

Received: October 2023 Accepted: December 2023

DOI: <https://doi.org/10.58262/ks.v12i1.065>

## Jurisdictional Evaluation of Circumstantial Evidence in Criminal Matter

### Valoración Jurisdiccional De La Prueba Indiciaria En Materia Penal

Garces Cordova Felipe Alejandro<sup>1</sup>, Suarez Albino Manuel Augusto<sup>2</sup>, Molina Mora José Fabián<sup>3</sup>

#### **Abstract**

*The main topic under analysis is not widely addressed within Ecuadorian doctrine, as there are not enough statements regarding circumstantial evidence or indirect evidence. It is necessary to mention that the Ecuadorian criminal process has an implicit doctrinal background, which has been debated regarding the evaluation of indirect evidence as part of the requirements that contribute to reaching a logical conclusion about the responsibility of a defendant in the face of the illicit act. It is essential to highlight the importance of evidence since it is part of the investigations of the events being examined, as it is the cornerstone of all legal reasoning. For this reason, it plays a fundamental role in the application of the law because it enables the connection between reality and the facts. The evaluation of evidence is necessary and fundamental, especially when dealing with indirect or circumstantial evidence. In criminal offenses, its application is generally more exposed, such as in cases of theft, offenses against sexual and reproductive integrity, economic crimes, and abuse of trust, among others, where it is challenging to prove the facts through direct evidence to establish the materiality and the responsibility of the defendant on trial.*

**Keywords:** Circumstantial Evidence, Jurisdictional Assessment of Evidence, Criminal Proceedings.

#### **Resumen**

*El tema principal en análisis es poco visible dentro de la doctrina ecuatoriana, puesto que no existen suficientes pronunciamientos acerca de la prueba indiciaria o prueba indirecta, es preciso mencionar que el proceso penal ecuatoriano, tiene implícito un antecedente doctrinario que ha sido discutido sobre la valoración de la prueba indirecta como parte de los requisitos que coadyuvan para poder llegar a una conclusión lógica sobre la responsabilidad de un imputado frente al acto ilícito. Es importante destacar que la prueba tiene una gran importancia, puesto que es parte de las averiguaciones de los hechos que se investigan, ya que es la piedra angular de todo razonamiento jurídico; por tal razón da lugar a un aspecto fundamental para la aplicación del derecho, porque a través de esta se logra la conexión de la realidad con los hechos. La valoración de la prueba es necesaria y fundamental, más aún cuando se trata de la prueba indirecta o necesaria. En los delitos penales generalmente es más expuesta su aplicación como en los delitos de hurto, contra la integridad sexual y reproductiva, económicos, abuso de confianza, entre otros, en donde es complejo demostrar los hechos a través de la prueba directa para así establecer la materialidad y la responsabilidad de quien está siendo procesado.*

**PalabrasClave:** Prueba Indiciaria, Valoración Jurisdiccional De La Prueba, Proceso Penal.

---

<sup>1</sup>Universidad Regional Autónoma de Los Andes, Extensión Quevedo, Ecuador. ORCIDID: <https://orcid.org/0000-0002-1136-2344>, Email: [uq.felipecg09@uniandes.edu.ec](mailto:uq.felipecg09@uniandes.edu.ec)

<sup>2</sup>Universidad Regional Autónoma de Los Andes, Extensión Quevedo, Ecuador. ORCIDID: <https://orcid.org/0000-0002-9257-273X>, Email: [uq.manuela97@uniandes.edu.ec](mailto:uq.manuela97@uniandes.edu.ec)

<sup>3</sup>Universidad Regional Autónoma de Los Andes, Extensión Quevedo, Ecuador. ORCIDID: <https://orcid.org/0000-0002-2653-2721>, Email: [teachertp43@uniandes.edu.ec](mailto:teachertp43@uniandes.edu.ec)

## Introduction

The evidence, according to different writers on criminal law, is considered polysemic, that is, it is studied from the objective, subjective, and final result points of view. The writer María Rodríguez, on the purpose of the evidence in the process on the circumstantial evidence and presumption of innocence in the criminal process, referring to the purpose of the circumstantial or indirect evidence, stated that:

