

Evidence in protective action proceedings: an empirical analysis of selected proceedings by the Constitutional Court (2019-2021)

La prueba en los procesos de acción de protección: análisis empírico de los procesos seleccionados por la Corte Constitucional (2019-2021)

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ABSTRACT: This research focuses its analysis on the evidence, in the processes of protection action given the absence of research on the subject and the deficient regulation in the Organic Law of Jurisdictional Guarantees and Constitutional Control. The importance of the subject of the study focuses its evaluation on the application of the different means of evidence, with particular emphasis on the evidence collected by commissions. The study aims to establish an argumentative position about the right to defense and its scope in the processes of protective action through the empirical analysis of all the processes of protective action selected by the Constitutional Court between 2019 and 2021. The results of the quantitative analysis show

that the evidence by the commission shows: that the most common means of proof used at the time of filing or answering a protection action are in the first instance: documentary 70%, testimonial 13%, expert 7%, judicial inspection and evidence by commission 0%, while, on the other hand, in 10% of cases no means of proof were presented. Of the 91 sentences analyzed, 64 of them were appealed and heard in the second instance, from which it can be concluded that in 61 cases, representing 94% of the sample, no evidence was presented, while documentary evidence, judicial inspection, and evidence by commission represent 2% respectively.

KEYWORDS: Evidence, jurisdictional guarantees, argumentation, protective action, facts.

RESUMEN: Esta investigación centra su análisis en la prueba, en los procesos de acción de amparo dada la ausencia de investigaciones sobre el tema y la deficiente regulación en la Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional. La importancia del tema de estudio centra su valoración en la aplicación de los diferentes medios de prueba, con especial énfasis en las pruebas recogidas por las comisiones. El estudio pretende establecer una posición argumentativa sobre el derecho de defensa y su alcance en los procesos de acción de tutela a través del análisis empírico de todos los procesos de acción de tutela seleccionados por la Corte Constitucional entre 2019 y 2021. Los resultados del análisis cuantitativo muestran que las pruebas por comisión demuestran: que los medios probatorios más utilizados al momento de interponer o contestar una acción de tutela son en primera instancia: la documental 70%, la testimonial 13%, la pericial 7%, la inspección judicial y la prueba por comisión 0%, mientras que, por otro lado, en el 10% de los casos no se presentó ningún medio probatorio.

De las 91 sentencias analizadas, 64 de ellas fueron recurridas y vistas en segunda instancia, de lo que se puede concluir que en 61 casos, que representan el 94% de la muestra, no se presentó ningún medio de prueba, mientras que la prueba documental, la inspección judicial y la prueba por comisión representan el 2% respectivamente.

PALABRAS CLAVE: Prueba, garantías jurisdiccionales, argumentación, acción de amparo, hechos.

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INTRODUCTION

How is evidence announced, acted upon, and evaluated in jurisdictional guarantees? What are the types of evidence used in these processes? How does the regulation of evidence in constitutional matters differ from that contemplated for ordinary jurisdiction? How do constitutional judges apply the rules of evidence in practice? How do the commissions that gather evidence in jurisdictional guarantees operate? In this article, we offer a systematic examination of these questions.

From the theoretical level, this analytical exercise seems relevant to us insofar as the specialized literature shows a void concerning evidentiary aspects in judicial proceedings, especially notable in the case of jurisdictional guarantees. In part, this is due to the incipient regulation that the Constitution and the LOGJCC establish on the subject, in addition to the still scarce jurisprudential development. To the best of our knowledge, the present study would be the first to study, based on empirical and quantitative analysis, the evidence in protection action proceedings.

In practice, it is commonplace to affirm that the violation of rights is considered proven when the judge considers that he is persuaded that it happened. According to this system of free assessment, the only thing that matters is the judge's intimate conviction. This conviction, by the way, is not always objective and controllable, but highly subjective and sometimes even arbitrary. What is expected of any judicial authority, however, is that it assesses the facts submitted to it objectively. Its decisions -and as far as this article is concerned, those that deal with evidentiary matters- are susceptible to intersubjective control, both by the appellate courts, as well as by the parties to the proceedings and by the public in general. Hence the importance of analyzing the evidentiary regulation necessary to prove the violation of constitutional rights.

To clarify the various evidentiary aspects in the processes of jurisdictional guarantees, particularly those related to the action of protection, we conducted a review of the regulatory framework of the Constitution, the Organic Law of Jurisdictional Guarantees, and Constitutional Control (LOGJCC), and the jurisprudence issued by the CCE. Once we discussed various normative aspects of the test, we evidenced how the relative norms have been applied through the quantitative analysis of 91 protective action processes. Unlike most existing studies, our approach is based on the empirical analysis of all cases of protective action selected by the Constitutional Court of Ecuador (CCE) between February 2019 and June 2021.

The results show that the most common means of evidence used at the time of filing or answering an action for protection are in the first instance: documentary evidence 70%, testimonial evidence 13%, expert evidence 7%, judicial

inspection and evidence by commission 0%, while, on the other hand, in 10% of cases no means of evidence were presented.

Of the 91 sentences analyzed, 64 of them were appealed and heard in the second instance, from which it is concluded that in 61 cases, representing 94% of the sample, no evidence was used, while documentary evidence, judicial inspection, and evidence by commission represent 2% respectively. We highlight the functioning of the evidence collected by commissions, which in certain cases could even violate the due process in guaranteeing the right to defense of the procedural parties.

1. THE REGULATION OF EVIDENCE IN JURISDICTIONAL GUARANTEES

1.1. The evidentiary stages

The Constitutional Court of Ecuador (2013) also conceives it as “the certainty or conviction that it provides, being, strictly speaking, a sensible equivalent of the fact to be assessed” (Decision No. 116-13-SEP-CC).

The evidentiary activity includes the following five stages: collection, announcement, admissibility, practice, and evaluation of the evidence (Guerrero, 2020), which we will analyze below.

1.1.1. Compilation

The first of these, the compilation, is a generally extra procedural stage through which the plaintiff, before proposing his claim, investigates and gathers the evidentiary elements necessary to support his claim. Article 10 numeral 8 of the LOGJCC establishes that the claim must contain “the evidentiary elements that demonstrate the existence of an act or omission that results in the violation of constitutional rights,

except in those cases in which, by the Constitution and this law, the burden of proof is reversed". Hence, some authors consider that there are no major differences between the collection of evidence in ordinary justice processes and jurisdictional guarantees processes (Guerrero, 2020; Quitana, 2016).

