South American Publishing

SAP Environmental Research and Ecotoxicity. 2023; 2:68
doi: 10.56294/ere202368

REVIEW

Procedural consistency and material truth: limits and scope of ex officio evidence. Ruling 'Argentine Chamber of Fireworks Companies (CAEFA) and Others v. Municipality of Paraná on Unconstitutionality Action (Art. 51 Inc. b. Law 8369)'

Congruencia procesal y verdad material: límites y alcances de la prueba de oficio. Fallo "Cámara Argentina de Empresas de Fuegos Artificiales (CAEFA) y Otros C/ Municipalidad De Paraná S/ Acción de Inconstitucionalidad (Art. 51 Inc. b. Ley 8369)"

Yanina Elisabeth Cerdeira[1], Mirna Lozano Bosch[1]

[1]Universidad Siglo 21, Abogacía. Argentina.

Cite as
Cerdeira YE, Lozano Bosch M. Procedural consistency and material truth: limits and scope of ex officio evidence. Ruling 'Argentine Chamber of Fireworks Companies (CAEFA) and Others v. Municipality of Paraná on Unconstitutionality Action (Art. 51 Inc. b. Law 8369)'. SAP Environmental Research and Ecotoxicity. 2023; 2:68. https://doi.org/10.56294/ere202368

Publication History
Submitted: 16-09-2022
Revised: 24-01-2023
Accepted: 09-06-2023
Published: 10-06-2023

ABSTRACT

The analysis of the ex officio nature of evidence in Argentine judicial proceedings was presented as a topic of considerable doctrinal and jurisprudential debate. The discussion focused on the tension between the principle of consistency, the impartiality of the judge, and the search for material truth. Several authors argued that measures to better provide granted magistrates the power to incorporate ex officio evidence when the parties did not offer the necessary elements to decide, without this implying a violation of the equality of the litigants. In this sense, it was highlighted that these measures benefited both parties by placing them in the same situation of doubt or uncertainty. In the administrative sphere, two positions coexisted: one that considered ex officio evidence unnecessary in review proceedings, and another that justified it to ensure effective protection of rights. Legal scholars such as Peyrano defended the exceptional nature of its use, limiting it to very specific circumstances, while the General Environmental Law expressly enabled its application to guarantee the protection of constitutional rights. In comparative law, both the Inter-American Commission and Court of Human Rights and the European Court recognised the importance of ex officio evidence in environmental and fundamental rights matters. Argentine jurisprudence, for its part, endorsed its use in cases of social significance, prioritising health and the environment over purely formal arguments. In conclusion, ex officio evidence has established itself as a legitimate tool, capable of harmonising impartiality, consistency and effective judicial protection within the framework of a fair process.

Keywords: Official Capacity; Consistency; Due Process; Environmental Law; Judicial Evidence.

RESUMEN

El análisis de la oficiosidad de las pruebas en el proceso judicial argentino se presentó como un tema de gran debate doctrinario y jurisprudencial. La discusión se centró en la tensión entre el principio de congruencia, la imparcialidad del juez y la búsqueda de la verdad material. Diversos autores sostuvieron que las medidas para mejor proveer otorgaron a los magistrados la facultad de incorporar pruebas de oficio cuando las partes no ofrecieron los elementos necesarios para decidir, sin que ello implicara violar la igualdad de los litigantes. En este sentido, se destacó que dichas medidas beneficiaron a ambas partes al colocarlas en la misma situación de duda o incertidumbre. En el ámbito administrativo, coexistieron dos posturas: una que entendió innecesaria la prueba de oficio al tratarse de procesos de revisión, y otra que la justificó para asegurar una tutela efectiva de derechos. Doctrinarios como Peyrano defendieron la excepcionalidad de su uso, limitándola a circunstancias muy puntuales, mientras que la Ley General del Ambiente habilitó expresamente su aplicación para garantizar la protección de bienes constitucionales. En el derecho comparado, tanto la Comisión y la Corte Interamericana de Derechos Humanos como el Tribunal Europeo reconocieron la importancia de la prueba de oficio en materias ambientales y de derechos fundamentales. La jurisprudencia argentina, por su parte, avaló su empleo en casos de trascendencia social, priorizando la salud y el ambiente por sobre argumentos meramente formales. En conclusión, la prueba de oficio se consolidó como una herramienta legítima, capaz de armonizar imparcialidad, congruencia y tutela judicial efectiva en el marco de un proceso justo.

