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The New Evidence

La Prueba Nueva

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Abstract

Law is the result of the ancient societies' quest to maintain balance in their communities. According to history, law originated in the first primitive communities whose main economic activity was agriculture. That is, agricultural societies seek social peace and productive order. This led to the need to choose one or more individuals to manage these tasks, laying the foundation for what is now known as the State. Evidence, according to various authors, is the means by which the truth of disputed facts is sought. From a more doctrinal perspective, evidence in the legal field represents the quest for "truth." The concept of evidence not only relates to all sectors of the law but also transcends the general field of law, extending into other human sciences. As a society, the state assumed the obligation to maintain order and weigh rights, becoming involved in dogmas promoted by social and political movements in various countries. These movements have significantly influenced the ideologies that characterize each legislation, adopting views that are most viable in terms of respecting human rights. These rights have been codified in various legal bodies, constituting principles and guarantees. It is the responsibility of the state to ensure that there is no violation and that every act exercised by public power adheres to due process.

Keywords: *Evidence, Litigation, Regulations.*

Resumen

El derecho es consecuencia de la búsqueda de las sociedades antiguas de mantener el equilibrio en la sociedad. Según la historia el derecho nació de las primeras comunidades primitivas cuya actividad económica principal se basaba en la agricultura, es decir sociedades agrícolas que buscaban la paz social y el orden productivo, constituyendo así la necesidad de elegir una o varias personas que se encargarían de estas labores considerando así aquellas actuaciones como indicios de lo que se hoy en día conocemos como Estado. La prueba según el criterio de varios autores es el medio por el cual se busca la verdad de los hechos en litigio, pero desde un aspecto más doctrinario, la prueba en el ámbito jurídico que representa la búsqueda de la "verdad". La noción de prueba no solo es la relación con todos los sectores del derecho, sino que trasciende el campo general de éste, para extenderse en conjunto con otras ciencias humanas. Establecidos como sociedad, el estado adoptó la obligación de mantener el orden y ponderar los derechos convirtiéndose en partícipes de dogmas que eran impulsados por movimientos sociales y políticos de varios países y que han repercutido de una manera considerable en las ideologías que representan a cada legislación, pues adoptaron las visiones que más sean viables al respeto de los derechos humanos, mismos que se han plasmado de manera escrita en los diversos cuerpos legales constituyendo principios y garantías convirtiéndose en responsabilidad del estado el supervisar que no exista ninguna vulneración y que todo acto ejercido por el poder público se lleve a cabo respetando un debido proceso.

Palabras Claves: *Prueba, Litigio, Normas.*

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Introduction

Jeremías Bentham (2005) stated that evidence is "something magical in the legal process: a making reappear present that which has passed, a making immediate that which has disappeared in its immediacy, a making represent vivid feelings that have consumed, and, more singular still, a making whole again a situation that has decomposed." He also affirmed that "The Art of the process is essentially nothing else but the Art of Administering Evidence." Chiovenda (2005) considers that evidence consists of "creating conviction in the Judge about the existence or non-existence of facts in the process, which implies providing the means for that purpose." Silva Melero points out that evidence "is a means or instrument used in the process to establish the truth." Sanojo (1963) asserts that evidence is a "certain and known fact from which another fact is deduced about whose existence there is some controversy between the parties." As can be seen from the above concepts, evidence refers to the reasons or arguments that demonstrate the existence or non-existence of a fact. This leads to convincing the decision-maker in the responsibility determination process that a person did or did not engage in an act that generates administrative responsibility, objection, or fine.

The word "evidence" comes from the Latin "probadum," which means "to make faith." It can be affirmed that evidence, in making faith, is the most suitable means to lead the judge to the certainty of the truth. Through evidence, we enable the judge to confront the truth, to know it so that justice can be served. Without evidence, the judge would not have sufficient elements to resolve a case.

Evidence is obtained when an inference drawn from indications supports the truth of a statement about a litigious fact. In some sense, the evidence of a fact and the truth of the statement about this fact are synonymous. One can say that a fact is true only when it is proven based on the means of evidence, and it is proven only when its truth is based on it. (Beltrán, 2005)

In very general terms, the role of the means of evidence in civil proceedings can be fairly easily defined in all procedural systems.[4] More or less clearly, the means of evidence are connected to the facts in dispute through an instrumental relationship: "means of evidence" is any element that can be used to establish the truth about the facts of the case.