We differ with this criterion, as we find several differences regarding the collection of evidence in ordinary proceedings and jurisdictional guarantees. In the case of jurisdictional guarantees, for example, Article 86 paragraph 3 of the Constitution provides that the judge "at any time during the process may order the gathering of evidence and appoint commissions to collect it". Article 16, the second paragraph of the LOGJCC, on the other hand, states that the judge may appoint commissions to gather evidence during the "qualification of the claim or at the hearing". Both provisions establish that, unlike what happens in ordinary judicial proceedings, in which the collection is an activity carried out by the plaintiff or the defendant, in jurisdictional guarantees, unipersonal or peripersonal commissions, i.e., third parties, may be entrusted with the collection of evidence.

Another difference lies in the fact that, in ordinary proceedings, the collection of evidence is an eminently extra procedural activity, which is generally carried out before the filing of the lawsuit, in the case of the plaintiff, or before the answer to the lawsuit, in the case of the defendant. In the jurisdictional guarantees, on the other hand, the gathering of evidence may be an intraprocedural activity that it occurs "at any time during the process", according to the Constitution. It should be noted that the LOGJCC limits that constitutional judge may appoint commissions, either in the qualification of the claim or in the hearing. This appointment of commissions in

charge of gathering evidence should not affect the due process or delay the resolution of the case. We will analyze possible affectations on the due process when we examine the practice of the evidence gathered by the commissions in the second section of the evidentiary means of this article.

From the review of the cases selected by the Constitutional Court, in only 1 of 91 cases, equivalent to 1.09% of them, the commission was used to collect evidence.

1.1.2. Advertisement

The second moment corresponds to the announcement of evidentiary means, which refers to the proposal or presentation of the evidentiary means that will be used in a judicial proceeding. In jurisdictional guarantees, the announcement of evidence may occur either: a) in the claim, in the case of the plaintiff, b) is the answer to the claim, for the defendant, or c) in the hearing, for both parties. This differentiates the jurisdictional guarantees from other ordinary judicial proceedings.¹

In the complaint, by the provision of Article 10 numeral 8 of the LOGJCC (2009), which establishes:

The complaint, at least, shall contain: (...) 8. The evidentiary elements that demonstrate the existence of an act or omission that results in the violation of constitutional rights, except for those cases in which, under the Constitution and this law, the burden of proof is reversed.

1 In ordinary justice, the announcement is made in the acts of the proposition, although some certain exceptions and circumstances enable the announcement of evidence.

If the opportune moment for the announcement of evidence by the plaintiff is the complaint, it is logical to assume that the defendant can do the same in the response to the same, even though the LOGJCC does not expressly contemplate such a possibility. As an exception to the rule of orality that operates for the jurisdictional guarantees, the answer to the claim, according to article 8 paragraph 2 literal c of the LOGJCC, must be reduced to writing. This is without prejudice to the fact that Article 14 of the Law establishes that the answer to the claim must also be given at a hearing.

The announcement of the evidence, according to article 16 of the LOGJCC, is also possible at the public hearing. This is problematic for both procedural parties. In principle, if the evidence is not announced in the lawsuit, but only at the hearing: how is the right to defense and contradiction guaranteed for those who do not know until that procedural moment what evidence will be announced against them?

The General Organic Code of Proceedings (COGEP), as a rule, proscribes surprise evidence, i.e., that practiced without prior and timely announcement. The LOGJCC does not pronounce on the matter. In this regard, we consider that in cases in which the procedural parties announce new evidence at a hearing and the same is admitted, the judge, at the request of the party, must grant a reasonable period to the opposing party for it to fully exercise its right to defense and contradiction. Such a time limit may not be detrimental to the speedy and informal nature of the jurisdictional guarantees.

According to the review of cases carried out, the announcement of evidence is mostly made in the complaint, which relativizes the problem noted above. In 89 of the 89 cases reviewed (equivalent to 98%), out of a total of 91, the plaintiffs

announced evidence in their complaint, while in only 2 cases (equivalent to just over 2%) the evidence was announced at the hearing.

1.1.3. Admissibility

The admissibility of evidence comprises the acceptance of a means within a judicial process (Devis Echandía, 1966, p. 85). Unlike ordinary justice, in jurisdictional guarantees, the admissibility of evidence depends only on its constitutionality and relevance. Precisely, article 16 of the LOGJCC provides that “the reception of evidence shall be done only in a hearing and the judge may only deny it when he or she has qualified it as unconstitutional or impertinent”. In the ordinary justice system, on the contrary, the judge must judge the admissibility of the evidentiary means according to their relevance, conduciveness, usefulness, necessity, and lawfulness.

The Constitutional Court has held that “the evidence that should not be evaluated in a process of guarantees are those that were obtained against the Constitution, that is irrelevant or that impede the principle of contradiction” (Judgment No. 639-19-JP/20 and accumulated, para. 92). It is worth noting that the Court adds as a principle of admissibility of evidence, the contradiction, a matter that is not expressly established in the law. In Judgment No. 1776-16-EP/21, the Court determined the violation of due process because a public entity was not duly notified and, consequently, could not exercise its right to contradict the evidence. In this regard, the magistrate stated: “although article 24 of the LOGJCC contemplates that the Provincial Court must resolve the appeal “in the merit of the file”, this does not prevent the parties in the protection action to defend themselves and add the briefs they consider to present in said procedural phase (...) it is observed that the

impossibility that the ISSPOL had of knowing the processing of the protection action due to the lack of notification of the proceedings caused that it was unable to present the evidence and arguments to be considered by the jurisdictional authorities in the appeal”.

Now, the first principle of admissibility, the constitutionality of the evidence, depends on whether its production and practice are compatible with the constitutional text. It would be inadmissible, for example, a statement of a party taken under duress, threat, or torture.

The relevance of a means of evidence, on the other hand, refers to the direct or indirect relationship between the means of evidence and the fact in dispute in the proceeding (article 161 COGEP). According to this principle, evidence that tends to demonstrate the good conduct of one of the parties to the proceeding would be irrelevant, when what is being examined in a proceeding is a violation of constitutional rights. The Constitutional Court (2019, in its judgment No. 1208-13-EP/19, has stated that the principle of relevance:

Provides that the judge has the power to determine when an evidentiary element requested by any of the parties is not related either to the facts on which the case was brought or to the law to be applied, in which case the judge may deny or reject it as an element to form his conviction, in a reasoned manner. (parr. 63)

Both constitutionality and relevance act as guiding principles that limit the abusive evidentiary exercise of the parties and avoid unnecessary delays.

