



Homeless People, COVID-19 and the Insufficient and Discriminatory Measures Adopted by the City of Buenos Aires's Government

Liliana Ronconi¹

Accepted: 15 November 2021 / Published online: 17 March 2022
© The Author(s), under exclusive licence to Springer Nature Switzerland AG 2022

Abstract

The COVID-19 pandemic, which has had a high impact in the Latin American region since March 2020, has produced the dictation of various measures in order to, in principle, guarantee better health conditions for the population. In this paper, I will focus on the situation of homeless people and the measures adopted by the Government of the city of Buenos Aires. I will analyze two judicial decisions in which the measures adopted were questioned. However, these cases were resolved by the judges without applying a robust argument of equality. This analysis will allow me to demonstrate that even though the aim of these measures was to protect disadvantaged people, the appropriate measures were not taken (by omission or insufficiency). My claim is that in the context of the pandemic we needed more than only preventive measures — social distancing. In societies marked by situations of structural inequality suffered by large groups even in emergencies, it is the most vulnerable who should be in the center of the scene when developing public policies.

Keywords COVID-19 · Right to house · Homeless · Inequality · Public policies

Introduction

Since March 2020, the COVID-19 pandemic has had a high impact in the Latin American region and, as a result, several measures were enacted in order to guarantee better health conditions for the population.¹ Since little was known, and still is known, about the way the virus is transmitted, governments recommended social distancing. Social distancing imposed restrictions on freedom of movement, suspension of face-to-face classes, remote working, among other things. In Argentina, the Government of the Autonomous City of Buenos Aires (CABA), also adopted some measures (Smulovitz, 2015).

Rather than focusing on the legality of the imposed limitations on the executive branches of the region², the paper explores the absence or deficiency of the equality argument when planning and making effective public isolation policies, especially when they seem to protect primarily disadvantaged groups. A robust conception of equality requires giving reasons regarding the efficiency

of the actions undertaken. The protection that isolation implies could be obvious, and even plausible, for certain groups that can “stay at home”, The protection that isolation implies could be obvious and even plausible for certain groups that can “stay at home”, but are insufficient for others. This paper focuses on homeless people and the measures adopted in this regard by the CABA. For this, first I will refer to the context of housing and homeless people situations in CABA, seeking to determine a close link between housing and health. Subsequently, I will work with two conceptions of equality that place different obligations at the head of the States. With this benchmarking framework, I will analyze two judicial decisions on measures adopted concerning homeless people that did not consider a solid argument of equality. This analysis will allow me to prove that even when these measures were meant to protect homeless people, they were insufficient and discriminatory. However, I will also consider some problems that arise when building an equality argument. Finally, I will draw some conclusions.

✉ Liliana Ronconi
lronconi@derecho.uba.ar

¹ CONICET, Law School, University of Buenos Aires, Buenos Aires, Argentina

The Right to Housing and Homeless People in the CABA: Connection with the Right to Health

The right to housing has been indisputably recognized both in the Argentine National Constitution (CN) and that of the Autonomous City of Buenos Aires (art. 31 CABA Constitution). Likewise, it has been strongly recognized in various human rights instruments that possess constitutional hierarchy (according to art. 75. 22 CN such as Art. 26 American Convention on Human Rights — ACHR, Art. 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), among others). It should be borne in mind that access to housing or “suitable accommodation” implies not only having a “roof to sleep under”, but also having other services such as electricity, drinking water, toilets, and adequate surrounding conditions.³ And in the pandemic, the house became “a first line of defense against Covid-19” (Farha, 2020a).

In addition, in 2011, Law No. 3706 of Protection and Integral Guarantee of the Rights of People in a Street Situation and at Risk to the Street Situation was sanctioned in the CABA. This law defines the specific obligations of the Government of the CABA with respect to homeless people or those at risk of being homeless. The main obligation is to adopt non-discriminatory policies and positive actions in order to respond to the situation. It also contemplates the right of homeless people to access to social-assistance services and the obligation of the State to remove the obstacles that impede equal opportunities for personal and community development.

This plurality of legal rules on the right to housing has been used by civil organizations and public offices, such as the *ombudsman* (Defensoría del Pueblo) to claim the right to housing, both before the administration and the judiciary.⁴ Despite that, there are serious difficulties when it comes to achieving its effective protection. In April 2019, the Second Popular Census on people living on the streets in CABA was carried out.⁵ This survey showed that there were 7251 homeless people. Out of these, 5412 did not have access to shelters, meaning, they slept on public roads. Eighty percent of them were men, 19% were women, and 1% declared to be transvestite or trans. Eight hundred seventy-one were children and 40 were pregnant women. This showed that in “two years, the number of people without any type of access to housing policies had increased by 23%” and that at least 1461 people were now living on the street for the first time. Many of them reported respiratory disorders, overweight and other risk factors, and about 10% were older than 60 years.