The basic idea is that a dispute arises from certain facts and is based on them, that these facts are contested by the parties, that this dispute must be resolved by the court, and that the solution to the "controversy over the facts" is reached when the court establishes the truth about the facts that are the subject of the dispute. Therefore, the context of the legal process can well be conceived as a privileged place for the "demand for verisimilitude," the "devotion to verisimilitude," and the "desire for verisimilitude" that a prominent philosopher indicates as essential features of modern thought and culture. In addition, in modern procedural systems, seeking the "truth" is not expected through divination, luck, or reading tea leaves, but through a judicial duel or some other rational and controllable means, namely the means of evidence, which must be properly offered, admitted, and presented.[5]

What The Evidence Represents

The evidence represents the truth or falsehood of a fact in dispute. The law categorizes facts as a legal norm, making it simpler to determine the facts as a premise for decision-making.

Facts have an empirical dimension beyond the legal field; they exist as the foundation of a legal case and are thus constituted by their existence in the real world. If attention is paid, facts bring consequences

[4]Taruffo, 1992.
[5]About the change from "magical" knowledge to "rational" knowledge in judicial contexts, Gascón, 2002:8.

with them, and this is the "dimension" of the fact—an aspect that takes a back seat because what becomes relevant is the legal qualification of the fact. Considering the empirical dimension as a consequence of a fact makes it easier to understand the truth or falsehood of the facts. From the perspective of evidence and decision-making about the facts, the empirical dimension of the facts in dispute is more important than the legal qualification.

Legal norms evaluate facts in a value-based manner, meaning they classify them as good or bad. This implies the need to observe the dimension and scope of the consequences to determine the truth or falsehood of the existence of a fact. Subsequently, it is essential to analyze the aspects they possess to ascertain the type of legal norm to which they are attributable. According to doctrine, it is necessary to observe the empirical dimension of facts in the real world to classify them as legal norms because merely evaluating them in a value-based manner (axiological aspects) is not sufficient.

The conclusion that can be drawn from the above observations is that the concept of a fact is very complex, and facts often carry legal and value-loaded aspects. However, these aspects do not imply that the existence of an empirical dimension is sufficient to declare the truth or falsehood of the facts; this must be established through evidence.

Propositions about the empirical dimension of a fact can and should be distinguished from legal evaluations and classifications of that fact. Factual propositions can be true or false; therefore, they are the subject of judicial evidence conceived as a means to establish the truth of the facts in dispute.

The Function of Judicial Evidence

Judicial evidence is the means by which the facts of a legal dispute are sought to be clarified. We can peacefully state that judicial evidence performs a function in the process that we will call "demonstrative." Consequently, this implies that the function of evidence, aimed at demonstrating the truth or falsehood of factual assertions, must be assumed within the process through the use of a rational procedure. The results of this procedure are properly controllable from the outside by all recipients of the decision, namely, by the judge on appeal and, in general, by all those involved.[6]

According to doctrine, to define the function of evidence, it is necessary to establish the objective of the legal process: whether it aims to determine the truth of the facts or merely to resolve conflicts between individuals.

In legal systems, such as common law, which form part of the sources of law, the process is seen as aiming to resolve conflicts, and it is not necessary to establish the truth of the facts. Although it may be useful, it is not the goal. Instead, determining the truth is considered a collateral act to the main problem to be solved, and the use of evidence is irrelevant. In this approach, there is no requirement to follow a proper procedure based on principles or guarantees; the focus is solely on resolving the conflict, regardless of the truth or falsehood of the facts. This method of conflict resolution has been criticized for not respecting a procedural framework or maintaining an interest in establishing the truth, portraying the parties as guardians of their interests without a societal perspective.

In the Civil Law system, the interests of individuals and their role in a legal process are considered important, even more so than the general interest of society as a whole in having justice administered based on criteria for making objective and truth-based decisions.

The similarity lies in the personal interest of each individual.

[6]Criminal Law course program, Franceso Carrara, pp.75-76-

In a theory like this, the main function attributed to evidence is not to provide the basis for a true understanding of the fact; on the contrary, the presentation of evidence is conceived as a mechanism that parties can use in the defense of their case or simply as a way to meet procedural burdens. These two theories mentioned above are simplified extracts from two legal systems that are part of the sources of law based on their doctrine but do not represent the general dogma of each.