In Ruling No. 687-13-EP/20, the Constitutional Court further established: “questions concerning the admission

of evidence (e.g., is this means of evidence valid?) involve a qualitatively different judicial reasoning than questions concerning the evaluation of evidence (e.g., what facts are inferred from this means of evidence?): to answer the first type of questions, one must argue whether or not the production of a means of evidence has observed the rules that regulate such production; while to answer the second type of questions, one must argue about which facts can or cannot be considered proven from legally admissible, i.e., valid, means of evidence”.

As Guerrero (2020) points out, it should be noted that:

In constitutional matters, there is no analysis of the conduciveness of the evidence -that is to say, of the aptitude of the means of proof to lead the judge to the conviction of a certain fact- because there is freedom of means of proof, that is to say, in matters of jurisdictional guarantees there are no lags of assessed evidence.

Although we generally agree with this assessment, we cannot fail to note that recent constitutional jurisprudence has limited the evidentiary freedom of the parties, introducing certain exceptions in which we appreciate the introduction of the principle of conduciveness of evidence, even though this principle is not expressly regulated in the LOGJCC.

We refer, in particular, to Judgment No. 679-18-JP/20. 679-18-JP/20, in which the Court established that the violation of the right to access to medicines requires the demonstration of the following elements: “(i) the disease diagnosed by a health professional of the public sector and of the complementary health network; (ii) the medical prescription of a medicine within a treatment; (iii) the difficulty or impossibility to access medicines; (iv) the information and free and informed consent

of the patient to undergo the treatment based on medicines and the purpose of the enjoyment of the highest possible level of health; (v) the quality, safety and efficacy of the medicine by an impartial expert person” (para. 35).

We say that this is a case in which the principle of conduction is introduced and the evidentiary freedom of the parties is limited because each of the elements that make up the violation of the right to access medicines must be proven through specific means of proof. For example, the Court itself provides that the prescription of a medicine must be proven through the epicrisis made by a physician of the Public Intra-governmental Health Network, the informed consent must be proven through the statement of the patient and the testimony of experts, and the proof of the impartiality of the experts’ opinion must be made through an affidavit (Judgment No. 679-18-JP/20, para. 237 to 244).

With this caveat, we agree with Guerrero (2020), when he warns that in general, the informality of the jurisdictional guarantees and the evidentiary freedom that should occur in them is far from the systems of standardized evidence, that is, “that in which the legislator predetermines the evaluation that the judge must give to a certain piece of evidence” (Judgment No. 2-14-IN and accumulated parr. 76).

1.1.4. Practice

For Devis Echandía (1966), the practice of evidence refers to “the procedural acts necessary for the various means adduced or requested to be incorporated or executed in the process” (p. 342).

The taking of evidence takes place in a hearing (art. 16 LOGJCC), although as Cevallos (2021) warns, the Law does

not establish a specific evidentiary season for this purpose. According to article 14 of the LOGJCC (2009):

The plaintiff and the affected person will have up to twenty minutes to intervene and ten minutes to reply; likewise, the entities or persons being sued will have the right to the same time. If they are interested third parties, and the judge authorizes it, they will have the right to intervene for ten minutes.

In reality, it happens that judges have made these rules more flexible and while the oral arguments are being made, the evidence supporting the arguments of each party is also presented -usually in a disorderly manner.

If the judge so considers, he may open the case to evidence for a term of 8 days (art. 16 LOGJCC) and, exceptionally, he may also extend the said term in case the complexity of the evidence so warrants. In this regard, the Constitutional Court has stated that “the rules of procedure regarding evidence in jurisdictional guarantees consider the principles of speed and efficiency that characterize these processes. Particularly, the first paragraph of Article 16 of the LOGJCC specifies the procedural moment for the practice of evidence, that is, at the hearing...” (Decision No. 729-14-EP/20, para. 44).

In the same decision, the Court (2020) explained that “in the second paragraph of Article 16 of the LOGJCC, the exceptional possibility of opening an additional term for the taking of evidence is established” (par. 45). Furthermore, the Court (2020) concluded that:

The mere allegation of the failure to open an additional evidentiary term in addition to the evidence that may be presented at the hearing, without a justification

explaining its necessity, does not allow for a finding of a violation of a procedural rule or, therefore, of the right to due process in the guarantee to present evidence and contradict that which is presented against him. (par. 47)

In the second instance, the opening of a procedural phase to propose and practice evidence is an *ex officio* power of the judge. Article 24 of the LOGJCC (2009) itself provides that “the Provincial Court shall take cognizance and decide on the merits of the case file”. Likewise, the Constitutional Court has repeatedly emphasized that the fact that the provincial courts of justice, when resolving the appeal filed in processes of jurisdictional guarantees, do not convene a hearing, “does not constitute *per se* a violation of due process” (Judgment No. 1292-12-EP/19, par. 18).

The practice of evidence varies according to the means of evidence, although it should be noted that the LOGJCC does not regulate the specific way in which evidence is acted in the processes of jurisdictional guarantees. Therefore, it is necessary to apply the final provision of said law, which states: “in all matters not expressly provided for in this Law, the supplementary provisions of its regulations, in the (...) Code of Civil Procedure (...) shall be applicable and compatible with Constitutional Law” and to apply article 159 and following of the COGEP as a supplementary source, as long as they do not distort the simple, fast and efficient nature, provided for in article 86.2.an of the Constitution, for the processing of jurisdictional guarantees.

The Constitutional Court itself has stated that “to determine the proven facts in a process of jurisdictional guarantees, one must start from the rules of evidence provided in Article 16 of the LOGJCC and, as far as it is compatible

with the nature of the jurisdictional guarantees, the other procedural principles established in the General Organic Code of Proceedings (COGEP) and the Organic Code of the Judicial Function” (Judgment No. 2936-18-EP/21, para. 42).

It should also be noted, as the constitutional magistracy has pointed out, that “the evidence in the processes of jurisdictional guarantees, unlike the civil, criminal, labor and other processes, is governed by principles and rules that are specific to them and characterize them” (Judgment No. 639-19-JP/20 and accumulated, para. 91). It is added that, in constitutional proceedings, “greater flexibility is allowed in the way of acting the evidentiary means, which are not common in ordinary justice proceedings.

This is because the procedure in which violations of rights are known must be “simple, quick and effective” since such violations are of such magnitude that a reasonably flexible evidentiary activity should be sufficient for their verification”. The Court has also stated that “the fact that the evidence has greater flexibility and characteristics that are proper to it, in no case could mean that these actions could be carried out in contravention of rights and principles contained in the Constitution”.

