MLS LAW AND INTERNATIONAL POLITICS

https://www.mlsjournals.com/MLS-Law-International-Politics

ISSN: 2952-248X

LAW AND INTERNATIONAL POLITICS

How to cite this article:

González Urzaiz, F. R. (2023). Aplicación práctica del principio de igualdad procesal. *MLS Law and International Politics, 2*(2), 66-79. doi: 10.58747/mlslip.v2i2.2439.

PRACTICAL APPLICATION OF THE PRINCIPLE OF PROCEDURAL EQUALITY

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Abstract. The recent jurisprudence of the First Chamber of the Supreme Court of Justice of the Nation (2023, reg. 2026079) is examined, regarding the scope and foundations of the principle of procedural equality and its possible application in the initial hearing held within a process accusatory criminal, following the method of legal hermeneutics by understanding the legislative framework of the Mexican State, together with the jurisprudence and doctrine related to the general norms in question. It has been warned, from the norms contained in the National Code of Criminal Procedures (2014), that, in an initial hearing, the technical parties must deal, among other tasks, with providing means of conviction that are useful to support their respective theories. of the case in order to incline the balance towards the issuance of a binding order or non-binding process. Likewise, the requirements demanded by said legal system for the issuance of the first type of resolution in question have been taken into account, and after doing the above, the possible answers to the question related to the evidentiary standard that should be required of the court have been explored. defense in order to achieve a decision to the contrary, that is, that an order of non-binding process be issued in favor of the client.

Keywords: equality, binding, process, accusatory, proof.

APLICACIÓN PRÁCTICA DEL PRINCIPIO DE IGUALDAD PROCESAL

Resumen. Se examina la reciente jurisprudencia de la Primera Sala de la Suprema Corte de Justicia de la Nación (2023, reg. 2026079), relativa a los alcances y fundamentos del principio de igualdad procesal y su posible aplicación en la audiencia inicial celebrada dentro de un proceso penal acusatorio, siguiendo el método de la hermenéutica jurídica mediante la comprensión del marco legislativo del Estado Mexicano, junto con la jurisprudencia y la doctrina relacionadas con las normas generales en cuestión. Se ha advertido, de las normas contenidas en el Código Nacional de Procedimientos Penales (2014), que, en una audiencia inicial, las partes técnicas han de ocuparse, entre otras tareas, de aportar medios de convicción que resulten de utilidad para sostener sus respectivas teorías del caso a fin de inclinar la balanza hacia el dictado de un auto de vinculación o no vinculación a proceso. Asimismo, se han tomado en cuenta los requisitos exigidos por dicho ordenamiento para la emisión del primer tipo de resolución en comento, y hecho lo

anterior, se han explorado las posibles respuestas sobre la interrogante relativa al estándar probatorio que en su caso debe exigirse a la defensa a fin de lograr una decisión en sentido contrario, es decir, que se dicte un auto de no vinculación a proceso a favor de su representado.

Palabras clave: igualdad, vinculación, proceso, acusatorio, prueba.

Introduction

This paper examines the recent jurisprudence of the First Chamber of the Supreme Court of Justice of the Nation regarding the scope and foundations of the principle of procedural equality, in order to specify the way in which, in the field of judicial practice, the content of said jurisprudential thesis can be materialized and grounded, which basically states that the parties must have reasonable equality in terms of the possibilities of exercising their claims.

The main challenge of the research will be to determine whether or not it is possible to transfer the substance of this criterion, which was issued in relation to civil matters, to the field of the accusatory criminal proceedings, keeping, of course, due proportions and observing the differences that exist between one matter and the other and that are inherent to their nature.

This transfer has been deemed possible because, apart from the specific peculiarities of the proceedings according to their subject matter, it cannot be overlooked that there are also analogous figures in both proceedings.

For this purpose, we have taken into account both the decisions of various jurisdictional bodies in the resolutions they issue during their daily life, as well as the statements expressly included in the different theses that have been published in the Judicial Weekly of the Federation, in order to establish the compatibility or, as the case may be, the incompatibility of one or the other criteria.

In order to achieve this task, in reviewing the legislation and case law, together with the doctrine generated by various authors, special attention has been paid to the concepts that are considered to be involved in the subject to be developed, such as the evidentiary standard that should prevail at each stage of the accusatory criminal process, what should be understood by data and means of evidence, and the greater or lesser relationship between the relevance of the evidence and the eventual obligation to take it into consideration when resolving the issue raised before the jurisdictional body.