Ulpian said, "Justice is the constant and perpetual will to give everyone their right." It is understood, then, that the purpose of evidence is to demonstrate the truth of the facts in litigation so that the court can reach a just resolution. This is the fundamental principle of a "state of law"—applying established procedures based on the principles dictated by the norm to clarify the facts through legally and properly evaluated evidence.

Whatever the resolution of a conflict, it is not necessarily a good solution just because it has ended the conflict. Within any legal system based on the fundamental principle of the "state of law," a good solution is only obtained through a legitimate decision, i.e., a fair one. However, a decision is not legitimate if the rules regulating the case are not appropriately applied to that specific case, if the norm is not applied properly to the facts to which it should be applied.

It should be emphasized, however, that the legal norms regarding the use of evidence and the search for the truth in the judicial process establish various limits in relation to the time, means, and procedures that can be used in the search. of the truth.[7] Indeed, in modern procedural systems, some rules aim to rationalize the judgment on the facts and avoid errors and misunderstandings in the evaluation of evidence, some of these rules prohibit the use of specific types of evidence or prevent the proof of certain facts.

Judicial evidence serves a demonstrative function by providing a cognitive and rational basis for the judge's selection, individualizing a credible and truthful version of the relevant facts of the case, and rationally justifying such a choice.

Facilitating the process of reconstructing judicial evidence in demonstrative terms to achieve a better and more effective understanding for those who are third parties within a legal proceeding is necessary. Why?

Reconstructing judicial evidence in demonstrative terms involves assuming the following as its foundations:

A. That, within the legal proceeding, it is possible to logically distinguish aspects related to the judgment of facts from those pertaining to the judgment of law.

B. That, concerning the aspects related to the judgment of facts, it is necessary to organize the judge's probative procedure according to rational elaboration.

C. That, only in this way is it possible to gain control over the judge's selection in forming their conviction about the truthfulness or falsehood of the factual statements in the case. The three presuppositions are closely linked since their objective is to make the judge's probative reasoning externally controllable, which requires the elaboration of such reasoning on rational grounds.[8]

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In this way, it is possible to gain control over the selection carried out by the judge in forming their

[7]Weinstein,1996:229; Larenz,1979:293; Saltzburg,1978:12.
[8]On the function and object of the test, Carlos Alberto Math.

conviction about the truthfulness or falsehood of the factual statements in the case. These three presuppositions are intimately linked since their objective is to make the judge's probative reasoning externally controllable, which requires the elaboration of such reasoning on rational grounds.

In any case, these norms do not prevent the search for truth; they regulate how facts can be proven and cover only limited areas of the domain of evidence and decisions on facts. The function of evidence is precisely to provide the judge with empirically and rationally founded knowledge about the facts of the case.

Evidence as a Guarantee of Due Process in the Cogep

Our legislation adopted ideological currents from other countries that served as a foundation, thus structuring the new legal and procedural system that we maintain in our country today.

With the jurisprudential background that shaped the philosophical and legal currents embraced by our legislation, the well-known "Magna Carta" was reformed and made known through a referendum on September 28, 2008, in the city of Montecristi. The new Constitution of Ecuador proposes a change in the administration of the justice system, moving towards the constitutionalization of the Ecuadorian legal system through the administrators of justice. Their responsibility is mandated constitutionally, involving the protection of guarantees and constitutional principles, as well as ensuring access to justice for all Ecuadorians without any form of discrimination.

The new Constitution includes a series of principles and guarantees that impose limitations on the actions of the state power, as well as the guarantees established in various processes that would involve different priorities of individuals. Ensuring the effectiveness of the guarantees established within the constitution emphasized the importance of acquiring a procedural system that applied the principles of constitutional procedures and each legal area.

Within the branches of legal science, there is procedural law, whose object is the direction and analysis of judicial processes to administer justice. It resolves conflicts that arise between individuals and between public institutions and individuals as long as there are opposing interests or rights violations.

The new institutional paradigm of the Ecuadorian justice system provides a new adversarial accusatory system, replacing the old procedural system maintained by our legislation. It grants the judge the authority to be an impartial third party with knowledge of matters within their competence and jurisdiction. The judge, through their position, is responsible for upholding the principles and rights established in the constitution within each procedural act.