It is the judicial conviction; in the mind of the judge, there must be certainty as to whether a situation did or did not originate in reality. The purpose of evidence is to persist in the probability that there may be an error in the decision, but this does not imply the occurrence of doubt. If doubt were to arise, it would not allow for conviction, and the result of the evidence would not serve its purpose. In such a case, the court must resolve the situation by considering the assertion or denial in question as not proven, while being aware of the consequences that arise from the burden of proof. (Rodríguez, 2019)

From this perspective, one can relate that to analyze circumstantial evidence, it is necessary to establish that it is a piece of evidence that allows the judicial system to consider proven facts for which there is no direct evidence. However, it can be inferred from this that other facts linked to what is intended to be proven can be established. It is important to deduce the certainty of these latter facts through logical reasoning.

## Definitions of Circumstantial Evidence or Indirect Evidence

It's important to cite San Martín Castro, who defines circumstantial evidence as proof directed towards establishing the certainty of facts (indications) that are not constitutive of the alleged crime but from which, through logic and the rules of experience, the criminal acts and the involvement of the accused can be inferred. He also points out that it must be motivated based on a causal and coherent link between the proven facts (indications) and the crime being sought to be proven.

On the other hand, Mixán Mass defines circumstantial evidence as a probative activity that is necessarily discursive and indirect, originating from established data. It is realized by obtaining probative arguments through correct inferences. (Mixán Mass, 2019).

Cabanillas Barrantes says that the proof of evidence is based on every true and known fact that leads, thanks to inductive reasoning, to the determination of an unknown fact, resulting in a synthetic judgment, that is, adding something new to an entity that is discovered (Rosas, 2004).

In other words, circumstantial evidence, also known as indirect evidence, is aimed at demonstrating the certainty of indicative facts through reasoning, based on a causal and logical connection equivalent to both the proven facts and the facts under consideration. These facts must be directly linked to the criminal act.

Now, analyzing the phenomenology when assessing circumstantial evidence allows us to realize that when imposing a penalty with criminal implications, a prior trial is required to determine whether the accused is guilty of a legally relevant act. However, this does not always happen, as direct evidence is not always available, especially when investigating crimes such as corruption by public officials. The procedural activity aimed at convincing the judge of the legally relevant facts is doctrinally understood as an evidentiary element or proof.

## The Circumstantial Evidence in the Constitutional Principles of the Ecuadorian State

Circumstantial evidence in the constitutional principles, according to Articles 424 and 425 of the Constitution of the Republic of Ecuador, is considered the main norm within the hierarchical order established in the well-known Kelsen pyramid. This means that the other laws that are part of the legal system are subject to it, without violating human rights. Therefore, the relevance of circumstantial evidence in relation to the related principles is constantly debated due to a lack of knowledge or the necessary criteria for its application within the criminal process, such as the principles of the presumption of innocence and legality.

Regarding the right to the presumption of innocence, it is important to establish that the accused does not have to prove their innocence. Instead, it is the responsibility of the prosecution to prove their guilt. In other words, the accused enters the trial enjoying their innocence and acquires the status of guilt when there is evidence that refutes their innocence and demonstrates their actual guilt. The judge, guided by this principle, must provide a motivated judgment based on all the evidence presented during the trial. Therefore, it is not accurate to claim that there is a conflict between the presumption of innocence and circumstantial evidence. The prosecution must incorporate all elements into the process that lead the judge to be convinced of the accused's guilt, providing a logical argument for the circumstantial evidence to overcome the presumption of innocence.

Regarding the principle of legality, it is part of the control of punitive power to prevent errors or arbitrariness in the application of "justice." It means that criteria for action are pre-established for the benefit of procedural truth. No crime or punishment can be applied without prior law, as reflected in international treaties, the Constitution of the Republic of Ecuador, and the Organic Integral Penal Code. In this specific case, circumstantial evidence, not being previously established in the legal norm, can be challenged if it is not coherently substantiated, thereby leaving the person presenting it in a position of disadvantage.