Palabras clave: Oficiosidad; Congruencia; Debido Proceso; Derecho Ambiental; Prueba Judicial.

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INTRODUCTION

The analysis of ex officio evidence in Argentine judicial proceedings has generated intense doctrinal and jurisprudential debate, particularly regarding the tension between the principle of consistency, the impartiality of the judge, and the pursuit of material truth. Legal doctrine has examined the power of judges to order ex officio evidentiary proceedings under the concept of measures to provide better, as outlined in procedural codes and specific regulations, such as the General Environmental Law. This institution raises the dilemma between a strictly dispositive process, where the judge is limited to evaluating the evidence provided by the parties, and a model with greater judicial activism, which allows for the incorporation of evidence necessary to reach a fair judgment. Likewise, in sensitive contexts such as environmental protection and fundamental rights, both domestic and comparative law have recognized the legitimacy of ex officio interventions to safeguard constitutional and collective rights. In this context, it is essential to review doctrinal positions, national case law, and international experience to understand how the search for legal truth is articulated in conjunction with respect for due process, equality of the parties, and judicial impartiality.

DEVELOPMENT

Ex officio evidence: Jurist Elías[1] states that so-called ex officio evidence, accepted as measures to better provide for Argentine procedural codes, establishes the procedural tool to be used by the civil judge at the end of the process and before issuing a ruling, as "a certain ex officio evidentiary initiative", and seen as extraordinary proceedings, they give the judge the power to use them to resolve the case in the most appropriate and informed manner, without having to rely solely on the evidence provided by the parties.

That is why, according to Gozaíne, allowing magistrates to order the production of evidence ex officio enables them to obtain the knowledge required to pass sentence when, due to the negligence or inaction of the parties, it has not been incorporated. There is no violation of the principle of equality in court, since such an ex officio provision is directed at the parties to the litigation, which means placing both in an equal situation of doubt or lack of necessary certainty, as beneficiaries of such a remedy.

Admission and assessment of ex officio evidence in administrative proceedings: there are two positions on the issue. The first concerns the function of the contentious-administrative process, where it is unnecessary to provide proof, as it is only for reviewing the actions and decisions of the previous instance. And the second theory justifies ex officio evidence, not only because the process is not a mere act of review, but because "the aim is to provide effective protection of legal situations [...], which is why it is perfectly possible and even necessary for the process to include evidence intended to convince the judge of the disputed facts".

Likewise, when evaluating the evidence, the judge seeks, in this intellectual operation, to establish the effectiveness of his convictions regarding the evidence received.

Peyrano reflects that the civil judge, in the context of an adversarial and contentious proceeding where evidence has been produced, should be the one to employ it, use it to the fullest, and ensure its preservation, but not the one to investigate or explore the truth, except in very exceptional cases and when promoting it ex officio. Not to seek the truth, if they still have doubts, but because "they will have fulfilled their real, limited but noble mission: to approach the truth in a limited and selective manner".

Environmental protection: In Argentina, Article 32 of General Environmental Law 25.675[2] covers two procedural institutions of notable utility: on the one hand, the production of ex officio evidence, and on the other, precautionary measures, also adopted ex officio. Both have been proposed in response to the need to protect "constitutional rights (in this case, the environment) and the need to safeguard the principle of due process.

In comparative law, regarding environmental protection, the Inter-American Commission on Human Rights, in conjunction with the Inter-American Court of Human Rights, serves as an international forum for presenting cases that affect the environment, where their resolutions have a greater impact than those in general situations. Both present regulations to better provide, where Article 58 regulates ex officio evidentiary proceedings when they are considered valuable and necessary to reach a fair judgment.[3]

For its part, the European Convention on Human Rights does not regulate the right to a healthy environment. Still, the case law of the European Court of Human Rights has ruled that certain rights of the Convention are influenced in environmental cases, such as the right to life and the right to privacy, for example, where "severe environmental pollution can affect people's well-being and prevent them from enjoying their home, negatively affecting their private and family life".