The main purpose is to clarify in which scenario the development of the initial hearing should lead to the issuance of an indictment and in which cases it would be in the opposite hypothesis, and also to determine in which of these situations the indictment should be sustained in the same terms requested by the agent of the Public Prosecutor's Office, and also to delimit under what circumstances a decision not to commit for trial should allow for the continuation of the investigation of the alleged facts and what would be the scenario in which such decision should include the effect of dismissal that would inhibit the continuation of the respective investigation.

For the foregoing, of course, a careful distinction must also be made in order to establish whether the investigative inhibition should refer, depending on the matter in question, only to the

persons initially charged or, in general terms, to the facts that generate the investigation file in which the prosecutor's office is acting.

Method

This work has been prepared following the method of legal hermeneutics by reviewing and understanding the prevailing legislative framework in Mexico, especially the Political Constitution of the United Mexican States (1917) and the National Code of Criminal Procedures (2014), together with the jurisprudence that gave rise to the realization of this study and other theses related to the topic to be addressed, as well as the doctrine related to the general rules in question.

The foregoing, in the understanding that, when referring to theses published in the Semanario Judicial de la Federación, the page citation has been replaced by the digital registry number.

This is for practical reasons and in order to facilitate its eventual consultation by readers, given the fact that such information is currently published electronically.

Results

In the present case, the criterion to be examined is the one published in the Semanario Judicial de la Federación by the First Chamber of the Supreme Court of Justice of the Nation (2023, reg. 2026079), in which it was held:

> Procedural equality is an aspect of the rights to due process and legal equality, which demands a reasonable equality of possibilities in the exercise of each of the claims of the parties in a trial and which is in turn a rule of action of the judge as the director of the process.

As a result of what was stated by the First Chamber, the existence of the right of all those who are part of a procedural dispute to confront their counterpart with similarity of arms, free of unjustified disadvantages, that is to say, that they should not be imposed considerably higher burdens than those that their co-plaintiffs have to meet, neither in the procedural field in a broad sense, nor in matters of a strictly evidentiary nature, can be glimpsed.

In other words, through procedural acts of similar intensity, each of the parties must have the same possibilities as the others to obtain a favorable resolution of their claims.

In accordance with the above, it is deemed prudent to refer to the elementary conception of equality, for which it can be taken as a starting point what is embodied by Mariana Rodrigues Canotilho (2017, p. 363), in the sense that:

> First, equality was understood as a mere obligation to justify the distinctions made by normative means, that is, as an expression of a general principle that establishes the prohibition of arbitrariness in the classifications and differences established by the legislator.

From said expressions it can be deduced that the similarity of treatment towards the governed must be taken care of from the legislative seat, therefore, when reading the general rule to be applied, it must then be assumed that, as a general rule, the intention of the legislator himself must be considered focused on equality and not on inequality, and that, even in the hypothesis that the second case (rule of unequal treatment) would occur, it would have to be understood as a rule referring to cases of exception in its strictest sense and clearly justified.

In this regard, it is also worth noting the relevance of the generic conception of equality that Efrén Angulo (2022, p. 21) has sustained when he states that:

> At present, and from a strictly legal point of view, the equality of all before the law is something that merits little discussion since it is a principle that is embodied in the Universal Declaration of Human Rights, since 1948, accepted in its legal system by most countries of the world, in which it has the force of law, and based on it, constitutions, laws and regulations that govern the life of a nation and its institutions are enacted.

From the paragraph transcribed above, the universality of the prerogative of equality before the law is clear, so that, in general terms, it must be considered mandatory in all branches of law, even though it is not ruled out that, in situations that merit it due to their own special nature, the nuances that each particular case requires are equally admissible.

Therefore, as anticipated in previous lines, the aim is to examine how feasible it would be to transfer this criterion, originally referred to civil matters, to the scope of the accusatory criminal process.

Based on the foregoing, it should be taken into account that the principle of equality between the parties is one of those expressly contemplated in the National Code of Criminal Procedures (2014), precisely in its Article 11, which provides that "the parties are guaranteed, under conditions of equality, the full and unrestricted exercise of the rights provided in the Constitution, the Treaties and the laws that emanate from them", to which is added what Patricia Lucila González Rodríguez (2017, p. 43), in the sense that, in the Mexican adversarial criminal system, the principle of equality "is observed in the development of procedural acts in which the so-called procedural equality prevails, for example, when the parties offer in equal conditions their means of proof".