The different measures established by the CABA in order to respond to homeless people are:

- *Buenos Aires Presente (BAP)*, which provides assistance, food and blankets, and referrals to shelters. During the pandemic, the only addition was to deliver sanitizing products and masks (Defensoría del Pueblo, 2020).

- *Housing subsidy*, which consists of a monthly sum of money for the homeless or those who are at risk of becoming one. The purpose of this is to financially assist single people and/or families so that they can rent a room or a house. To have access to this subsidy you must prove a residence of two years or more in the city and have a social report confirming the housing emergency. This measure have different problems: (a) the subsidy is so scarce that it makes it impossible to rent a decent house; (b) the required residence is difficult to obtain, mainly after the hardening of immigration policies in Argentina in 2017 (Garcia, 2017); (c) the subsidy is guaranteed only for 12 months, with a renewable period of 6 months at the request of the beneficiary. Consequently, in many cases it is lost due to bureaucracy. During the pandemic, only automatic renewal was established for all beneficiaries, preventing a significant number of families from having to leave their rooms or homes to obtain the documentation necessary to present before the government (Defensoría del Pueblo, 2020). However, this was not enough to comply with the right to housing.

- *Shelters*, refers to shared places where people can spend just the night. This option has problems too. First, the only way to enter is via BAP referral; thus, a lot of people remain sleeping in the street. Besides, the shelters are only for men, for women and for women and children; there is no place where the whole family can spend the night together, so families must separate to enter.⁶ In addition, there are limited entry hours and situations of violence, aggression, and insecurity, among others. All this makes this option unattractive for homeless people. Families “prefer” to sleep all together in the street and take care of their goods.

During the pandemic, the City of Buenos Aires added a total of 3379 places. Besides, it provided sanitizing products and a change of clothes. Upon entering a shelter, people’s temperature was taken, and questions about the state of health were asked. The admission was organized in “window groups” of 3 days in which an area was filled, isolated and — if there were no infections — they joined the common space. Additionally, shelters were kept open 24 h a day. Although these seem to be important actions, the number of beds was insufficient so more than half of the homeless were left out (Defensoría del Pueblo, 2020). Furthermore, the rest of the infrastructure (bathrooms, dining rooms, etc.) were not expanded accordingly.

So far, I have analyzed different measures adopted by the CABA. Argentina, a federal country, and although housing policies have been left to local jurisdictions, the National Government could have had a relevant role. This Government adopted various policies, but generally based on economic aid (such as the Federal Emergency Income, the family support subsidy) or food (delivery of bags with food), among others, but not aimed at housing.

In this sense, there is, on the one hand, there is a broad normative recognition of the right to housing in Argentina. On the other, structural problems limit access to housing for large proportions of the population in CABA. This situation did not arise due to the pandemic. The pandemic made explicit and aggravated an existing situation.

Historically, NGOs and public offices such as Defensoría del Pueblo have initiated administrative and legal actions to guarantee a decent home for homeless people (Arcidiácono and Gamallo, 2014; Vita, et. al., 2013; Tedeschi, 2017). For these organizations, the right to housing as a human right is relevant. However, this problem remains despite the administrative and judicial measures taken in the pandemic.

In addition, the right to housing cannot be considered isolated from other rights, such as the right to health.⁷ The pandemic made this more evident. With the emergence of the Coronavirus, the different claims of homeless people were also linked to the need to avoid the risk of transmitting and contracting the virus. The situation of “living” in the street prevented compliance with the generic preventive measures adopted, such as social isolation, washing hands frequently, washing consumer products, and sanitizing commonly used surfaces with bleach. Without access to decent housing, the right to health was violated for those “living” in the street. The COVID-19 pandemic clearly showed the link between poverty and housing and health, reinforcing inequalities.

Equality and Disadvantaged Groups

Much has been written about the different conceptions of equality.⁸ It is possible to affirm that the Argentine National Constitution and especially the Constitution of CABA have expanded their classic form of equality under the law to consider at least two conceptions.