These criteria have been reiterated in Judgment No. 2951-17-EP/21, in which the Court held: “evidence in jurisdictional guarantees is governed by the principles and rules that characterize these processes. Therefore, greater flexibility is accepted in the way of acting of the means of evidence, and broader categories and evidentiary institutions are accepted than in ordinary proceedings. This is since the procedure in which violations of rights are known must be “simple, rapid and

effective”, since such violations are of such magnitude that a reasonably flexible evidentiary activity should be sufficient for their verification” (par. 92).

In the following section, we will point out several specificities that we consider important at the moment of practicing each type of evidentiary means in jurisdictional guarantee processes.

1.1.5. Valuation

The LOGJCC also does not contain specific regulations on the method of evidentiary assessment that must be used by constitutional judges. Therefore, it is again necessary to apply in a supplementary manner article 164 of the COGEP, according to which the evaluation of evidence is carried out by applying the system of sound criticism. In this system of evaluation, according to Barrios (2003), “the judge appreciates the evidential elements according to the rules of logic, experience, and related sciences and arts” (n. p.). Likewise, Coloma and Agüero (2012) argue that sound criticism is composed of the principles that guide logic, the maxims of experience, and scientific knowledge.

This has been ratified by the Constitutional Court in Judgment No. 2936-18-EP/21, in the following terms: “in the absence of an express rule in the LOGJCC, the evaluation of the evidence must be based on the general rules outlined in Article 164 of the COGEP, according to which the evidence must be evaluated as a whole and following the rules of sound criticism...” (para. 43). Additionally, in Judgment No. 2951-17-EP/21, the Court (2021) stated:

The evaluation of the evidence must be based on the general rules outlined in Article 164 of the COGEP,

according to which the evidence must be evaluated as a whole and by the rules of sound criticism (...), the evidence admitted to the proceedings must be evaluated as a whole and under the rules of sound criticism. (pars. 87 and 93)

The judge must justify within his sentence the value he has given to each of the evidence, qualifying them as pertinent or impertinent and, to the facts, as truthful or of doubtful consideration, in such a way that from among all the events that occurred and that participated in the process, the judge makes a justified selection (Guamán Ramos, 2018, p. 12).

The need to give reasons for evidentiary decisions in matters of jurisdictional guarantees has also been recognized by the Constitutional Court in the following terms: “once the judge carries out the internal process of evaluating the evidence, he must reflect it in the motivation of the decision. As this Court has pointed out, the guarantee of the motivation requires a sufficient factual basis and this must contain, at least, “a sufficient justification of the facts considered proven in the case” (Judgment No. 2951-17-EP/21, para. 94 and Judgment No. 1158-17-EP/21).

In our opinion, if what is intended is that the decisions regarding the evidentiary assessment of a judicial authority be rational and controllable, it is not enough to establish generically a highly subjective system, such as sound criticism, for the evidentiary assessment. On the contrary, we consider it necessary for the Constitutional Court to gradually introduce through its jurisprudence standards of proof. These standards are usually defined as those minimum thresholds that must be satisfied to consider a statement of fact to be proven. (Clermont & Sherwin, 2002; Ferrer Beltrán, 2021; Gascón Abellán, 2005;

Taruffo, 2003). Some point out that the institutionalization and plurality of evidentiary standards are defining features of mature justice systems and, therefore, capable of identifying the different thresholds of proof applicable to different types of conflicts (Larroucau Torres, 2012; Vásquez, 2013).

It is worth noting that, in Judgment No. 2951-17-EP/21, the Constitutional Court introduced a variant of the *preponderance of evidence* as to the generally applicable evidentiary standard for jurisdictional guarantees. Indeed, the Court (2021) stated:

The standard of proof required to consider a fact proven is less rigorous than in other areas of law. If it can be concluded from the body of evidence that it is reasonably more probable than not that an event occurred, the standard is satisfied. (par. 93)

The preponderance of the evidence adopted by the Constitutional Court is a *de minimis* standard according to which the parties must provide sufficient evidence to show that it is more probable that their account of the facts is true than that it is false or that it is more probable than the account alleged by the opposing party (Kaplow, 2012). It is not necessary, for this, for the judge to have elements that guarantee absolute certainty about the truth of the facts, as in the case of the standard beyond *a reasonable doubt*. On the contrary, it is sufficient to show that hypothesis X is more likely to be true than hypothesis Y for the judge to consider hypothesis X proven.

As Lord Denning explains in *Miller v. Minister of Pensions* (1947), “if the evidence is such that the court can say ‘we think it more likely than not, then the burden has been met’ (n. p.). Unlike other standards of proof, the preponderance of

the evidence is based on an inductive and eminently referential probability (Gascón Abellán, 2005).

We consider that the generic application of this standard may undermine the evidentiary nature of the jurisdictional guarantees. In our opinion, the preponderance of the evidence should be applicable only when the reversal of the burden of proof does not operate, that is, in those cases in which the burden of proof falls on the plaintiff. In other cases, for example, when the State must prove that it did not violate constitutional rights, it would be more appropriate to introduce more rigorous evidentiary standards than the preponderance of the evidence. Standards such as the preponderance of evidence and clear and convincing evidence are suited to higher levels of protection of constitutional rights, in those cases where the evidentiary burden falls on public entities.

1.2. Evidence

The LOGJCC does not determine which evidentiary means may be announced and practiced in constitutional proceedings. Under this premise, it is again necessary to resort to the COGEP which, as indicated above, is a supplementary rule to fill the gaps in the LOGJCC. In this regard, the COGEP, in its Book III, Title II, Chapters II, III, IV, and V, regulates the evidentiary means that may be admitted in trials, i.e., testimonial, documentary, expert, and judicial inspection evidence. In the case of jurisdictional guarantees, evidence gathered by commissions appointed by the judges is added.

1.2.1. Testimonial evidence

Testimonial evidence is the statement made by one of the procedural parties, called declarant, or a third party, called witness (Article 174 COGEP). This evidentiary means

essentially serves for a person to inform the judge about what he/she knows of certain facts that he/she perceived directly or indirectly through his/her senses. The testimonial evidence must be given at a hearing, either in person or through videoconference, although it is also possible to request an anticipated statement or preparatory diligence (articles 122 numeral 7 and 174 COGEP). In the jurisdictional guarantees, it is not possible to take testimonial evidence through advance statements or preparatory proceedings, since the LOGJCC itself does not provide for this, but it is possible to do so through videoconference. Therefore, in these proceedings, testimonial evidence can only be taken at a hearing.

The practice of the testimonial evidence is carried out through an interrogation, formulated by the person proposing the declarant or witness, and a cross-examination, by the opposing party. According to the COGEP, the judge is limited to ordering the declarant or witness to answer the questions asked by the parties, without the judge being able to ask questions autonomously, but only for clarification purposes (Article 175). In jurisdictional guarantees, on the contrary, we consider that the active role of the judge allows him to formulate questions not asked by the procedural parties, oriented to determine the violation of constitutional rights. Moreover, Article 14 of the LOGJCC provides that “the judge shall ask the questions he or she deems necessary to resolve the case...”.