Such assertions lead, of course, to the logical inference that, since there are equal conditions to offer evidence, it must also be understood that the effectiveness of such elements of conviction must be the same for all parties, that is to say, it would be absurd to establish, on the one hand, a scenario of equality at the time of proposing evidence and, on the other hand, at the time of making the respective evaluation thereof, demand a greater evidentiary activity from some parties than from the others, especially if it is taken into account that the legislative portion mentioned speaks, in general, of the exercise of rights, without making a distinction between some prerogatives and others.

Now, from the confrontation between the position of the aforementioned civilist and the two later authors, we obtain as a result the evident fact that, both in civil proceedings and in criminal proceedings, equality implies that the parties are in similar positions and that they are allowed to participate, with the same tools, in the construction of the contradictory scenario before which the judge will have to decide what in law corresponds.

In other words, as Calamandrei (1943, cited in Becerra. 2003, p. 3), the procedural legal relationship "implies collaboration between the parties, as in sport, because although the contestants fight against each other, in order to obtain the victory, they must abide by the rules of the game".

In addition to the above, the principle of equality must be considered indissolubly linked to the principle of impartiality, which must be preserved with the utmost care, as can be seen in the isolated thesis recently issued by the First Chamber of the Supreme Court of Justice of the Nation (2023, reg. 2026341), in which even the criterion that:

> The mere fact of having known or participated in the matter at some stage prior to trial implies the loss of impartiality in its objective aspect and, therefore, violates the principle of immediacy even if it had not made a pronouncement on data or evidence. Administrative or jurisdictional knowledge cannot be argued as an exception.

In fact, in this thesis, the Chamber itself has sustained the importance that "what is decided in the final judgment is the result of a clean and equal procedural contest, contemplated and evaluated by the sentencing court with guarantees of full objective impartiality".

In this way, it has been noted that the principles, as referred to by Hesbert Benavente Chorres and José Daniel Hidalgo Murillo (2014, p. 25), "are guiding rules" and "from their enumeration basic guidelines of judicial action are derived", so it is evident the special relevance of the referred principle, among others, within a criminal proceeding in order to bring it to a successful conclusion, that is, towards obtaining a resolution that is truly in accordance with the law and that, of course, constitutes a legal truth that corresponds as much as possible with the historical reality of the facts.

Therefore, it must be considered that even the principles that are apparently referred to the oral trial hearing must be observed, with due nuances, in each and every stage of the proceedings.

Now, if the principle of equality must be observed in a proceeding (indissolubly joined to the other principle of impartiality) in the sense that each of the parties must exercise its claims in equal circumstances in relation to the other party, it is also necessary to establish the manner in which each of the intervening parties exercises its claims.

In this regard, it may be noted that, in the specific case of an initial hearing, the National Code of Criminal Procedures (2014) indicates, in the second paragraph of its Article 313, that:

> The Public Prosecutor's Office must request and justify the binding of the accused to trial, explaining in the same hearing the evidence with which it considers that a fact that the law establishes as a crime and the probability that the accused committed it or participated in its commission has been established.

Likewise, in its diverse numeral 314, the same procedural ordinance in quotation, provides that "the accused or his defense counsel may, during the constitutional term or its extension, present the evidence that they consider necessary before the Judge of control", and adds that:

> Exclusively in the case of crimes that merit the imposition of the precautionary measure of unofficial pretrial detention or another personal measure, in accordance with the provisions of this Code, the Control Judge may admit the production of evidence offered by the accused or his defense counsel, when, at the beginning of the hearing or its continuation, he justifies that it is pertinent.

From the provisions transcribed above, it may be noted, or at least inferred, that in an initial hearing, each party carries out the exercise of its pretensions, mainly through the submission of data and evidence.

In this regard, it is also important to take into account what Manuel Valadez Díaz (2021, p. 66) highlights, which includes among other requirements for the issuance of an indictment:

> There must be evidence to establish: a) the existence at the level of an assumption of a fact that the law indicates as a crime and b) there must be evidence to establish under the logic of probability that the accused may have committed or participated in the commission of the crime.