- (a) Equality as non-discrimination: This conception of equality requires the question about the reasonableness of a distinction (“reasonableness test”). In the light of this conception, certain criteria of distinction configure what is known as “suspicious categories,” that is, categories that “a priori” are suspicious in their justification because they are usually linked with stereotypes and prejudices about certain groups.⁹

Thus, in cases where the State uses a suspicious category to establish the distinction, it is necessary for the State to demonstrate the overriding of their use; otherwise, it is understood that the distinction implies discrimination, and thus it is not valid. What justifies the existence of these suspicious categories is the fact that the measure tends to affect groups that have historically been harmed or oppressed and that the harmful consequences for that group persist until today.

The question here is whether or not the condition of being a homeless person configures a suspicious category, because this group is not specifically mentioned in the norms.

In the case of groups in vulnerable situations not mentioned in the norm, they themselves must prove: (a) that they belong to a certain group, (b) that this group is systematically disadvantaged, and (c) that the consequences of this disadvantage persist today. Then, it is the State that bears the burden of aggravated justification and if doubts persist at the end of the argument, the distinction must be ruled as unconstitutional. In this way, as it will be seen later, the measures taken by CABA with regard to homeless people proved unconstitutional for involving unreasonable treatment.

However, there are situations where the conception of equality as non-discrimination becomes insufficient. Basically, this happens when discrimination does not come only from the norm but has its origin in the systematic exclusion of certain groups from the enjoyment and exercise of their rights.

- (a) Equality as non-domination: This conception of equality implies the recognition of the actual situation of certain groups (such as extreme poverty or marginalization),¹⁰ towards which the State must take positive actions to guarantee the full enjoyment of their rights. In this case, the state obligations must be guaranteed sufficiently (“insufficiency test”) (Clérico, 2018). In this way, not just any measure can be accepted but the one that best manages to protect the rights.

In these assumptions, equality as non-domination seeks not only to consider what happens in the norm, but also to analyze the real situation of certain groups so as to eliminate structural barriers that prevent them from enjoying their rights.¹¹

In different articles, the National Constitution adopted this new conception of equality, specifically since the 1994 reform. First, in Article 75 subsection 23, it orders the adoption of positive actions in favor of certain groups such as children, women, old people and those with disabilities, in order to achieve *real equality of opportunities*. Therefore, the constitutional mandate is clear in this sense: *there are certain groups that are at a disadvantage when it comes to enjoying their rights*. Further and more specific examples are in Article 37, which recognizes the need to take positive action regarding access to eligible political positions through political parties in order to achieve real equality of opportunity between men and women. This shows it recognizes that women are at a disadvantage to access to these positions, and thus a quota system is necessary; also, Article 75, subsection 19, which establishes that it is up to the Congress to dictate norms that regulate basic education, guaranteeing *equal opportunities*. Something similar happens in the Constitution of the CABA. I will return to this point later on in order to analyze the situation of homeless people.

Unreasonableness or Insufficiency? The Treatment of Homeless People During COVID

The public policies adopted by the CABA Government for homeless people during the COVID-19 were unreasonable and insufficient. To demonstrate this, I refer to three issues: (a) the treatment of homeless and repatriated people in the CABA, (b) the judicial measures adopted with respect to homeless people, and (c) the unreasonableness and insufficiency of these measures.

(a) The treatment of two groups

Regarding the homeless, the main measure adopted by the CABA during the pandemic was to locate them in different shelters dependent on the CABA, which, as stated, expanded their vacancies for this purpose. Nevertheless, there were serious difficulties in guaranteeing isolation (in fact, one could speak of overcrowding), cleaning supplies, health care, and influenza vaccination, among others. This created a risk of massive contagion (Defensoria del Pueblo, 2020).

With regard to the repatriated, the CABA adopted different measures since they could represent a risk as they were likely to transmit the virus.¹² Thus, these people were forced to quarantine (15-day isolation) in hotels (many of which were luxurious) rented by the CABA.