According to Article 175 of the COGEP, the witness or declarant may refuse to answer questions that could lead to personal criminal liability, to his spouse, common-law spouse, or relatives within the fourth degree of consanguinity. Suggestive, captious, vague, confusing, impertinent, or hypothetical questions may be objected to by his technical defense counsel

(art. 176 COGEP). Person's incapable of testifying, persons suffering from a mental illness that deprives them of the capacity to perceive or communicate objectively and persons who at the time of the facts were intoxicated or under the effect of psychotropic substances (art. 189 of the COGEP) may not testify. We consider that these provisions are fully applicable for jurisdictional guarantees since they preserve the standards of constitutionality for the practice of testimonial evidence.

One of the fundamental differences between what occurs between administrative and tax litigation proceedings and jurisdictional guarantees lies in the admissibility of the testimony of public servants. In the first process, Article 310 of the COGEP expressly provides that the testimony of public servants does not constitute evidence and adds that "the reports issued by the defendant authorities (...) shall not be considered part of the testimony". Constitutional jurisprudence has specified that this does not apply to jurisdictional guarantees. In Judgment No. 639-19-JP/20 and accumulated, the Constitutional Court stated that, in resolving an action for protection, "it is admissible (...) declarations of public officials" (par. 91).

With the evidentiary value of the testimonies, the Constitutional Court has held that, in habeas corpus proceedings in which the violation of the right to personal integrity is alleged, "the statement of the victim of sexual aggressions becomes fundamental evidence in this type of aggression". In addition, following the line of the Inter-American Court of Human Rights, the Ecuadorian judiciary expressed: "these statements, when referring to a traumatic moment of the victims, could incur in certain inaccuracies, without this meaning that the statements are false or that the facts related lack veracity" (Judgment No. 365-18-JH/21, para. 192).

In Case No. 2951-17-EP, the Constitutional Court also stated that “to evaluate the testimonial evidence, the context of any statement and its relationship with the other evidence must be considered” (para. 88). In the same decision, it stated: “the judges must always evaluate the statement of the alleged victim, but this statement cannot be taken in isolation, but rather within the body of evidence in the process, taking into account its context and relationship with the other evidence” (par. 93).

After analyzing the 91 sentences selected by the Constitutional Court of Ecuador in the period between 2019 and 2021, it can be concluded that the use of testimonial evidence as a means of proof in the first instance represented 13% of the total study population. On the other hand, 64 sentences were appealed and heard in the second instance, consequently, testimonial evidence was not used, however, in 94% of cases, no evidentiary means were presented.

1.2.2. Documentary evidence

According to Article 193 of the COGEP, documentary evidence is any public or private document that “collects, contains or represents any fact or declares, constitutes or incorporates a right”. This includes photographs, videos, and graphics, among other physical and digital documents. Article 194 of the referred procedural law provides that the documents must be submitted in originals or certified copies. Constitutional jurisprudence, however, has established that, in jurisdictional guarantees, “simple copies of public documents, press clippings...” are admissible. This is because in these processes “flexible evidentiary categories and institutions are accepted” (Judgment No. 639-19-JP and accumulated, para. 91). We understand that this rule would be generally applicable to the plaintiffs, but not to the defendant’s public authorities,

who normally have direct access to administrative records and original documents.

Article 195 of the COGEP establishes several conditions to guarantee the full effectiveness of the documentary evidence, among them: “That they are not defective or diminutive (...) That they are not altered in an essential part (...) That no instance or appeal is pending in the proceedings on the point that, with such documents, it is intended to prove”. We consider that these provisions are also applicable in the case of jurisdictional guarantees.

The practice of documentary evidence, regulated in Article 197 of the COGEP, provides that documents are read and exhibited in public in their relevant part, objects are exhibited, and photographs and audiovisual elements are also reproduced in their relevant part. The development of technology has made it possible to speak of digital documents, which are produced electronically through programs, applications, or functional systems that make it possible to prove voluntary acts and facts for a certain event. Article 202 COGEP provides that documents produced electronically with their respective annexes (support), will be considered originals. In the same sense, Article 52 of the Law of Electronic Commerce, Signatures and Data Messages considers as means of evidence “data messages, electronic signatures, electronic documents, and national and foreign electronic certificates”, the first characteristic provided by the same law corresponds to the fact that the magnetic support must be attached for its full validity in court. Such evidence remains in the hands of the judge and may be used by the parties during the hearing. In protection action hearings, it is usual for the parties to refer generically to documents included in the file, i.e., without specifying specific extracts.

On the other hand, documentary evidence may be public or private, in the first case, documents authorized with the legal solemnities are considered public, if such document was incorporated into a protocol or public registry it will be called a public deed, in addition, data messages granted by the competent authority duly signed are considered public instruments.

Private documents are those instruments that do not have solemnities or are not registered in protocols or registries; however, they have been created voluntarily by individuals interested in contracting and binding each other, according to the COGEP it is left open the possibility of requesting the recognition of signatures and signatures in the respective hearing, in such a way that if this is not done, it will not lose its evidentiary validity. The documentary evidence in matters of jurisdictional guarantees has greater flexibility and avoids unnecessary formalisms such as the one mentioned in previous lines “recognition of signatures”, due to the inequality of the procedural parties involved in the jurisdictional actions.

Regarding the evaluation of documentary evidence, the Constitutional Court has stated, for example, that “the birth registration certificate and the birth certificate are suitable documentary evidence to claim the right to a nationality” (Judgment No. 2158-19-JP and accumulated/21, para. 91).

When analyzing the 91 sentences selected by the Constitutional Court of Ecuador in the period between 2019 and 2021, it can be concluded that the use of documentary evidence as a means of proof in the first instance represented 70% of the total study population, on the other hand. In this context, in the second instance, documentary evidence was used in 2% of the total analyzed.

1.2.3. Expert evidence

Expert evidence refers to the information provided by a third-party expert called an “expert”, who due to his knowledge, academic training, and technical or scientific skills, is qualified to provide specialized information (technical and/or scientific) on a fact of great relevance to the process.

Also, we can identify two central aspects of the expert evidence. The first corresponds to the expert, who has the necessary knowledge to present the information to the judge. The second aspect consists of the expert report that was prepared by the mentioned expert and that is intended to be used to prove the factual premise (Vásquez, 2014, p. 32).