The current and valid General Organic Code of Procedures (COGEP), which came into effect on May 22, 2015, through Official Registry –S 506, is the representation of the change made within the judicial system and the interest in achieving true justice.

COGEP develops the provisions of the Constitution by conducting judicial proceedings in all areas, instances, stages, and proceedings through the oral adversarial accusatory system. This system states that its actions will be carried out orally, leaving behind the cumbersome procedures of the past that did not instill confidence in the public, as it disrespected the principle of procedural expeditiousness by handling everything in writing, causing delays in processing each request within judicial offices.

The adversarial accusatory system is conceived with the following characteristics:

- Adversarial, because both the accusation and the defense are carried out through a confrontation of evidence and arguments from each of the parties. Both sides must be heard, commented on, denied, or clarified before a judge.

- Accusatory, because there are two parties involved in the trial: one that accuses and another that defends.
- Oral, because, unlike the previous system, the trial takes place through an oral debate in front of a judge who must always be present.

The Constitution of the Republic establishes that "The substantiation of processes in all matters, instances, stages, and proceedings will be carried out through the oral system, following the concentration, contradiction, and dispositive principles."[9]

The Procedural Impulse corresponds to the procedural parties to the impulse of the process, in accordance with the dispositive system.[10] The procedural and evidentiary activity, according to the provisions of the COGEP, is governed by the dispositive principle, which implies, among other aspects, that:

a) Every process begins with the presentation of the claim.

b) The parties will announce the means of evidence in the claim, response to the claim, counterclaim, and response to the counterclaim; and, they will attach the documentary evidence that the plaintiff has, within the terms provided in the fourth and fifth paragraphs of Art. 151 of the COGEP, may announce evidence on the facts outlined in the answer to the complaint.
c) The parties can conciliate at any stage of the process, as well as enter into a transaction.
d) The defendant may expressly agree to the claims of the lawsuit at any stage of the process before the ruling.
e) The plaintiff may withdraw his claim before it has been summoned.
f) At any stage of the process before the first instance ruling, the plaintiff may withdraw the claim. The defendant who counterclaims may withdraw the claim or renounce the right
g) The parties may reduce, suspend, or extend the judicial terms by mutual agreement.
h) The party has the right to orally or in writing present the reasons or arguments they believe support their case, respond to the arguments of the other party, submit evidence and challenge evidence presented against them. However, the validity of the dispositive principle does not imply that the entire procedural dynamics are tied to the actions and impetus of the parties. Since the judicial process is within the realm of public law, the COGEP has established the judge as the director of the process and has provided terms that the judge must adhere to for the continuity of the process, such as convening hearings without waiting for a party's request, within the terms stipulated by law for each type of process.

Principles of the Evidence

The Constitution of the Republic includes principles that govern the evidentiary activity to ensure the clarification of procedural truth and achieve the effectiveness of the rights of the litigants.

Article 75 of the Ecuadorian Constitution establishes the Rights of Protection: "Every person has the right to free access to justice and effective, impartial, and expeditious protection of their rights and interests, subject to the principles of immediacy and promptness; in no case shall anyone be left defenseless. Non-compliance with judicial resolutions will be sanctioned by law.

Principle of immediacy: The judge will conduct hearings together with the parties involved, who must be present for the presentation of evidence and other procedural acts that fundamentally structure the process. They may only delegate proceedings that must be held in a territory different from their competence. Hearings not conducted by the judge will be null and void."[11]

Expressed in this way, the principle of immediacy is understood as the direct intervention of the judge

[9]Constitution of Ecuador, art.168. numeral 6.
[10]Organic Code of the Judicial Function, art.5.
[11]General Organic Code of Processes, art.6.

with the parties in the hearing and each of the stages to be developed within them (practice of evidence). In this way, it seeks to guarantee transparency, impartiality, and equality of actions of the participants, as well as to clarify the truth of a fact or the existence of a right.

The principle of promptness implies that "The administration of justice will be prompt and timely, both in the processing and resolution of the case, as well as in the execution of what is decided." This principle is related to that of concentration, which leads to consolidating procedural activity into the fewest possible acts.