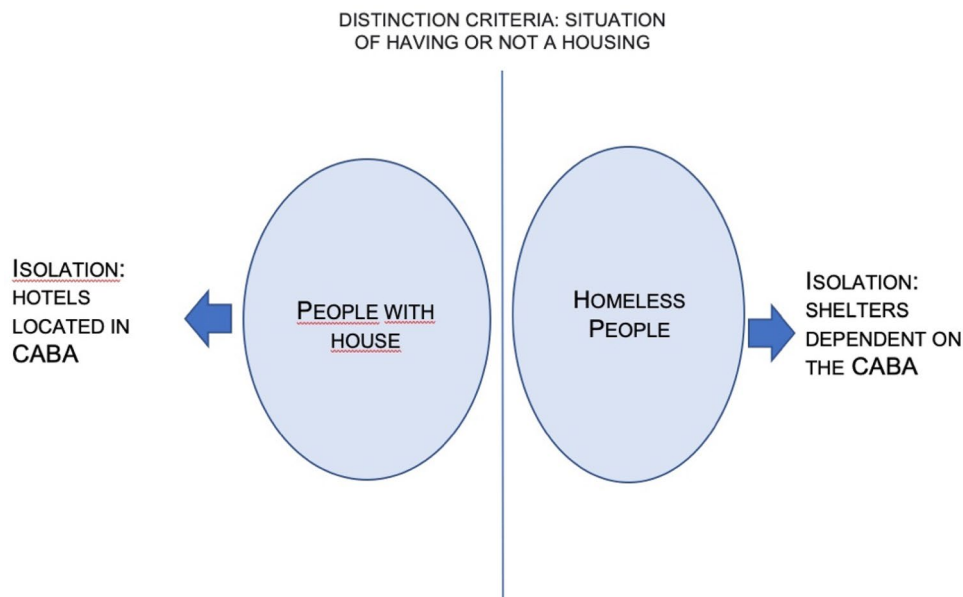
The equality test then implies analyzing why the homeless were sent to overcrowded shelters, and the repatriated were sent to luxurious hotels paid by the CABA. The equality test would be established in this way:

The question is, Why was this distinction made?

(b) The judicial measures

On June 6, 2020, a state agency (National Institute Against Discrimination Xenophobia and Racism) initiated a precautionary measure (and some NGOs adhered) requesting the comprehensive protection of homeless people, particularly in the face of COVID-19 and considering the deficiency of public policies in this sense.¹³ It mainly alleged the discriminatory treatment that homeless people had received in contrast to (a) people who could stay at home, for whom the greatest number of preventive measures was feasible (isolation, hand washing, and the cleaning of consumer products, etc.); (b) regarding the repatriated who were located temporarily in luxurious hotels.

Between the initiation of the judicial claim and the date of its resolution, at least 79 people living in a shelter, which represented about 86% of the occupants, were infected as a result of the exponential increase of the number of cases due to close contact. This proved the risk of the violation of the right which gave rise to the injunction. Thus, the CABA was obliged, among other things, to report within a 5-day-period whether there was a specific protocol for the operation and organization of the accommodation network, and whether there was a specific protocol for cases of suspicion and/or confirmation of COVID-19. A few weeks later, a final sentence was issued obliging the CABA to report not only on the existence of protocols but also on how they were complied with. For this, information regarding the tests, the flu vaccine, the available beds, the transfer of



people to health centers, etc. was requested as well as information regarding how these protocols had been notified in the different shelters, applying a pecuniary fine in case such presentations were not complied with. It should be borne in mind that the protocols did not focus on prevention but were intended to establish guidelines for actions in the face of contagion. Which went against what the IACHR maintained when it claimed that “given the current circumstances of the COVID-19 pandemic, which constitute a situation of real risk, the States must adopt measures immediately and diligently to prevent the occurrence of violations of the right to health.... Such measures must be considered a priority to prevent contagions...”.¹⁴

(c) Unreasonableness/deficiency

The question that arises and is not considered in the resolutions analyzed, is whether there was discriminatory treatment with respect to homeless people compared to repatriated ones. The analysis of this question is essential, since it demonstrates the insufficiency of the measures adopted within the framework of health policy by the CABA. Regarding this:

- “#StayAtHome” *A health policy empty of contents*: The general policy that sought for people to stay at home to guarantee isolation, and thus the community circulation of the virus was meaningless for those who live on the streets, since they simply did not have a place where to stay. In this way, in terms of equality as non-domination, a measure that was supposed to be neutral was not and had a high discriminatory impact on certain groups. About 800 million people in the world have no place to live; therefore, the preventive policy was intended only for a part of the population, while the rest could not comply with it, resulting in a high risk of contagion and virus transmission (Farha, 2020b). In response, CABA sent those without homes to shelters. From here it results:

- *A suspicious health policy*: If the homeless were considered a group with more possibilities of transmitting COVID (“risky group”),¹⁵ and one of the purposes of the measure (sending them to shelters) was to prevent them from infecting others; that is, if they were considered as possible transmitters of the virus, like the repatriates, then the two groups should have received the same treatment. This implies that the homeless should have been taken to hotels and accommodated in individual rooms, with individual bathrooms and even, in some cases, receive health assistance in the same place. Thus, the policy of sending homeless people to shelters, if they were a “risky group,” was visibly discriminatory, because it did not seek to encourage the purpose that it was trying to achieve, that is, to prevent community transmission of the virus, since the situation in the shelters increased the risk of contagion and transmission.