From such assertions, it is evident that what supports the order of committal to trial is the concurrence of sufficiently reasonable evidence to demonstrate, even if only in a circumstantial manner, that the punishable act attributed to the accused existed and, of course, the probability of linking the latter to the production of such illicit event.

Therefore, it is evident that the procedural or evidentiary work of the party seeking the issuance of such ruling will be aimed at demonstrating those extremes and, consequently, the activity of his counterpart will be focused on the opposite objective, that is, the establishment of a scenario in which the accumulation of evidence points to the non-existence or non-verification of the criminally relevant conduct, or of the probable involvement of the person under investigation as the cause of such conduct.

Likewise, it adds another condition that for the purposes of this study must be taken into account, which consists of "that there is no cause for extinction of the criminal action or exclusion of the crime that favors the accused".

Thus, the information reviewed thus far shows that, at its core, it is the responsibility of the prosecutor to provide evidence that proves the existence of the act indicated by law as a crime and the probable involvement of the person under investigation in its commission, while the defense would be responsible for introducing data and means of proof that would place the scenario in the opposite hypothesis, in which the inexistence of any of said extremes would be clear, or that would evidence some circumstance that would lead to the extinction of the criminal action or to the updating of some hypothesis excluding the crime.

The foregoing is affirmed, given that, in the event that the defense achieves the task of evidencing the absence of any of the requirements demanded by the applicable codification, the initial hearing would then culminate with the issuance of an order of non-indictment, as provided in the first paragraph of article 319 of the law in question, when it establishes:

> In the event that any of the requirements set forth in this Code are not met, the Control Judge will issue an order of non-binding of the accused to trial and, if applicable, will order the immediate release of the accused, for which purpose he will revoke the precautionary measures and the anticipated precautionary measures that had been decreed.

Now, what should be understood by data and means of proof?

In this regard, it is worth mentioning, in the first place, the content of Article 261 of the National Code of Criminal Procedure (2014), which in the relevant part of its first paragraph establishes that the evidence constitutes "the reference to the content of a certain means of

conviction not yet produced before the jurisdictional body", while in its second paragraph it defines the means of evidence as "any source of information that allows reconstructing the facts".

In addition to the above, José Alberto Ortiz Ruiz (2015, p. 74) states that "the evidence gathered during the initial investigation carried out by the agent of the Public Prosecutor's Office... is not considered as full evidence... it is only a reference".

This can be exemplified by mentioning the case of the acts of investigation currently known as interviews, which are usually carried out by both public prosecutors and defense attorneys, whose contents are generally presented during the initial hearing.

In effect, the content of the interview conducted with someone who had the opportunity to witness the facts, when exposed during said hearing, constitutes a piece of evidence, that is, it refers to the information possessed by the person interviewed, which, in the event that the process reaches an oral trial hearing, would be introduced through the testimonial statement of the subject himself, and would thus become a means of evidence.

Similarly, the content of an investigative record consisting of the inspection of the material object of the crime (weapon, drug or some other) could be presented as evidence at the initial hearing and, at the oral trial hearing stage, the same object could be incorporated as evidence, after its recognition by the agent of the investigating police who carried out the inspection or even the one who was in charge of its securing and packaging, in terms of the provisions of article 383 of the aforementioned procedural code, in the sense that "the documents, objects and other elements of conviction, prior to their incorporation in the trial, must be exhibited to the accused, to the witnesses or interpreters and to the experts, so that they may recognize them or report on them".

In other words, although the content of an investigative record may be exposed as evidence in the initial stage of the process, the same does not occur in the oral trial stage, since there is even an express prohibition in article 385 of the adjective code in question, which reads as follows:

> The records and other documents that give account of actions carried out by the Police or the Public Prosecutor's Office in the investigation may not be incorporated or invoked as evidence or read during the debate, with the exception of the cases expressly provided for in this Code.

Of course, this also means that, during the initial hearing, the defense attorney who is interested in relying on witnesses to the facts will have to decide whether to incorporate the information by means of the presentation of evidence by speaking during the hearing about the results of the interviews conducted with said persons, or as evidence by having them personally give their statements in the presence of the supervising judge.

This is so, because it is important to avoid overabundance, as is evident from a broad interpretation of the content of the antepenultimate paragraph of Article 246 of the aforementioned National Code of Criminal Procedure, which establishes:

> In the event that the Judge considers that the means of proof is superabundant, he shall order the party offering it to reduce the number of witnesses or documents, when by means of them he wishes to prove the same facts or circumstances with the matter to be submitted to trial.