As a basic guarantee of due process in relation to evidence, the Constitution establishes that "Evidence obtained or acted upon in violation of the Constitution or the Law shall have no validity and shall lack probative efficacy." The right to defense, which is a guarantee of due process, has a direct relationship with the evidentiary activity; in this regard, the Constitution of the Republic, in accordance with the block of constitutionality provided by Article 8 of the American Convention on Human Rights, contemplates the following basic guarantees for the right to defense:

Art. 76 paragraph 7: The right of people to defense will include the following guarantees:

a) No one may be deprived of the right to defend at any stage or level of the procedure.
b) Have the time and adequate means to prepare the defense.
c) Be heard at the right time and under equal conditions.
d) The proceedings will be public, except for exceptions provided by law. Access to all documents and actions of the procedure is allowed for the parties. Among cases of closed-door hearings, examples can be cited as provided for in the Organic Code of Childhood and Adolescence: whether or not the person understands the language in which the procedure is conducted.
g) In judicial proceedings, be assisted by a lawyer of their choice or a public defender; access or free and private communication with their defense cannot be restricted.
h) Present, verbally or in writing, the reasons or arguments they believe in and counter the arguments of the other parties; present evidence and challenge presented against them.
i) No one may be judged more than once for the same cause and matter. Cases resolved by indigenous jurisdiction must be considered for this purpose.
j) Those acting as witnesses or experts must appear before the judge or authority and respond to the respective questioning.
k) Be judged by an independent, impartial, and competent judge. No one shall be judged by special tribunals or special commissions created for this purpose.
l) Resolutions of public authorities must be reasoned. There will be no reasoning if the resolution does not state the legal norms or principles on which it is based and does not explain the relevance of its application to the factual background. Administrative acts, resolutions, or judgments that are not properly reasoned will be considered void. The responsible officials will be sanctioned.

Likewise, the Constitution of Ecuador establishes that "The procedural system is a means for the realization of justice. Procedural norms shall embody the principles of simplification, uniformity, efficiency, immediacy, speed, and procedural economy, and shall make the guarantees of due process effective. Justice shall not be sacrificed solely due to the omission of formalities."[12]

In such a way that in each procedural action, it must be verified that there is an adequate application of due process that does not violate the rights and guarantees of the people involved in a process. The General Organic Code of Processes in its general provisions establishes a connection between the principles established by COGEP, the constitution, and the organic code of the judicial function.

[12]Constitution of the Republic of Ecuador, art.169.

The New Evidence

The Constitution of the Republic recognizes new evidence as a fundamental right of the parties and safeguards the principle of opportunity along with legal certainty, procedural loyalty, and contradiction. Alvarado Velloso criticizes the ex officio evidentiary power, arguing that any initiative that disrupts the development and fundamental structure of procedures or affects legitimate defense would qualify as conduct that violates due process and therefore would affect one of the parties involved in the litigation.

When new evidence is presented at a hearing, it adversely affects the opposing party because it lacks knowledge of the new evidence, placing the technical defense at a disadvantage as it acquires knowledge at that moment. Thus, the right to defend and contradiction for the party unaware of it is violated, limiting adequate preparation in understanding each piece of evidence. This act delays the progress of the process due to the suspension of the hearing, which is only allowed in cases of fortuitous events or force majeure, according to the regulations established in the COGEP.

The principle of expeditiousness

New evidence delays the process; therefore, as a general rule, it is required that the evidence be announced in the claim and answer to the claim, counterclaim, and answer to the counterclaim according to article 159 of the COGEP; the admission of the evidence in the preliminary hearing in the ordinary process or the first phase of the single hearing in the other types of processes; the practice of the evidence in the trial hearing or the second phase of the single hearing, with the direct intervention of the judge; the non-repetition of evidence in the second instance. As an exception, "new evidence" may be requested in the cases provided for in articles 166 and 258 of the COGEP.

The COFJ obliges the judge to require the parties and their attorneys to observe a conduct of reciprocal respect and ethical intervention; it is the duty of the parties and their attorneys to act in good faith and procedural loyalty. Deformed evidence, abuse of the law, and the use of trickery and procedures in bad faith to unduly delay the progress of the Litis will be sanctioned (Art. 26 COFJ).

Understanding that the right to defense and contradiction is violated for the party unaware of it, limiting adequate preparation in understanding each piece of evidence. This act delays the progress of the process due to the suspension of the hearing, which is only allowed in cases of fortuitous events or force majeure, according to the regulations established in the COGEP.