In addition, this unsuitability of the measure is even stronger when we consider that homeless people were not undergoing a temporary quarantine, but, on the contrary, their situation of “living” in shelters would be permanent at least while the pandemic lasted. In this way, the policy adopted was not adequate either to respond to the right to health or to attack the problem of homelessness (right to housing).

- *An inadequate health policy*: If another purpose of the measure was to protect these people so that they did not become infected or infect their family group, then placing them in shelters was also insufficient. In the shelters, it was difficult to prevent the spread of the virus because, as stated, the requirements of distance and hygiene were not possible. For this reason, in some cases, people did not even want to go to the shelter because the overcrowded conditions did not guarantee privacy, and it was not clear what would happen with them once the pandemic was over. In many cases, people preferred to stay in the street with the few items they already had (mattresses, trolleys, etc.) instead of losing everything. At this point, social work is relevant. Organizations are often in charge of distributing food, blankets, and guaranteeing other daily needs of people living on the streets. In this way, they carry out legal assistance work before administrative bureaucracies and accompany them on the streets.

Besides, it is difficult for homeless people to accept being locked down from one day to the next; thus they needed accompaniment during this process. The option of the shelters was, consequently, a self-frustrating policy that contradicted its aims. For this reason, the group “people on the street” should have been the recipient of special protection measures. Although many of them were benefited from other measures adopted because they are part of other groups in vulnerable situations (for example, women who received the Universal Child Allowance Programme or Pregnancy Allowance Programme also began to receive the payment of the Federal Emergency Income),¹⁶ but they are not because of the condition of being homeless. This implies that the purpose of the state intervention is not linked to the fulfillment of the right to housing.

Problems to Build a Discriminatory Argument

This analysis of the two possible purposes behind the measures adopted for the homeless show that they were both insufficient and discriminatory and that they did not comply with either the right to housing or the right to health. Something similar happened at the time of the issuance of the injunction and the final judgment. The equality argument was not taken into account, and the right to housing and the right to health were not considered jointly.

Yet, the construction of the argument for equality is not free of problems. Namely:

- (a) *Intersectionality*: Understanding structural inequality requires the recognition of the intersection of identities in the group and within it and their experiences of oppression and discrimination. So in the case of the homeless it should be considered the fact that they are not only living in the streets but the fact that they are also migrants, women (Fredman, 2009), trans or transvestites, children, individuals with disabilities, and individuals with addictions or mental health problems (IACHR, Resol. 1/20); however, in general, the policies adopted by the CABA were uniform (shelters) for all of them. Thus, the health policies adopted did not seriously consider the characteristics of each homeless person. A clear example is that of children who had no connectivity to attend their classes online. Or when students went back to on site classes, the shelters were far from the schools they used to attend. In this way, housing was not guaranteed sufficiently.
- (b) *Availability of information in the hands of the State*: Another characteristic to understand structural inequality is that it often requires comparisons of information which (a) may not exist, (b) or if it exists, it is in the hands of the State. It is not possible to control public policies without data (in the case of the pandemic and the homeless, this means the number of people infected, who are affected by the measures, how the measures are implemented, among others).

It is interesting at this point to discuss what should be proved and who should prove it to demonstrate an inequality argument. In the case of public policies the State is the agent who is in the best position to provide information. This information must be produced and must be available without the need of a precautionary measure. This availability of the information is one of the channels that people have to control the acts of the government. However, when the data are not available or not do exist, this should not prevent us from talking about discrimination; otherwise, we would remain tied to the information provided by the State to corroborate the discriminatory treatment.

In the first resolution (precautionary measure), the lack of information was evident, and thus, apart from requiring health protocols, the judge requested the information regarding the situation in the shelters. Therefore, at this point it was difficult to construct a comparison for equality. In the final sentence, on the other hand, once the information was provided, it was recognized that the protocols that

were applied to people who were in shelters were not the same protocols that applied to people who were hosted in hotels. Even after this recognition, the equality argument was not applied since the only measure that resulted from the trial was to comply with the protocols. Thus, it seems that the argument regarding health protection and the need to reduce mass infections prevailed over the importance of analyzing the discrimination bias implicit in the established health policy.

- (iii) *Homeless people as a suspicious category*: I argued at the beginning that the suspicious categories are listed in the National Constitution as well as in various international human rights instruments. However, in none of them does the “category of homeless people” appear expressly. In this way, the question arises as to whether the normative enumeration is exhaustive or it should also be extended to other groups such as the homeless.