Thus, it is evident that it would be unnecessary to expose the content of the interview and, in addition, to present the testimony of each of the subjects that have been interviewed by the defense or its assistants.

As an important part of the principle of equality, reference should also be made to what was held by the First Collegiate Court in Criminal and Administrative Matters of the Seventeenth Circuit (2018, reg. 2015953) in the sense that both the evidence and the means of evidence "must be assessed at the initial stage as data, in view of the principle of equality".

The foregoing, of course, without ignoring that, even placing the data and the means of evidence in the same range of appreciation, this must be done taking into account all the information obtained even from the presentation of the means of evidence, during which, it is even possible the practice of cross-examination, which, as Frank Almanza Altamirano and Oscar Peña Gonzáles (2022, p. 7) have pointed out, constitutes "the cornerstone of an adversarial system", since such exercise allows "confronting and verifying the veracity of what is declared by the witnesses of the opposing party".

In addition to what has already been highlighted, we also note the content provided by Eliseo Lázaro Ruiz (2019, p. 1880), who states that "cross-examination is a technique that allows materializing the principle of contradiction of the accusatory criminal procedure".

On the other hand, it should not be overlooked that there is also a thesis directly related to the accusatory criminal process, specifically with the resolutions to be issued after the holding of an initial hearing, which was published in the Judicial Weekly of the Federation by the First Collegiate Tribunal in Criminal Matters of the First Circuit (2022, reg. 2025379) and refers precisely to the conditions for the issuance of an indictment.

In effect, in the isolated thesis referred to in the previous paragraph, it is held that "the circumstance that the alternate version of the accused is plausible and even probable, evidentially speaking, does not prevent the prosecution from being bound to trial if the version of the accusation is equally probable", which it justifies by pointing out that "the very fact that it is only probable does not prevent the version of the accusation from also being probable", to which it adds that "both can be probable and this implies that the version of the accusation retains that quality, which is the relevant and sufficient standard to bind".

Notwithstanding the foregoing, it should be taken into account that such criterion leaves unanswered the question as to what would then be the standard required of the defense in the initial phase and whether or not such parameter would have to be in accordance with the aforementioned principle of equality between the parties that must be observed throughout the process together with the different principle of presumption of innocence contemplated in numeral 13 of the adjective code of the matter by stating that "every person is presumed innocent and will be treated as such in all stages of the proceeding, until his responsibility is declared by means of a sentence issued by the jurisdictional body".

Discussion and conclusions

Once the data contained in the previous section have been reviewed, the relevance of procedural equality between the parties and the impartiality of the supervisory judge at the time of the initial hearing within an accusatory criminal proceeding can be clearly seen.

This is so, since, on the one hand, it is noted that the thesis from which this study derives refers to the "possibilities in the exercise of each of the claims of the parties in a trial".

Consequently, it is necessary to establish whether or not this possibility should be extended to all matters, especially in the criminal area, in order to determine whether or not it would be applicable in an accusatory process.

Therefore, if we start from a basic notion of the concept of equality, which constrains the legislator himself to provide equitable or non-discriminatory treatment, it is evident that any regulatory act must be understood as aimed at the effective achievement of this objective, that is, at establishing a scenario in which all persons enjoy, at least in general terms, the same rights and, consequently, are also in the same possibilities of asserting them before the competent authorities.

In effect, in accordance with the foregoing, every normative provision must be interpreted taking into account that the intention of the legislator has been to achieve, in the factual field, a real possibility for persons, including those who are parties to a controversy, to prove that they are right and entitled, in order to benefit from the legal consequences that such proof may bring them.

The above is supported by the fact that, from the bibliographic sources reviewed, it has become clear that there is a need for "equality of all before the law" as a principle enshrined in the Universal Declaration of Human Rights.

Thus, since the expression "all" is a word that denotes universality, that is to say, absolute inclusion, it is unquestionable that equality must be understood as referring both to the activity that individuals carry out on a daily basis and in relation to the procedural acts that at a given moment they may develop in defense of their substantive rights, understood, in this specific case, this same universality should also reach, as a general rule, the totality of the possible controversies submitted to the power of the public authority, thus preventing the exclusion of any of them, whether for reasons of subject matter, amount, territory or other reasons.