### **Application of the Evidence test**

Circumstantial evidence is, above all, real and true evidence. Its results must be accepted and validated in law. It is essential that circumstantial evidence exhibits seriousness, consistency, and rigor that all evidence must possess to be admissible.

According to Perelman and Olbrechts Tyteca, circumstantial evidence requires several selections of essential elements to function properly: the selection of data considered relevant, the selection of hypotheses, the selection of theories to be confronted with the facts, and the selection of the elements themselves that constitute the facts. Each of these selections, in turn, implies deciding on criteria for making the selection. Consequently, the construction of the final certainty is based on multiple subjective elements or, at the very least, highly contentious ones. (Perelman, 1970)

It is noteworthy that circumstantial evidence is very important within the criminal process, especially when investigating crimes committed by state officials. Due to its nature, it can lead to the objective truth, allowing the surpassing of any reasonable doubt, thus safeguarding constitutional rights and the presumption of innocence.

In the Ecuadorian legal system, the term "beyond a reasonable doubt" is not explicitly established, but judges could make use of conventional control. This involves acting under Article 66 of the Rome Statute, of which Ecuador has been a part since October 7, 1998. The statute states that "In order to issue a conviction, the Court must be convinced of the accused's guilt beyond a reasonable doubt."

There is no doubt that circumstantial evidence in criminal matters has the potential to support a conviction. However, it must be used in strict compliance with specific and exhaustive rules to ensure that individual freedoms are not violated, as circumstantial evidence cannot be considered residual evidence.

In this regard, circumstantial evidence, by its nature, is directed at demonstrating the certainty of facts that are not the subject of the accusation but that, through logic and certain rules of practice or experience, can demonstrate the commission of criminal acts and the involvement of the alleged perpetrator.

### **The Assessment of Circumstantial Evidence in Cases of Official Corruption**

It is important to note that judges, when providing reasoning in cases related to corruption, must ensure democracy for the citizens. Therefore, the proof of these indications is important because it depends on the probative force of these indications whether the judge can impose a guilty verdict.

## **Classification of Indications**

The indications are highlighted in our jurisprudence and doctrine, so it is necessary to point out that it is not a rigorous classification.

- 1. 1. Indications of physical opportunity or presence:** This category strictly pertains to the circumstances in which the suspect is found to be able to commit the crime. Gorphe's interpretation of this notion encompasses a) Personal opportunity to engage in criminal activity, involving the intellectual and physical capacity derived from a person's knowledge and power, which also constitutes a specific condition of the crime; b) Material or real opportunity, which varies and includes factors such as being present at the scene of the criminal acts, possessing the tools of the crime, knowledge of the location, or awareness of certain circumstances, among others. (Gorphe, 1998).
- 2. Indications of criminal involvement:** These are distinct indications obtained from traces, circumstances, or objects that link them to the commission of the crime.
- 3. Indications of the ability to commit a crime or personality:** It refers to a set of past behaviors, dispositions, and habits.

In this regard, García Caveró points out that, while a criminal system focused on rehabilitation, might naturally generate some resistance to assign any value to prior convictions, it should be clear that it is not a matter of deducing guilt from a person's way of life (an author-based criminal law). (García Caveró, 2010)

## **Materials and Methods**

### **Documentary - Bibliographical Research**

The objective established in this research was developed from the positivist paradigm, supported by bibliographic documentary research, following well-founded guidelines. It is descriptive research from a certain qualitative perspective.

### **Inductive - Deductive Method**

In this article, it was necessary to apply an inductive-deductive method, in order to discover reality and not rely on speculation. The synthetic analysis method is also proposed by which it is decomposed into parts to extract relationships, characteristics, and elements.

### **Legal Hermeneutics**

Legal hermeneutics was also used, in which the relationship between man and regulations is expressed, an important activity because, through hermeneutics, an attempt is made to find the indisputable meaning of words, both written and spoken.

These methods are viable for the analysis of normative bodies, doctrines, legal documents, and legal literature, which, after analysis, allows for the development of criteria and contributions for a better application of Constitutional and criminal law.