The rule of consistency linked to ex officio evidence: The meaning of consistency recognized by doctrine is related to the similarity or equivalence between the claims made by the parties and the judgment. Regarding this guideline, legal doctrine and judicial decisions refer to the defense in court and due process as guarantees prescribed by the Constitution.[4]

Evidence, as an activity, is presented during the course of the proceedings. At the same time, consistency is related to the judge, who possesses it as an intellectual activity, as an impartial third party, at the time of sentencing. Vélez[4] points out multiple points of contact when linking both concepts and their results, where:

The best known has to do with the judge's assessment of the evidence in the judgment, and the possible internal inconsistency between the recitals and the ruling (internal inconsistency). There are also connections between the burden of proof and consistency, in that both are rules that the judge must respect when handing down a ruling. Another has to do with measures to provide better or better resolve, and here we are definitely approaching the issue that interests us.

Likewise, in a traditionalist sense, the rule of consistency also prohibits the judge from exceeding the scope of what is claimed and disputed by the parties, which entails the restriction of acting ex officio, because doing so could lead to hypothetical inconsistency, violating the guarantee of a fair trial, in an inquisitorial position. Vélez[4] understands that the judge "abandons his role as an impartial third party to come to the aid of the party that should have provided evidence but failed to do so, thereby fatally undermining the procedural principles of impartiality and equality".

He adds that when the judge orders measures to provide better, he is already estimating, as he is judging, because he requests

them for a specific purpose that he has previously thought out. Therefore, if these measures are not admitted, the consequence is that when the judge passes sentence, he will only take into account the evidence provided by the parties, where the rule of consistency must be extended to the evidence.

In conjunction with these arguments is the concept of truth in the process and the issue of "objective legal truth," with two conflicting positions: permission to seek the truth with measures to provide better, or a process that is respectful of the guarantees of the Constitution, which only accepts "a declaration of certainty, and consequently the judge has no reason to get involved in the search for any truth, and must never abandon his position as an impartial third party, who has nothing to do with obtaining evidence".[4]

Case law background

The Supreme Court of Justice of the Nation (CSJN) has decided, under the authority conferred by Article 32 of the General Environmental Law, in rulings such as "Cruz, Felipa et al. v. Minera Alumbrera Limited et al. on summary proceedings,"[5] in 2016, that "the objective is to take all necessary measures to order, conduct, or prove the harmful facts in the proceedings, to protect the general interest effectively".

For its part, the Chamber brings comparative law jurisprudence to this ruling, as exemplified by the Supreme Court of Spain, STS. Chamber 2, on 30 November 1990, No. 3851/1990, FD 17.2, has emphasized the importance of protecting what it refers to as "natural capital," encompassing everything inherent in nature, including its living beings, where human beings are immersed, and where its use is not accepted without limits.

Similarly, the IACHR, in its October 20, 2020, ruling in the case of "Grijalva Bueno v. Ecuador," has considered, in accordance with the provisions of Article 58 of the Convention, that this Court may, at any stage of the proceedings, and provided that it is effective for its ruling, "a) seek, on its own initiative, any evidence it considers useful and necessary. In particular, it may hear, as an alleged victim, witness, expert, or in any other capacity, any person whose statement, testimony, or opinion it deems relevant." Similarly, in the September 15 ruling in the case of Cordero Bernal v. Peru,[6] the president of the IACHR reiterates the reference to the proceedings for better provision of Article 58, stating that it is appropriate to note the need to obtain "additional specific evidence that will allow for a better resolution of the dispute raised. In this regard, the State is required to submit, as evidence for a better resolution, within the time frame indicated in the operative part".