Consequently, the separation of one or more jurisdictional disputes from the universe of equality would have to constitute, if it existed, a case of exception expressly contemplated and, at the time, justified by the legislator.

However, if it has already been seen that the intention of the legislator must be, at all times, to achieve a factual scenario in which all persons effectively enjoy the same rights and the same possibilities of asserting them, it is evident that the hypotheses of inequality that come to be expressly contemplated in the current regulatory framework must be aimed precisely at achieving such objectives.

Therefore, it is sustainable the assertion that, in the event that a distinction is provided for in the law itself, such determination would have to favor the most vulnerable party, so that the normative inequality is translated, in practice, into a de facto equality by correcting one or more of the factual deficiencies that affect the possibility of the weaker contender to carry out an effective defense of his claims.

Therefore, if the criterion of equality were to be transferred to an accusatory criminal procedure, it would have to be considered that, in any case, any specific distinction should be channeled towards strengthening the conditions of the intervening parties other than the technical parties, which in this scenario would be the accused and, depending on the circumstances of each proceeding, the victim or offended party.

Now, just as in the previous section of this article we have set forth the information that allows us to establish the scenario that normally prevails in an initial hearing with respect to the burdens that correspond to each of the technical parties, now we have a panorama in which it is clear that both will be in charge, among other tasks, of providing evidence that will be useful to support their respective theories of the case in order to tip the scales towards the issuance of an order of committal or non-committal to trial.

Thus, it is evident the key role played by such means of conviction at the time of establishing the sense of the decision to be made by the supervising judge during the proceeding in question, in the understanding that, as it was also evidenced, the evidence presented by the parties and the means of evidence that the defense may present at a given moment during the initial hearing must receive the same treatment.

It was also made clear that, since there are criteria regarding the standard of proof that must be required of the Public Prosecutor's Office in order to issue an indictment, the question remains unanswered as to the standard required of the accused and his defense counsel in order to obtain a decision to the contrary, that is, an indictment in terms of Article 319 of the National Code of Criminal Procedure.

In effect, a first reading of the aforementioned provision would seem to indicate that the defendant's defense counsel faces a lesser requirement by only having to make allegations that demonstrate the non-existence of any of the conditions required by section 316 of the same procedural law, which would ipso iure ensure that the judge in charge of the initial hearing would issue an order of committal to trial and, if applicable, would order the immediate release of his defendant.

However, closer examination reveals that, in reality, the defense position is not as comfortable as it first appears.

In effect, the requirements contemplated in sections I (that "the accusation has been formulated") and II (that "the accused has been given the opportunity to testify") are clearly procedural in nature and, in any case, can be remedied at the same hearing if any of the parties informs the judge that this phase of the proceedings has not yet been exhausted.

On the other hand, there is the content of section III, which requires that:

> From the background of the investigation presented by the Public Prosecutor's Office, there is evidence that establishes that a crime has been committed and that there is a probability that the accused committed it or participated in its commission. It shall be understood that there is information establishing that an act designated by law as a crime has been committed when there are reasonable indications that this may be presumed.

With respect to this requirement, the apparent function of the defense counsel would be, at least initially, to present logical and legal arguments capable of demonstrating the insufficiency of the evidence mentioned by the prosecutor.

However, the doubt cannot be ruled out as to what would happen in the event that what the prosecution has presented is not in itself insufficient to achieve the purposes contemplated in the aforementioned section III of the article under study.

In other words, should the defense counsel give up because he considers that his case is lost in advance, or should he rather carry out acts of investigation aimed at discovering a historical truth different from the one narrated by the prosecuting authority?

Now, if instead of referring to section III of said article 316, section IV were being examined, there would be no room for the doubt raised in the previous paragraph, since it would be evident that the role of the defense attorney would have to be preeminently active, since his work would consist of demonstrating that in the case a cause for extinction of the criminal action or excluding the crime is present.

Therefore, it is clear that the doubt arises in those cases in which the defense bets on the absence of reasonable indications that evidence the existence of the fact indicated by the law as a crime and the probable intervention of the accused in its commission.

In this regard, it should be noted that, in the opinion of the author of this article, the following should be taken into account:

On the one hand, it is true that in the first instance the Public Prosecutor's Office may file a request for a committal for trial based on data that is sufficient in itself to justify its claim.