The right to defense grants the parties involved in litigation the opportunity to defend themselves in any situation where their rights are violated or there is a dispute of interests with other individuals, whether natural or legal.

Evidence is the contribution that serves for the judge to make a decision, and that is why these must be announced in advance for the knowledge of the parties, thus avoiding affecting the right to defense of each of the interveners. Since the evidence presented by each party within the litigation is mutually known, it must be evaluated within the general principles established in the norm.

It is essential to announce evidence in the complaint and the response, as it allows for legal confrontation with loyalty, enabling the adoption of strategies that lead to a fair judgment with lower costs and in less time.

The right to defense gives individuals the opportunity to defend themselves in any case where they must appear in court and present evidence, whether in support or against, justifying or refuting the fact being judged.

Defense and legal assistance are inviolable rights at every stage of the investigation and the process. Every person has the right to be notified of the charges for which they are being investigated, to access evidence, and to have the time and means necessary to exercise their defense. Evidence obtained through

a violation of due process will be considered null and void. Every person declared guilty has the right to appeal the verdict, with the exceptions established in this Constitution and the law.

The principle of contradiction includes, as Maier points out, "imputation, summons, and the right to a hearing"; that is, the necessity for the charges to consist of a clear, precise, and detailed account of the offense and for this account to be known to the accused. The accused must be heard and be able to present their defense before the resolution. According to the COGEP in Article 148 concerning the Amendment of the complaint, "until before the answer by the defendant. If a new fact occurs after it has been answered, it may be amended until before the preliminary hearing. The judge will ensure that the defendant can exercise their right to contradiction and evidence." However, it is not specified how the right to defense will be safeguarded. The COGEP says nothing about limitations on new evidence, affecting the constitutional principles of legitimate defense and contradiction, as the opposing party does not have sufficient time for the optimal preparation of a technical and material defense for the accused.

Who can apply for new evidence? Anyone can apply for the announcement of new evidence as long as it does not violate the law or due process within an ongoing trial. The announcement of evidence in the complaint can be made by the plaintiff, and after it is answered, it should refer to the facts stated by the defendant in the response, which can also determine the evidence it will present. According to the defendant, it must expressly respond to each of the plaintiff's claims. The response to the complaint will be submitted in writing and will comply, where applicable, with the formal requirements provided for the complaint, the truthfulness of the facts alleged in the complaint, and the authenticity of the documentary evidence submitted, with a categorical indication of what it admits and what it denies. It must also raise all exceptions it believes it has against the claims of the plaintiff, with an expression of its factual foundation, and exceptions can be amended until before the preliminary hearing. However, within three days of qualifying the response, it will be notified with its content to the plaintiff, who, within ten days, may announce new evidence related to the facts stated in the response. The General Organic Code of Processes in Article 152 refers to the announcement of evidence in the response, so the defendant, when responding to the complaint, must announce all the evidence intended to support its contradiction, providing all the necessary information for its presentation. (General Organic Code of Processes, 2016).

To this end, the list of witnesses will be attached, indicating the facts on which they must testify and the specification of the objects on which the proceedings will focus, such as judicial inspection, exhibition, expert reports, and others. If there is no access to documentary or expert evidence, its content will be described, indicating precisely where they are located and requesting the relevant measures for their incorporation into the process.

When can new evidence be requested? The evidence asserts that evidence is the knot of the process because untying that knot precisely implies solving the problem on which there is uncertainty or doubt. It is precisely that uncertainty or doubt that needs to be cleared, and it is cleared by untying the knot of the process and solving the problem that such a knot poses. New evidence can be requested in the complaint, response to the complaint, counterclaim, and response to the counterclaim, until before the summons to the trial hearing, provided that it is proven that it was not known to the benefiting party or, having known it, could not have it at their disposal. The judge may accept or reject the request according to their sound judgment.

The defendant is not obligated to produce evidence if their response has been simple or absolutely negative, but they must do so if their response contains explicit or implicit statements about the fact, the right, or the quality of the disputed thing. The judge will order the parties to make available to the counterpart, with sufficient advance notice, the evidence that is or should be in their possession and dictate corrections if it is done incompletely. When it comes to the rights of children and adolescents, in family and labor law matters, the judge will do so ex officio in the preliminary hearing. In family matters,

the proof of the income of the obligor for child support will fall on the defendant, in accordance with the law on the calculation of the minimum child support. 2.5. Right to defend in the practice of new evidence: None of the parties can be left defenseless since the lawyer must have attached the evidence they will present at the time of the hearing when filing the complaint.