According to Article 222 of the COGEP, the expert witness is the natural or legal person who, in addition to having technical, scientific, artistic, practical, or professional knowledge, must be accredited by the Judiciary Council, so that only those persons who meet the requirements indicated may issue expert reports, intervene, and testify in the process. If there are no accredited persons in a specific matter, the judge will request the Judiciary Council to require a public institution, university, or professional association to send a list of three professionals to be accredited and provide the necessary support in that case, Article 221 of the COGEP and Article 12 of the RSPIFJ.

For the practice of the expert evidence, the expert report must be attached to the claim, except in the event of not having or not having access to the person, object, or thing of the expertise, in which case the judge must be requested to order its practice. For this purpose, the corresponding drawing of lots and designation of an expert will be made. In both cases,

the work of the expert must be carried out with objectivity, impartiality, opportunity, responsibility, punctuality, rectitude, and honesty, therefore, the expert shall avoid making value judgments on any of the parties (articles 16 and 21 of the Regulations of the Judicial Function Integral Expert System, hereinafter RSPIFJ).

According to Article 5 of the RSPIFJ, persons who have been convicted of crimes against public administration, harm, crimes against humanity, hatred, sexual or family violence, have been dismissed or sanctioned for administrative, civil, or criminal liability, owe tax obligations and who adulterate or falsify documents at the time of applying for accreditation may not be qualified as experts.

According to article 224 of the COGEP, under article 21 of the RSPIFJ, the expert report must contain the general data of the appointed expert, the indication of the profession, expertise, or art, the number of accreditation before the Council of the Judiciary and a logical exposition of the facts or objects subject to analysis, must be homogeneous among themselves, must be motivated by the methodological activity used and must contain their respective conclusions, in such a way that, it allows the judge and the parties to easily understand the content of the report. For Martorelli (2017) “the report aims to clarify all the technical aspects linked to the case and in that sense to elucidate the disputed facts” (p.133).

The COGEP, to guarantee the right to defense, provides that the expert report must be notified to the procedural parties at least 10 days before the trial or a single hearing is held (article 225 COGEP). This is not regulated in the rule governing constitutional cases. Despite this, in both cases, the expert witness is obliged to attend the corresponding hearing

and support his report orally. The procedural parties may question him and challenge the technical or scientific rigor of his conclusions and credibility (articles 222 and 223 *ibidem*).

In the constitutional sphere, expert opinions have been fundamental evidentiary elements for the resolution of causes related to collective rights. For example, in judgment number 004-14-SCN-CC, the Constitutional Court ruled that in the event of conflicts of competence between the ordinary justice system and the indigenous justice system, anthropological, sociological, and other expert opinions must be available to allow an approach to the ethnocultural worldview of the indigenous peoples, nationalities, and communities.

Similarly, in Case No. 112-14-JH/21, the Court (2021) stated that:

State and indigenous authorities, to interpret norms and understanding facts and conduct in any jurisdictional process in which rights are involved, must open an intercultural dialogue. The mechanisms to develop this intercultural dialogue are diverse, and priority should always be given to the most direct ones, such as (...) expert opinions with field studies..." (par. 35).

In case No. 273-19-JP/22, referring to action for protection, the Court verified, through an expert report, "environmental, social and cultural damages" that put the Cofán de Sinangoe community at risk. This expert report also highlighted:

Damage to vegetation cover and deforestation in the area of Las Pizarras, Cofanes River, Chingual River, Aguarico River due to the opening of roads for the entry of backhoes; damage to the banks of the

Aguarico, Chingual and Cofanes Rivers; damage to water as evidenced by the reduction of fishing; damage to fauna, as it was reduced by poaching and illegal hunting activities of miners who lie in the territory, among others. (Court, 2022, par. 17)

The use of expert evidence as a means of proof in the first instance is 7%. On the other hand, in the second instance, it is not used in the review processes analyzed.

1.2.4. Judicial inspection

Judicial inspection is that evidence that allows the judge to know directly and through his senses the places, things, or documents that are the object of the litigation, in such a way that it is the judge who verifies the existence or not of the facts alleged by the parties. For Garcia (1974), the importance of this evidentiary means consists in that “it puts the judge in personal, immediate and direct contact with the facts that are the subject of the process, thus facilitating the formation of his conviction regarding the extremes that will serve as support for his decision” (p. 322). According to García (1974), the judicial inspection consists of the “personal examination made by the judge of the object of the controversy, to obtain from these examination elements that form his conviction” (n. p.). The judicial inspection is, therefore, a test directly practiced by the judge.

Following Articles 228 and 229 of the COGEP, the judicial inspection may be requested ex officio or at the request of a party utilizing the acts of proposition with the precision of the reasons that support it. This will take place at the place, date, and time indicated for the purpose and, if necessary, will be supported by an expert accredited by the Judiciary Council.

Once the proceedings have been installed, the floor will

be given to the requesting party, who will explain the purpose of the inspection, the corresponding judge will conduct the inspection, and finally, the floor will be given to the opposing party, who, in use of his right to defense, will explain what was inspected and will try to refute the allegations of the requesting party, after which, the proceedings will be recorded and the video recording will be attached (Article 230 of the COGEP).

On the other hand, concerning jurisdictional guarantees, the judicial inspection may be requested by the judge or by one of the procedural parties and its objective is the same, i.e., it seeks that the judge acquires knowledge and conviction of the facts through the use of his senses to the place, the thing or the corresponding documents.

Before the analysis of the judgments under study, the evidence by judicial inspection in the first instance was not used, however, in the second instance it represents 2% of applicability, out of the total of 91 review processes analyzed.

1.2.5. Evidence collected by committee

The appointment of commissions to gather evidence in jurisdictional guaranteed proceedings is an *ex officio* power of the judge. It is the judge who, at the time of qualifying the claim or in the course of the hearing, whenever he considers that the evidence provided by the parties is not sufficient, may appoint a commission to gather new elements, Article 16 of the LOGJCC.

These commissions can be unipersonal or pluripersonal, depending on the information, versions, and evidence required to clarify one or several facts. In this context, the impact of the exploitation and oil spill on a group of inhabitants in a state of voluntary isolation requires the support of a group of people who can gather the necessary information (environmental,

economic, social damages, malformations, complex diseases, violent dispossession of ancestral territories, etc.), for which people with a high level of knowledge related to the investigated fact will be required.

