship's agony and without any interruption developed support and protection strategies for victims of torture and other repressive forms, have been able to see that the actual instance of access to justice represents in most of the cases the overcoming stage of its long, painful and worthy personal and collective history.

CODESEDH's team bases its strategy on two essential parameters: a) the ethic assessment in the relationship and the bond with the witness and his family and social group; b) the strengthening of the civic quality in the full exercise of the right to sue or to charge into the framework of the legal process.

The interdisciplinary team organizes its running on those principles, understanding that different trainings and knowledge involving a high degree of complementarity come together, as well as an ideal level of coordination with the different components of the judicial structure, which excludes obviously the private defense or official technique of the indicted.

In the perspective of this strategy it is very useful and necessary to have a professional of health or of the social and legal field, someone identifying him with these objectives and strategies and who can promote actions in the direction that has been mentioned.

Examining critically each experience, interpreting it with the necessary intellectual liberty in order to achieve better learning, constitutes a methodology enabling us to prevent or avoid repetition of errors. It is possibly in this aspect that the professionalism of the work program is put into play with a higher intensity.

On the other hand and following with the assumed teachings, we can assert how inadvisable the proposals based on supportive voluntarism – sometimes generating chaos - turn out to be, like those working in the field of investigations related to different disciplines, without founding their practices on a direct contact, permanent and involved with the witnesses victims of State terrorism.

A special chapter deserves the attitude assumed by judges, district attorneys and plaintiffs in relation to guaranty the best measures of protection and support for the witnesses. As such, it is important to emphasize on the different judicial resolutions that

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have defined with justified arguments the necessity to count on the technical collaboration of specialized teams, promoting a high level of coordination between the different public or civic agencies.

It is appropriate in this regard to transcribe the highlights of some of these resolutions through which CODESEDH is called to intervene in the assistance and support of the victim witnesses – period 2006 – 2010:

- Resolución Juzgado en lo Criminal y Correccional Federal N° 3 de La Plata, Provincia de Buenos Aires. Presidente Dr. Arnaldo Hugo Corazza. 3d of November of 2006.

(...) Accordingly, and mindful of the problem in its entirety, meaning that the protection of victims in these cases should not be reduced to their personal safety or financial compensation, but should transcend to other more essential aspects: for such protection to be effective it must be comprehensive, all of which leads to integrate the judicial proceedings with organizations and professional bodies being able to assist psychologically and emotionally the witnesses in these circumstances (...)

- Resolución del Ministerio Público Fiscal - Fiscalía General - Cámara Federal de Apelaciones de Mar del Plata, Provincia de Buenos Aires. Fiscal General Dr. Daniel E. Adler. 17th of April of 2007.

*(...) Aware that the criminal proceedings in which they investigate crimes against humanity are characterized by the lack of direct evidence to form the necessary conviction on the different circumstances of the facts and the consistent responsibilities, the testimonial evidence is a fundamental way of discovering the truth and identifying the perpetrators;
That in these cases such evidence is provided mainly by people who have been victims of the crimes mentioned above, ie by those who suffered in their own humanity the abduction, the illegal detention in secret facilities and the damages to their personal integrity;
We cannot fail to appreciate the process of re-victimization these people are subjected to because of the need to rely on their statements, sometimes in more than one procedural opportunity, which requires the state agencies in charge of the administration of justice to take the most feasible precautions to avoid or moderate the effects entailed by the participation in the process (...)*

- Resolución del Tribunal Oral en lo Criminal Federal de la Provincia de Corrientes. Presidente Dr. Víctor Antonio Alonso. 6th of de March of 2008.

(...) That reiterating concepts previously spilled above, it should be noted that any statement in law courts creates in itself some degree of emotional impact on witnesses, emphasizing on this circumstance in cases involving human rights violations, given the caliber of the events under investigation.