Evidence on new facts allows the amendment of the complaint after being answered and prior to the preliminary hearing. The judge will ensure the proper exercise of the defense of the opposing party and the evidence on the alleged new facts. The procedure can be initiated ex officio or at the request of a party. In the first case, notice must be given to the interested party so that they can present their response and produce any evidence they wish to rely on, keeping in mind that the burden of proof, in good principles, rests on the administration. Additionally, it allows evidence that is more complex to access to be announced so that the judicial body can order third parties to provide it. The article concludes by invoking legality for obtaining evidence and stating that its presentation will be oral during the trial hearing.

The Means of Evidence and the Evidence as Results

The notion of evidence is only indirectly linked to the issue of judicial truth. Means of proof constitute cognitive data and information from which the truth of the facts in dispute can be derived if appropriate inferences are drawn from them and such inferences lead to the truth of the disputed facts. When this goal is achieved because there are good cognitive reasons to believe that a fact is true, then this fact is "proved," as it has been confirmed by the evidence, in a sense. In any procedural context, a "means of proof" is anything that can be meaningfully used to support the proof of a fact. In a strict sense, we are dealing with a means of proof only if it is relevant and admissible. An element of proof that lacks relevance or is inadmissible in a specific case is not an element of proof in that case.[13]

The Evidence as A Result

Not all relevant and admissible means of evidence can imply proof of facts, as not all of them will reveal the reality of the events. A fact is considered proven when there are inferences concerning each premise raised regarding the occurrence of the facts from the available means of proof.

The evidence is obtained only when an inference drawn from the means of proof supports the truth of a statement about a disputed fact. The means of proof serve as the basis for logical inferences whose objective is to support conclusions about the disputed facts; proof is the reference to the positive results obtained from these inferences.

The judicial truth of the facts means that hypotheses about the facts in dispute are supported by rational inferences based on relevant and admissible means of proof.

To prove is nothing more than demonstrating that a fact has existed in a certain way and not in another, within a trial or proceeding; therefore, it is unquestionable that proof always seeks the truth, aiming to have a complete understanding of the matters to which a legal norm should be applied. However, since absolutes are impossible for humans, what is proven will be a mere approximation to the truth, never reaching total knowledge of the fact.

Methodology

Qualitative research: It refers to research that focuses on the collection and analysis of written or spoken words and textual data.

[13] Proof Theory, Michelle Taruffo, page 35.

Documentary research: It is a qualitative research technique that involves collecting and selecting information through the reading of documents, books, journals, and recordings. This research focuses on the consequences that the legal concept of new evidence has on the basic guarantees of due process.

Qualitative research: It refers to research that focuses on the collection and analysis of written or spoken words and textual data.

Documentary research: It is a qualitative research technique that involves collecting and selecting information through the reading of documents, books, journals, recordings, films, newspapers, and bibliographies.

Theoretical conceptual

The researcher's theoretical commitment to the work they perform not only influences the choice of a topic and the formulation of the problem but also affects the selection of research procedures, the underlying theories that explain the topic of interest, and the specific way in which they analyze and disseminate their results.

Results

The new evidence has an exact moment according to COGEP for its presentation for future application, a moment established by the norm that, when breached, violates the right to defense of the affected party in all matters. The last-resort knowledge about the presentation of new evidence puts the defense at a disadvantage regarding its awareness and also delays the hearing stage, as it leads to the suspension of the hearing, necessitating the setting of a new date, day, and time for such proceedings.

Conclusions

The "new evidence," which can be applied by both parties, is found in Article 166 of the same law. This "new evidence" has a time limit, meaning that it must be announced before the summons to the trial hearing or the single hearing. Therefore, in practice, this "new evidence" for summary, executive, and monitorial procedures becomes quite limited, as the summons to the single hearing is made in the same order that admits the answer to the lawsuit. It applies to two well-defined cases: it is either evidence that was not known to the party announcing it - and this must be proven, or it was evidence that was known to the party but was not in its possession before. Therefore, "new evidence" cannot be used to try to introduce evidence that should have been presented initially when the party was aware of it and had it at its disposal or to try to correct any errors in a previous act of proposition as it contravenes the principle of defense.

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