This group is discriminated against because of its socio-economic condition. Article 1.1 of the AHRC prohibits discrimination based on socio-economic condition. Thus, the State should have provided compelling reasons to justify the differentiated treatment towards the repatriated and those who were on the streets, reasons which, as we have seen, were never provided. Thus it is possible to affirm that homeless people received discriminatory (unjustified) treatment.

Likewise, the constitution of the CABA establishes in its Article 17 that “the City develops coordinated social policies to overcome the conditions of poverty and exclusion through budgetary, technical and human resources. It assists people with unsatisfied basic needs and promotes access to public services for those who have fewer possibilities.” Even so, I understand that the “homeless group” meets the criteria of disadvantaged groups so the State must not only not discriminate against them but also take concrete and sufficient actions in their favor.

Now, it is not only a question of affirming that an imperative justification by the State is required in these cases, but also that positive actions should be established in order to remove that group from the situation of vulnerability. The concept of real equality operates as a rule, placing specific obligations on the head of the State. Consequently, people who lived on the streets required a different treatment from those who could stay at home: a bed in a shelter was not enough. On this matter, the I/A Court HR holds that “the obligation of States to respect and guarantee the right to health requires a special dimension in terms of protection of people in vulnerable situations.”¹⁷

- (iv) *Public policy coordination*: Structural inequality requires not just the application of this or that program, but rather a coordination of those programs to

attend to the different difficulties that people have. During the pandemic, the State acknowledged that it had doubled its efforts in this direction. Despite that, a real solution to the problem was not achieved, neither from the right to health nor from the right to housing. The situation was so critical that it was difficult to give an adequate answer. Both before and during the pandemic, the CABA adopted a number of policies investing millions of pesos in programs which are not the definitive answer to homelessness. Rather, they are “patch” policies, assistance services that are fragmented and, not infrequently, isolated from other networks or resources or referrals (Palleres & Hidalgo, 2018). Once again, the inefficient use of resources by CABA is demonstrated. It is evident that without the coordination of these programs, a definitive answer to the problems will not be reached.

Some Conclusions

The insufficiency of CABA's measures to respond to the lack of housing has previously been made known. As a result of the pandemic, CABA added more insufficient policies that involved discriminatory treatment of these people which, does not pass an equality analysis. Both from the conception of equality as non-discrimination (since there was a distinction in the treatment between the repatriated and the homeless people without an overriding reason that justified it), and in the concept of equality as non-domination (since the policies adopted were either “neutral” or insufficient considering how vulnerable homeless people are). This discrimination continued once the immunization process began. The homeless group was not considered among the priority despite their high risk. In addition, the registration process to get the vaccines has a highly discouraging impact on these groups. Since the information is provided by different communication networks and the access to a device with the internet is required to register. Evidently, a robust egalitarian look was also absent in these decisions.

In this way, the pandemic was a good opportunity to discuss structural problems. It is clear that sending homeless people to shelters did not rectify the high risks experienced by the homeless. And, the right to health, which was the area on which the CABA apparently was focusing, was not attended sufficiently, and the policies were also discriminatory. Disregarding the interdependent nature of rights may be a possible reason for these “patch” policies. In societies in which large groups suffer situations of structural inequality,

those most vulnerable should be at the center of policy-making, even in emergencies. It is urgent to strengthen the existing policies and to implement long-term policies that provide a comprehensive solution in terms of housing and health for this population.

Endnotes

¹It is true that not all countries of the Latin America region responded to the coronavirus in the same way. But in general, there were different restrictions to the freedom to circulate. They were adopted by national governments (for example, in the case of Argentina), regional governments (Chile), or local governments (like some local jurisdiction in Brazil). I would like to thank an anonymous reviewer for encouraging me to point this out.

²About it, see <https://lexatlas-c19.org/argentina/>

³In this regard, see General Observations No. 4 and No. 7 of the Committee on Economic, Social and Cultural Rights.

⁴Even recognized by the [Supreme Court of Justice in the case “Q. C., S. Y. c/ Gobierno de la Ciudad de Buenos Aires s/ amparo,”](#) Judgment of April 4, 2012. About these cases see Maurino and Nino (2014).