## **Results**

After applying the proposed methodology and documentary bibliographic research, the following results were obtained:

The study has been conducted on what is established in Article 76 of the Constitution of the Republic of Ecuador, concerning the principles of the presumption of innocence and the requirement for proper

motivation when a judge issues a sentence or judicial resolution. The foundational criteria based on doctrinal foundations reveal that, as a historical reference, Article 88 of the Code of Criminal Procedure, is intended to convey that circumstantial evidence has a precedent. Furthermore, in the recently incorporated Comprehensive Organic Penal Code, it is indicated in the norm that in the criminal offense of involuntary disappearance, the legislator highlights the importance by stating that "the accumulation of circumstantial evidence shall have the same binding force as direct evidence at the trial stage."

### **Analysis of the Assessment of Circumstantial Evidence in the Ecuadorian Criminal System.**

The study of the evaluation of evidence is important for the development of different legal systems. From various doctrinal perspectives, the system of free conviction establishes that the judge makes their decision based on their conviction, which could be seen as arbitrary.

Regarding the system of sound judgment, which is guided by logic, legal experience, and scientific knowledge, it is widely used today and forms the basis of circumstantial evidence. The objectivity of the facts, and the plurality of circumstantial evidence, leads to certainty about the criminal act and their interrelation to demonstrate the punishable act. It is essential to ensure its effective evaluation.

### **The Comprehensive Organic Penal Code and the inclusion of the probative value of circumstantial evidence.**

After analyzing national and international legislation, it is considered necessary to incorporate more elements regarding the probative value of circumstantial evidence into the Comprehensive Organic Penal Code. Despite certain criteria for the evaluation of circumstantial evidence being established in criminal proceedings, it cannot be claimed that it is effectively assessed or valued strictly by the judges.

### **Discussions**

This research article has been developed through doctrinal sources, scientific knowledge, and expertise regarding the application of circumstantial evidence in the evaluation of evidence. The way this evidence is known in law or regulations is limited and has always been related to the presumption of innocence. Therefore, probative means should prioritize circumstantial evidence because it is from this type of evidence that the affirmation or denial of a fact arises. There are cases in criminal law that rely solely on circumstantial evidence and lack direct evidence. This highlights the importance of reflecting the evaluation of this evidence primarily in the reasoning of justice operators. Judges in the judicial branch, when issuing any pronouncement, are obligated to ensure that the indications are properly proven because it depends on the judge's probative strength to potentially impose a guilty sentence.

### **Conclusion**

Circumstantial evidence, also known as indirect evidence, is inclined to establish facts based on a causal connection through logic and reasoning, with the aim of proving the criminal act.

Judicial operators must understand that circumstantial evidence constitutes evidence in itself, so it can be applied in a subsidiary or supplementary manner in any case.

In the context of criminal offenses, especially those related to the corruption of public officials, it is highly likely that direct evidence may not always be available. Therefore, judges must resort to other forms of indirect or peripheral evidence, such as circumstantial evidence, to impose guilty sentences and not leave serious crimes that affect the state unpunished.

## References

- Código Orgánico Integral Penal (COIP). (2023). *Asamblea Nacional de la República del Ecuador*. GARCÍA CAVERO, P. (2010). *La prueba por indicios*. Lima: Editorial Reforma.
- GORPHE, F. (1998). *Apreciación judicial de las pruebas*. Bogotá: Temis S.A.
- Mixán Mass, F. (2019). *La reforma del procedimiento penal siempre desde el cubículo tecnócratao desde el diagnóstico de la realidad social*. Perú: Anuario de Derecho Penal.
- Perelman, C. y -T. (1970). *Traité de l'argumentation. La nouvelle rhétorique*. Bruselas: Bruxelles.
- Rodriguez, M. (2019). *Prueba indiciaria y presunción de inocencia en el proceso penal*. Loja: Ecuador.
- Rosas, Y. (2004). *Prueba indiciaria: doctrina y jurisprudencia nacional*. Perú: Anuario de Derecho Penal.