About declaring the unconstitutionality of the challenged provision, which constitutes an act of utmost institutional commitment, as it is considered the last resort of the legal system, the Court has brought to this ruling judgments in which the CSJN has ruled that "If it is not proven that the application of the legal provision being challenged has caused harm to the claimant, it is meaningless to rule on the alleged unconstitutionality", this reasoning has been established as a rule in "Nuevo Cómputo SA v. AFIP" 331:1434; "Brandi Eduardo A., et al. v. Mendoza Province" 330:3109; Lemes Mauro I, Rulings 332:5.[7,8]

The Chamber mentions that, about jurisdiction over environmental issues, both provinces and municipalities have been recognized as having authority when the welfare of the community is at stake, as the Court has held in rulings such as "Roca, Magdalena v. Province of Buenos Aires on unconstitutionality," among others.[9,10,11,12]

CONCLUSIONS

The study of ex officio evidence and its connection to procedural consistency reveals that the dilemma lies not only in formal respect for guarantees, but also in the ultimate purpose of the process: to arrive at a fair and practical decision. Argentine and comparative jurisprudence have validated that, in matters of social relevance such as the environment and health, the judge can and should use ex officio measures when the evidence provided is insufficient. Far from constituting an illegitimate intrusion, such powers, exercised with prudence and within the regulatory margins, reinforce the role of the magistrate as guarantor of due process and protector of fundamental rights. Consistency, understood not as a rigid limit but as a principle of balance between the claims of the parties and the judicial decision, thus finds a channel for harmonization with the judge's exceptional evidentiary initiative. In short, the ex officio nature of evidence does not violate due process when it is aimed at clarifying relevant facts, safeguarding equality, and guaranteeing the adequate protection of rights, consolidating itself as an indispensable tool in modern procedural law committed to social justice and the protection of collective assets.

REFERENCES

1. Elías J. Las medidas para mejor proveer y su obligada vinculación al debido proceso. Buenos Aires: Microjuris.com Argentina; 2020. MJ-DOC-15423-AR | MJD15423.

2. Honorable Congreso de la Nación Argentina. Ley Nacional 25.675: Ley General del Ambiente. Buenos Aires.

3. Sagüés NP. "Activismo" versus "Garantismo". A propósito de la producción de pruebas y medidas precautorias de oficio en la acción de amparo ambiental. En: Centro Interdisciplinario de Derecho Procesal Constitucional, Facultad de Derecho y Ciencias Sociales del Rosario, Pontificia Universidad Católica Argentina; 2004.

4. Vélez JC. La prueba y su vinculación con la regla de congruencia. En: Alvarado Velloso A, presidente. IX Congreso Nacional de Derecho Procesal Garantista; 2007; Azul, Argentina.

5. Corte Suprema de Justicia de la Nación. Cruz, Felipa y otros c/ Minera Alumbrera Limited y otro s/ sumarísimo. Sentencia del 23 de junio de 2016. Fallos. 2016;339:142.

6. Corte Interamericana de Derechos Humanos. Cordero Bernal vs. Perú. Sentencia del 15 de septiembre de 2020.

7. Corte Suprema de Justicia de la Nación. Nuevo Cómputo SA c/ AFIP s/ daños y perjuicios. Sentencia del 18 de junio de 2008. Fallos. 2008;331:1434.

8. Corte Suprema de Justicia de la Nación. Brandi, Eduardo A. y otros c/ Mendoza, Provincia de s/ acción de amparo. Sentencia del 27 de septiembre de 2005. Fallos. 2005;330:3109.

9. González Lagier D. Argumentación en materia de hechos. Alicante: RUA. Repositorio Institucional de la Universidad de Alicante; 2014. Disponible en: https://rua.ua.es/dspace/bitstream/10045/37145/1/apuntes_sobre_prueba_y_argumentacion_juridica.pdf

10. Argentina. Constitución de la Nación Argentina. Texto ordenado con reforma de 1994. Buenos Aires; 1994.

11. Poder Ejecutivo Nacional (Argentina). Decreto Reglamentario 302/83: Empleo de artificios pirotécnicos. Buenos Aires.

12. Honorable Congreso de la Nación Argentina. Ley Nacional 20.429: Armas y Explosivos. Buenos Aires.

FINANCING

None.

CONFLICT OF INTEREST

None.

AUTHORSHIP CONTRIBUTION

Conceptualization: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Data curation: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Formal analysis: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Research: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Methodology: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Project management: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Resources: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Software: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Supervision: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Validation: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Visualization: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Writing – original draft: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.
Writing – review and editing: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.