⁵I highlight that the census of homeless people was not carried out from the CABA but from civil society organizations. Available in: <https://www.cels.org.ar/web/2019/07/segundo-censo-popular-de-personas-en-situacion-de-calle-en-la-caba/>

⁶This is against a different human rights standards which specially protect the family unit and the best interests of the child not to be separated from their parents. About that, see V. [United Nations Human Rights Office of the High Commissioner](#), Special Rapporteur on adequate housing, Guidelines for the Implementation on the Right to Adequate Housing, 26 December 2019, A/HRC/43/43. In the same sense, [ESCR Committee](#), Communication núm. 48/2018, 12 April 2021, E/C.12/69/D/48/2018 and Committee on the Rights of the Child, General Comment No. 21 (2017) on Children in Street Situations, among others. I would like to thank an anonymous reviewer for encouraging me to develop this point and Pablo Comegna for the information.

⁷At this point, I stop at the right to health. However, interdependence with other rights such as autonomy, physical integrity, etc. is clear. On the interdependence of rights, especially regarding [ESCR](#), v. [IACHR](#), “Caso Comunidades indígenas miembros de la Asociación Lhaka Honhat (Nuestra Tierra) Vs. Argentina,” Sentence of February 6, 2020 (Merits, Reparations and Costs).

⁸About Latin America, see Clérico & Ronconi & Aldao, 2017. Specifically, about Argentina see Ronconi, 2018/[Forthcoming](#).

⁹These categories follow clearly from Art. 1. 1 of the [ACHR](#) (sex, nationality, race, among others) and Art. 75. 23 of the National Constitution.

¹⁰On this point, see IACHR, “Caso Trabajadores de la Hacienda Brasil Verde Vs. Brasil,” Sentence of October 20, 2016 (Preliminary Objections, Merits, Reparations and Costs).

¹¹The USA Court in the case “*Brown v. Board of Education of Topeka*,” 347 SCR 483, sentence May 31, 1955 recognizes that it is not enough just to eliminate norms or even practices to make segregation schools disappear.

¹²Available in <https://www.buenosaires.gob.ar/gobierno/normativa/covid-19>

¹³Poder Judicial de la Ciudad de Buenos Aires, Juzgado de 1ra instancia en lo Contencioso Administrativo Y Tributario No 13 Secretaría N°26, “Donda Perez, Victoria Analía Y Otros Contra Gcba Sobre Amparo—Salud-Otros” Número: EXP 5484/2019–0.

¹⁴IACHR, Resolution 1/20 “Pandemic and Human Right in the Americas.” Available in https://www.oas.org/en/iachr/media_center/PReleases/2020/073.asp

¹⁵That is, the categories from which the isolation policies are built. I am not referring to the sectors considered at risk in epidemiological terms (for example, people with respiratory conditions, people over 60 years old, among others).

¹⁶About the Universal Child Allowance Programme or Pregnancy Allowance Programme, see Arcidiácono (2016). The Federal Emergency Income (IFE) is an exceptional monetary benefit intended to compensate for the loss or serious decrease in income of people affected by the health emergency situation, established temporarily by a decree of the Executive Power.

¹⁷IACHR, “Caso Cuscul Pivara y otros vs. Guatemala” Judgment of August 23, 2018 (Preliminary Exception, Merits, Reparations and Costs) cons. 131.

