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Secretariat for Multidimensional Security

**XLVII MEETING OF THE GROUP OF EXPERTS
FOR THE CONTROL OF MONEY LAUNDERING
September 24 to 25, 2019.
Bogota – Colombia**

**OEA/Ser.L/XLV.4.47
DDOT/LAVEX/doc.26/19
September 24, 2019
Original: Spanish**

**PRESENTATION
EVIDENCE IN IN REM FORFEITURE**

MEANS OF PROOF IN IN REM FORFEITURE



MICHELE TARUFFO

“Facts are not incorporated into the judicial proceeding in their empirical or material reality: in general they have already happened and, therefore, belong to the past. Hence, facts can only be perceived by the judge (except certain elements of circumstantial evidence), so they have to be reconstructed by the judge”.



EVIDENCE



- MEANS OF PROOF are the instruments that are used to demonstrate the procedural truth
- Testimonies, documents, physical evidence, etc.
- DIFFERENCE: LEGALLY RELEVANT FACTS AND CIRCUMSTANCIAL EVIDENCE.
- MEANING: POLYSEMIC.



MEANINGS:

1. **PROCEDURAL TOOL:** Confirm the happening of certain facts.
2. **PROCEDURAL DUTY:** The plaintiff must proof what they claim,
3. **STATE OF KNOWLEDGE:** The degree of conviction that a certain reality reaches in the understanding and assessment of the judge.



NEED OF EVIDENCE

- **Mandatory guarantee to impose a sanction on a person or their assets.**
- **Intimate relation in the due process: production and abduction.**
- **Illicit or illegal evidence (article 29 C.P.).**
- **Right to a defense: The possibility of the defendant or affected to be heard and convicted in a trial.**



- 1. PRINCIPLE OF CONTRADICTION.** Every person must be heard in trial in - *auditur altera pars*.
- 2. PUBLICITY.** Transparency of trials
- 3. LAWFULNESS AND LEGALITY.** Constitution and Law.
- 4. PRECLUSION OR EVENTUALITY:** the evidence phase must be conducted in the precise terms and opportunities = security and legal guarantees.

DIFFERENCES

INVESTIGATION ACTS

Gather and obtain evidence or material proving elements that will be used in trial, to justify the theory of the case to a certain degree of probability

ACTS OF PROOF

Actions that parties carry out in order to incorporate the investigation acts into the proceeding.

PIETRO ELLERO

“The need for punishment cannot be so pressing that it obliges to condemn them, either with ordinary or extraordinary sentences, since one can never be obliged to commit an injustice; it is unfair, truly, to take away the assets, fame, dignity, health and maybe the life of a man, if his guilt has not yet been proven”.

E. FLORIAN



*“The principle of material truth, which in the proceeding shines with its own light and constitutes the foundation of the evidence system, and the criterion of free certainty, which is the revitalizing soul and spirit of this system, lead together to the conclusion **that the means of proof cannot be established in a limited and unchangeable numbering**”.*

THE EVIDENCE IS NOT THE PROCEEDING

- With no evidence there is no proceeding.
- Evidence is assessed through the REASONED JUDGEMENT.
- **NOT THE ENTIRE ASSESSMENT PROCESS** is reviewed under the Reasoned Judgement. Formal and legal requirements of evidence (**extrinsic requirements**).
- **Reasoned judgement: Intrinsic requirements:** Connection between the information provided by the means of proof and the facts that constitute the *thema probandum*.



REASONED JUDGEMENT

1. PRINCIPLES OF LOGIC
2. RULES OF EXPERIENCE
3. SCIENTIFIC AND HUMAN KNOWLEDGE, CULTURAL TECHNIQUES, INTELLECTUAL OR CONSOLIDATED PRACTICES.



EFFECTIVENES IN PRESENTING EVIDENCE

The in rem forfeiture procedures are subject to the principle of jurisdiction, which conditions such civil forfeiture to the certification of the reason for it given the demonstration of an illicit activity from which generated illicit assets or the illicit destination of property rights, activities that illegitimates the right to such asset. This situation leads to confirm that the development of the in rem forfeiture trial is conducted under the observance of effectiveness in presenting evidence.



OBJECTIVE OF THE IN REM FORFEITURE PROCESS

1. SEARCH, IDENTIFY AND LOCATE **ILLICIT ASSETS** (ART. 34 AND 58 CONSTITUTIONAL).
2. DISCOVER the illicit conducts (all those considered as crime)
3. ESTABLISH the causal relation with the **suspect or third party**.



INDICATORS



- i) The importance of the amount of money laundered.
- ii) The connection of the authors with illicit activities or groups or persons involved in them.
- iii) The unusual or disproportionate increase of the subject's property.
- iv) The nature and characteristics of economic operations carried out, for example, with a large amount of cash.

INDICATORS



- v) The inexistence of a licit justification for the income that makes those operations possible.
- vi) The weakness of explanations regarding the licit origin of those capitals; and
- vii) The existence of shell companies or financial schemes that are not supported on confirmed licit economic activities.

Evidence in in rem forfeiture is in a degree of probability.

can be done through “direct proof” or “indirect proof”.

The existence of prior convictions for the illicit activity that produced the assets or through which they were illicitly destined is not necessary.

The accuracy of the conditions of time, method and place is not necessary.

THE DETERMINING ISSUE is to establish the direct or indirect origin of that asset or its illicit destination produced by the commission of an illicit activity.

There is no **legal rating** regime for the assessment of circumstantial evidence.



DYNAMIC BURDEN OF PROOF

In the in rem forfeiture process implies the dynamic burden of proof. It corresponds to the imputed party to proof the facts that hold the inadmissibility of the in rem forfeiture”

(ART. 152 C.ED.)



GRACIAS