The appointment of commissions, according to Article 86 of the Constitution and 16 of the LOGJCC, has three objectives: to visit the place of the facts, to receive testimonies and evidence, and then to prepare a report. This report, according to the LOGJCC, has the value of “practiced evidence”, even if it is not subject to a contradiction in a hearing. The condition of “practiced evidence” that the LOGJCC grants to the evidence by commission mark a new milestone in the protection of rights, because this evidence breaks the procedural rules, to the extent of having it as admitted and practiced. We would be in front of full proof because from the beginning it would be considered duly accredited and practiced and, if this is the case, the judge should value it as such.

The judge’s power to order the formation of commissions violates the principle of immediacy because he becomes one more actor in the process, thus leaving behind the duty of the parties to prove their allegations and contradict the evidence against them, and of course, under this scenario, the parties would no longer be on equal footing.

Ruling No. 175-14-SEP-CC established the leading role that constitutional judges must assume in the substantiation of jurisdictional guarantees so that the respect for the rights recognized in the constitution will only be materialized with a real verification or not of the violation of rights.

On the other hand, the LOGJCC confers to the judge the ex officio power to order the practice of evidence at any

time during the process, either in the qualification of the claim or in the hearing, although it is not established in the law, he can also order it in the second instance and the term in which it must be effectively practiced. Notwithstanding the above, it is important to emphasize that the judge should not make up for the evidentiary shortcomings of the corresponding technical defenses and, therefore, before ordering them, he must give reasons for his decisions.

In case 1837-12-EP/20, paragraph 16, the Court developed the basic criteria for a decision to be considered duly motivated, which are: i) enunciation of the legal norms or legal principles; ii) mention of the facts of the specific case and, iii) explanatory statement of relevance for the application in the case.

The importance of the power to order evidence resides in the effect that this generates at the time of resolving the protection action, where there will necessarily be a winning party and another that will have lost the action due to the evidentiary contribution dictated *ex officio*. For this, it is necessary to clarify that the power deposited in the judge is not unlimited and that it should not be activated in all cases and instances, but, on the contrary, it should be activated when there is not enough evidence to resolve.

From the analysis conducted, it can be concluded that the commission test was not used in the first instance. However, in the second instance, its application represents 2% of the total study population.

The burden of proof responds to a procedural necessity in the effective exercise of a jurisdictional guarantee such as the action for protection, according to article 16 of the LOGJCC,

the plaintiff should prove the facts alleged in its claim either in the complaint or at the time of the hearing, except in cases in which the burden of proof is reversed, thus transferring such obligation to the defendant.

According to Cevallos (2021, p. 11) quoting Michelle Taruffo (n. d.) “(...) the legislator resorts to these techniques when he considers it convenient to favor to some extent the position of the weak party or the party that would otherwise find it impossible or excessively difficult to prove a fact”. In contrast to what Article 169 of the COGEP promotes, on the burden of proof, this exchange obeys to a great extent the public interests pursued by the state in the protection of constitutional rights.

Article 86, paragraph 3 of the CRE, as well as article 16 of the LOGJCC, determine that the burden of proof falls exclusively on the defendant, in the following cases: i) when the defendant public entity does not prove the contrary or does not provide information and ii) when discrimination or violation of environmental or natural rights is alleged against a private individual, in these two scenarios the facts will be considered true and it will be the defendant's responsibility to prove the contrary.

CONCLUSIONS

The study of evidence in jurisdictional guarantees and specifically in the action of protection shows that in Ecuador there are no clear guiding rules. For this reason, the final provision of the LOGJCC has provided the possibility of using supplementary rules such as the COGEP to fill certain gaps in the process and evidence. In addition, the Constitutional Court, in its role as guarantor of rights, has found it necessary to issue

rulings to set minimum standards concerning evidence and its relevance when proving certain factual facts.

The LOGJCC does not establish which means of proof are accepted to demonstrate the violation of constitutional rights. For this reason, the provisions of the COGEP are used and the following are considered valid: testimonial, documentary, expert, and judicial inspection evidence. The Constitution and the LOGJCC grant the judge the power to appoint commissions to gather evidence, which must lead to the conviction of the facts so that a sentence can be issued. The seriousness of this informal power lies in the fact that it would be violating the right to defense in the guarantee of contradiction.

The empirical analysis of the 91 cases selected by the Constitutional Court of Ecuador in the period between February 2019 and June 2021 shows that the most common means of evidence used at the time of filing or answering an action for protection are in the first instance: documentary with 70%, testimonial with 13%, an expert witness with 7%, judicial inspection and evidence by commission 0%, while, for 10% of cases there was no means of evidence.

The results show that although judges are empowered to create commissions to gather evidence at their discretion and at any time during the process, they decide not to resort to the use of this mechanism due to the vacuum that exists in its use and application.

REFERENCES

American Convention on Human Rights (1969). *American Convention on Human Rights*. San José: American Convention on Human Rights.

Artavia, S. & Picado, C. (n.d.). *Costa Rican Institute of Scientific Procedural Law*. Retrieved from: https://www.masterlex.com/descargas/PuntoJuridico/2018/Noviembre/Capitulo_19_La_prueba_general.pdf

Ávila Santamaría, R., Grijalva Jiménez, A. & Martínez Dalmau, R. (2008). *Desafíos Constitucionales, La Constitución ecuatoriana del 2008 en perspectiva*. Quito: Ministry of Justice and Human Rights.

Benfeld Escobar, J. (2018). Sound criticism and the oblivion of the rules of sound criticism. *Revista de Derecho (Valdivia)*, pp. 303-325.

Cevallos Cabezas, F. (2021). La Inversión de la carga de la prueba en la acción de protección. Kairós. *Revista de Ciencias Económicas, Jurídicas y Administrativas*, 4 (7), pp. 25-53. <https://doi.org/10.37135/kai.03.07.02>

Constitution of the Republic of Ecuador (2008). *Constitution of the Republic of Ecuador*. Quito.