Also, the anxiety of the situation, exacerbated by the time elapsed since the facts that will be retraced in the process occurred, makes the support of professionals necessary in this field, that helps to moderate the psychological impact of the victims, because of the traumatic circumstance of having to retell episodes experienced, which is a re-victimization, that has to be taken into account by the Court in order to tempt its moderation, if this is possible somehow (...)

- Resolución del Tribunal Oral en lo Criminal Federal de la Provincia de Neuquén. Presidente Dr. Orlando A. Coscia. 20th of June of 2008.

(...)That within the need to provide a Professional System of assistance and full protection of the victims, their families and any other person involved in the process so required, as well as the individual security of those, within the framework of the Trial Hearing to be held in case of investigating crimes against humanity committed during the military dictatorship, the Oral Tribunal of the Federal Criminal Court of Neuquén required the intervention of national, provincial and non-governmental organizations, in charge of implementing and putting into practice various programs which objective is to cover the psychological, emotional, and related to security aspects, in view of the possibility of any emergency in those areas, which have been compromised in the development of the process.

In this regard, and on the understanding that the testimony of the victims and other witnesses turn out to be fundamental elements of evidence for the proper conduct of trial, and considering the particular situation of these people, there will be an effective intervention of the Comité para la Defensa de la Salud, la Ética Profesional y los Derechos Humanos, Asociación civil "CODESEDH" and of the Centro de Atención a la Víctima de la Provincia de Neuquén, "CAV", both in charge of assisting and protecting psychosocially the victims, families (...)

- Resolución Tribunal Oral en lo Criminal Federal N° 1 de La Plata, Provincia de Buenos Aires. Presidente Dr. Carlos Alberto Rozanski. December of 2009.

(...) Any statement in law courts generates some degree of emotional impact on witnesses.

In cases involving violation of human rights, an important part of the people who are summoned to testify are either direct victims of the

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events investigated, or relatives, friends or fellow prisoners of the same.

In such cases, those people are often subjected to long waits in inadequate conditions in violation of rules issued by the State for their comprehensive protection. These sufferings begin even before their attendance to the Tribunal and from the moment they are summoned to appear.

All this makes the psychological impact of this obligation to report more important, increasing geometrically what has been produced by the already traumatic situation of having to retell events of great violence, all of which supposes a re-victimization, in which case the state doesn't fulfill his duties towards these witnesses (...)

(...) The already mentioned agencies shall cooperate with this Tribunal after the notification of the present note and will be responsible, where it is required, to attend psychologically and emotionally each of the witnesses who were summoned to the debate, as well as the employees and officials who claim such assistance (...)

- Resolución Tribunal Oral Criminal Federal de Resistencia, Provincia de Chaco Presidenta Dra. Gladis Mirtha Yunes. 17th of September of 2010.

(...) That CODESEDH has been providing a valuable contribution in the course of the proceedings in another trial that has been developed in this Federal Oral Tribunal of Resistance (cf. In re "Caballero, Humberto Lucio y Otros " File No. 1.169/09) assisting victim witnesses residing outside the province.

That according to the special problematic of the lawsuits where facts that are classified as alleged crimes against humanity are investigated, the measures, leading to cushion the psychological impact on the witnesses and victims while remembering the circumstances under which they have been developed, don't turn out to be excessive. Hence the need for specialized help, which becomes more important coming from the mentioned Association CODESEDH, which has already demonstrated experience and suitability - including - during its former performance before the Oral Tribunal of the province of Corrientes in lawsuits for alleged crimes against humanity (...)

Within the working model it is correct to point out a certain aspect of proper implementation, respecting the cultural characteristics of the witnesses.

Concluding this brief approach to the conceptualization of the experience in supporting and protecting witnesses victims of State terrorism, we would like to express our gratitude to all those who enabled us with their personal and institutional trust to move in this step of the way, reaffirming our commitment to broaden, deepen and strengthen

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the strategies of support and assistance to the witnesses victims of State terrorism in their access to justice.

Board of Directors – Interdisciplinary Team

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