References

- Arcidiácono, P. (2016). Expansion and exclusion in the Universal Child Allowance Programme in Argentina. *SUR*, 13(24), 27–34
- Arcidiácono, P., & Gamallo, G. (2014). Entre la confrontación y la funcionalidad. Poder Ejecutivo y Poder Judicial en torno a la política habitacional de la Ciudad de Buenos Aires. *POSTData* 19, N°1, April–September.
- Brown v Board of Education of Topeka. (1954). 347 SCR 483
- Clérico, L. (2018). Proportionality in social rights adjudication: Making it workable: An analytical perspective. In D. Duarte & J. Silva Sampaio (ed.) *Proportionality in law: An analytical perspective*, Springer.
- Clérico, L., Ronconi, L., & Aldao, M. (2017). Multidimensional approach to equality in the Inter-American context: Redistribution, recognition, towards participatory parity. In A. von Bogdandy & E. Ferrer Mac-Gregor & M. Morales Antoniazzi & F. Piovesan & X. Soley *Transformative constitutionalism in Latin America: The emergence of a new ius commune*, Oxford: Oxford University Press.
- Defensoría del Pueblo. (2020). Report El derecho a una vivienda adecuada: medidas adoptadas en el marco de la pandemia de Covid-19, April. <http://www.defensoria.org.ar/biblioteca/>
- ESCR Committee, Dictamen adoptado por el Comité en virtud del Protocolo Facultativo del Pacto Internacional de Derechos Económicos, Sociales y Culturales, respecto de la comunicación núm. 48/2018, 12 April 2021, E/C.12/69/D/48/2018
- Farha, L. (2020a). Special Rapporteur on the right to adequate housing. Housing, the front line defence against the Covid-19 outbreak, March 18th. Available in <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727>
- Farha, L. (2020b). COVID-19 Guidance Note1 Protecting those living in homelessness, 28 April. Available in https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf
- Fredman, S. (2009). Engendering Socio-Economic Rights. *Journal South African Journal on Human Rights*, 25(3), 410–41
- García, L. (2017). Argentina’s migration law: Changes challenging the human right to migrate available at: <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2017/09/argentina>
- IACHR, “Caso Comunidades indígenas miembros de la Asociación Lhaka Honhat (Nuestra Tierra) Vs. Argentina”, Sentence of February 6, 2020 (Merits, Reparations and Costs). https://www.corteidh.or.cr/docs/casos/articulos/resumen_400_esp.pdf
- IACHR, “Caso Trabajadores de la Hacienda Brasil Verde Vs. Brasil”, Sentence of October 20, 2016 (preliminary objections, merits, reparations and costs). https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_esp.pdf
- IACHR, “Caso Cuscul Pivara y otros vs. Guatemala” Judgment of August 23, 2018 (Preliminary Exception, Merits, Reparations and Costs). https://corteidh.or.cr/docs/tramite/cuscul_pivara_y_otros.pdf
- IACHR, Resolution 1/20 Pandemic and human right in the Americas. Available in https://www.oas.org/en/iachr/media_center/PReleases/2020/073.asp
- Maurino, G., & Nino, E. (2014). Economic and social rights and the Supreme Court of Argentina in the decade following the 2001–2003 crisis. Nolan, A. (Ed.), *Economic and social rights after the global financial crisis* (pp. 299–334). Cambridge University Press.
- Palleres, G., & Hidalgo, C. (2018). Conceptualización y medición de la situación de calle en la Ciudad de Buenos Aires. *Cuestión Urbana*, Nr. 3. Available: <https://publicaciones.sociales.uba.ar/index.php/cuestionurbana/article/view/5186>
- Poder Judicial de la Ciudad de Buenos Aires, Juzgado de 1ra instancia en lo Contencioso Administrativo Y Tributario No 13 Secretaría N°26, “Donda Perez, Victoria Analía Y Otros Contra Gcba Sobre Amparo - Salud-Otros” Número: EXP 5484/2019–0. <https://observatoriociudad.org/public/eyJfcmFpbHMiOmsibWVzc2FnZSI6IkJBaHBbb2tGIiwZlXhwIjpuWxsLjJwdXliOiJibG9iX2IklN19-calcfef027533be846933a31df0e129c948bc5111%20-%20Sentencia%20ordena%20al%20GCBA.pdf>
- Ronconi, L. (2018). *Derecho a la educación e igualdad como no sometimiento*. Universidad del Externado de Colombia. <https://publicaciones.uexternado.edu.co/gpd-derecho-a-la-educacion-e-igualdad-como-no-sometimiento-9789587729023.html>
- Ronconi, L. (forthcoming). The inequality in Argentina. Collin, P. & Bastias, M. *Law and Diversity. European and Latin American Experiences from a Legal Historical Perspective*, Frankfurt am Main: Max-Planck-Institute for European Legal History.
- Smulovitz, C. (2015). Legal inequality and federalism: Domestic violence laws in the Argentine provinces. *Latin American Politics and Society*, 57(3), 1–26
- Supreme Court of Justice in the case “Q. C., S. Y. c/ Gobierno de la Ciudad de Buenos Aires s/ amparo”, Judgment of April 4, 2012. <https://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoByIdLinksJSP.html?idDocumento=148381&cache=1642159009689>
- Tedeschi, S. (2017). Tres decisiones estratégicas para el litigio de derecho a la vivienda. Thea, F. & Benente, M. (comp.) *Derecho a la vivienda y litigio estructural*, José C. Paz: Edunpaz.

- United Nations Committee on the Rights of the Child, General Comment No. 21. (2017). on children in street situations.
- United Nations Human Rights Office of the High Commissioner, Special Rapporteur on adequate housing, guidelines for the implementation on the right to adequate housing, 26 December 2019, A/HRC/43/43.
- Vita, L., Cardinaux, N., Aldao, M., Clérico, L. (2013). Condiciones de posibilidad para la exigibilidad judicial del derecho a la vivienda

en el ámbito local. Ciudad 5: Revista de la Asociación de Derecho Administrativo de la Ciudad de Buenos Aires, Buenos Aires, Asociación de Derecho Administrativo de la Ciudad Autónoma de Buenos Aires, 33–74.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.