Constitutional Court of Ecuador Case No. 282-13-JP, Constitutional Court of Ecuador Case No. 282-13-JP (Constitutional Court of Ecuador September 04, 2019). Retrieved from: <http://doc0.corteconstitucional.gob.ec:8080/alfresco/d/d/workspace/SpacesStore/eea6e923-d19f-4329-9b54-18447d4c8840/0282-13-JP-auto.pdf?guest=true>

Constitutional Court of Ecuador. (2014). Sentence No.004-14-SCN-C. Retrieved from: <https://biblioteca.defensoria.gob.ec/bitstream/37000/467/1/juicio%20de%20accion%20publica%20caso%20genocidio.pdf>

Constitutional Court of Ecuador. (2014). Sentence No.175-14-SEP-CC. Retrieved from: <http://doc.corteconstitucional.gob.ec:8080/alfresco/d/d/workspace/SpacesStore/7f72f3d7-7053-4742-a885-4776cdf1afb0/1826-12-ep-sen.pdf?guest=true>

Constitutional Court of Ecuador. (2019). Case 0282-13-JP, Constitutional Court of Ecuador, Case 0282-13-JP (Constitutional Court of Ecuador September 04, 2019). Retrieved from: [http://doc0.corteconstitucional.gob.ec:8080/alfresco/d/d/workspace/SpacesStore/de2a1ea3-7444-4b52-97bd-3b0b4790972e/282-13-JP-19%20\(0282-13-JP\).pdf?guest=true](http://doc0.corteconstitucional.gob.ec:8080/alfresco/d/d/workspace/SpacesStore/de2a1ea3-7444-4b52-97bd-3b0b4790972e/282-13-JP-19%20(0282-13-JP).pdf?guest=true)

Constitutional Court of Ecuador. (2020). Judgment No. 639-19-JP/20 and accumulated, p.20, Judgment No. 639-19-JP/20 and accumulated (Constitutional Court of Ecuador October 21, 2020).

Constitutional Court of Ecuador. (2020). Sentence No.1837-12-EP/20. Retrieved from: <http://doc.corteconstitucional.gob.ec:8080/alfresco/d/d/workspace/SpacesStore/689ca61e-f05f-4eaf-a734-becd759a5652/1837-12-EP-sen.pdf>

Constitutional Court of Ecuador. (2021). Sentence No.112-14-JH/21. Retrieved from: <https://www.funcionjudicial.gob.ec/www/pdf/sentencia%20cc%20%20112-14-JH21.pdf>

Constitutional Court. (2013). Ruling No. 113-13-SEPCC.

Couture, E. (1958). *Fundamentos del Derecho Procesal Civil*. Buenos Aires: Roque Depalma.

Devis Echandia, H. (1961). *General Theory of Judicial Evidence*. Bogotá: Temis.

Espinosa Cueva, C. (2010). *Teoría de la motivación de las resoluciones judiciales y jurisprudencia de casación y electoral*. Quito: Tribunal Contencioso Electoral.

García Galarza, J. F. & Trelles Vicuña, D. F. (2021). Evidence in jurisdictional guarantees in Ecuadorian legislation. *Revista Científica FIPCAEC*, 25.

García Sierra, L. A. (1974). Judicial Inspection Evidence. *Estudios de Derecho*, 33 (86), pp. 321-344. Retrieved from: <https://revistas.udea.edu.co/index.php/red/article/view/332803>

General Organic Code of Proceedings. (2015). *Código Orgánico General de Procesos*. Quito: National Assembly.

González Lagier, D. (2016). Argumentation in factual matters. *University of Alicante*, 46.

Guamán Ramos, E. A. (2018). Legal argumentation and the declaration of guilt or innocence of the defendant. *Revista Facultad de Jurisprudencia*, (3), pp. 347-379.

Guerrero del Pozo, F. (2020). Constitutional Jurisdictional Guarantees in Ecuador. *Corporación de Estudios y Publicaciones*. Quito

Hernández Rodríguez, M. V. (2011). The formation and evaluation of testimonial evidence in the canonical process of marriage annulment. *Valparaiso Law Review*.

Hunter Ampuero, I. (2017). Legal rules of evidence and free appraisal of the evidence: How do they coexist in the Draft Code of Civil Procedure? *Revista Ius et Praxis*, 100.

- León Ordoñez, D. A. (2019). Evidence in the general organic code of processes. Ecuador. *Revista Universidad y Sociedad*, 10.
- Ministry of Justice and Human Rights Presidency of the Nation (2017). *Techniques and Skills in the reality of Litigation*.
- Organic Law of Jurisdictional Guarantees and Constitutional Control (2009). *Organic Law of Jurisdictional Guarantees and Constitutional Control*. Quito: National Assembly.
- Pablo, M. J. (2017). La Prueba Pericial. Considerations on the expert evidence and its valuation in the judicial decision. *Revista derechos en acción*, 4.
- Pacheco Samayoa, J. P. (2017). Introduction to evidentiary law. *Instituto de Investigación y Estudios Superiores en Ciencias Jurídicas*, 76.
- Parada Vaca, O. (2006). Obtención Ilícita de las Fuentes de prueba en el proceso Civil. Santa Cruz. *Revista de Derecho*, p. 10 y ss.
- Porras Velasco, A. & Montaña Pinto, J. (2011). *Apuntes de Derecho Procesal Constitucional*. Quito: RisperGraf C.A.
- Quinta, Ismael (2020). La Acción de Protección. *Corporación de Estudios y Publicaciones*, 3rd edition. Quito.
- Ramírez Romero, C. (2017). *Apuntes sobre la Prueba en el COGEP*. Quito: Corte Nacional de Justicia.
- Rodríguez Serpa, F. & Turán Gutiérrez, J. P. (2011). *La valoración racional de la prueba*. Quito, pp. 191-208.

- Rojas Valdivieso, M. C., Erazo Alvarez, J. C., Pozo Cabrera, E. E. & Narváez Zurita, C. I. (2019). Evidence in Jurisdictional Guarantees. Lack of regulation and affection to the right to defense and evidentiary freedom in Ecuador. *Iustitia Socialis. Revista Arbitrada de Ciencias Jurídicas*, 22.
- Sanchis Crespo, C. (1999). *La prueba por soportes informáticos*. Valencia: Tirant lo Blanch.
- Santoscoy, B. (2015). *Las visitas in loco de la Comisión Interamericana de Derechos Humanos*. Mexico DC: Instituto de Investigaciones Jurídicas de la UNAM.
- Storini, C. & Navas Alvear, M. (2013). *La Acción de Protección en Ecuador, Realidad Jurídica y Social*. Quito: Centro de Estudios y Difusión del Derecho Constitucional.
- Taruffo, M. (n. d.). *La Prueba, Articles and Lectures*. Metropolitan.
- Valentin, G. (2014). *Evidence and sentencing: some reflections on the burden of proof rule*.
- Vasquez, R. (2014). *La Prueba Pericial entre la Deferencia y la Educación*. Retrieved from: <https://www.tdx.cat/bitstream/handle/10803/284763/tmcvr.pdf?sequence=4.xml>
- Vei Vecchi, D. (2020). Free evidence, epistemic justification, and the noble dream of standards of proof. *Revista de Derecho (Valdivia)*, pp. 25-48.
- Yáñez Meza, D. A. & Castellanos Castellanos, J. A. (2016). *El Derecho a la Prueba en Colombia: Aspectos favorables y críticos de la reforma del Código General del Proceso en el Derecho Sustancial y Procesal*. Bogotá: Vniversitas.

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