However, it is considered that it cannot be ruled out what may occur later during the same proceeding, that is to say, that the defendant's defense counsel, at the appropriate procedural moment, will also eventually present certain evidence and would even have the ability to propose the production of evidence at the initial hearing itself when it is in any of the hypotheses in which the applicable adjective codification allows it.

Therefore, once the initial hearing has been reached, it is evident that, in order to make a decision, it would not be possible to do so by taking the prosecution's presentation in isolation; on the contrary, the set of data and evidence that will be available will have been enriched to a greater or lesser extent as a result of the activity of the technical defense.

Consequently, the evidence that emerges from this new and broader set of elements of conviction must be taken into account and this will possibly lead to a new assessment of its rationality, or lack thereof.

From the foregoing it can be concluded that the equality referred to in the thesis cited at the beginning of this research work is perfectly applicable to the hearings held within the normative framework that governs the Mexican adversarial criminal process and, therefore, it is feasible, and even obligatory, to confront the elements of conviction provided by all the parties and, once this has been done, to determine whether from this total set, in view of their coincidences and contradictions, to establish to a probable degree the existence or lack of existence of the illicit act and the probable intervention of one or more persons in its commission.

In effect, it is considered that the opportune procedural moment to take into consideration the elements of conviction contributed during the initial hearing has to be that same diligence, given that, since they are not means of evidence presented before the trial court nor are we before the figure of anticipated evidence, it is evident that it would be impossible for them to cause any impact in a later stage, it is even less so in the intermediate stage, since the latter does not have as its

objective a mental activity directed towards the clarification of the facts, but rather it is a question of phases in which the intention is to attend to predominantly procedural questions directed towards the preparation of the eventual hearing of the oral trial.

Indeed, as Jordi Ferrer Beltrán (2022, p. 73) has pointed out:

> This requirement of rational assessment of evidence can be broken down into two distinct elements: on the one hand, it is required that the evidence admitted and used be taken into consideration for the purpose of justifying the decision to be adopted; on the other hand, it is required that the assessment made of the evidence be rational.

From the foregoing it can be inferred, then, that it would not be valid for the judge to decide the issue raised without taking into account the accumulation of evidence (deciding as if one or several of them had not been presented during the hearing), nor would it be valid for the judge to decide the matter without paying attention to the information that has emerged from each one of said evidence (deciding "blindly" or as if that which was evidently proven had not been evidenced).

Consequently, everything examined up to this point leads to the conclusion that it is possible and even imperative to transfer the substance of the revised criterion to the field of the accusatory criminal process, which implies, therefore, that each party has the same possibilities of proving the validity of its procedural position and, consequently, the director of the process must view the dispute from the perspective that there is the same evidentiary standard for all the intervening parties and, if as an exercise of the demonstrative activity a position is reached in which two or more litigants find themselves in the same circumstances as regards the proof of their respective hypotheses, then the rules on the burden of proof will have to tilt the balance of the judge's decision in favor of one or the other of them.

All of this also leads to reject the criterion held by some in the sense that the isolated reasonableness of the evidence provided by the prosecution should be considered sufficient to sustain an order of committal to trial regardless of the degree of proof reached by the alternative hypothesis introduced by the accused and his defense, such a position would lead to the extreme of endowing the theory of the ministerial case, a priori, with an impenetrable armor that, in turn, would make all the activity of the defense counsel totally useless and, therefore, would render nugatory the right of defense of the defendant.

All of the above, of course, opens the door to the investigation of new issues, such as, for example, the feasibility of assessing the procedural attitude of the parties as part of the evidentiary reasoning.

In effect, it is questionable whether the statements of the parties with the intention of preventing the production of evidence offered by the opposing party should be considered only as the fulfillment of an obligation to safeguard the purity of the rules of the proceeding, or whether it could be considered, to a certain extent, as an attempt to partially hide the truth.

This is sustainable if one starts from the premise, in accordance with natural logic, that the litigant who, in good faith, raises his claims with the conviction that he is right and entitled, will obviously want the true and complete facts on which his claim is based to be known.

On the other hand, the intention to generate an epistemological bias on what really happened would be a conduct attributable, by its very nature, to a person who, a priori, has the clear knowledge that the event that occurred does not fully correspond to the normative hypothesis from which he intends to benefit.

However, this topic would have to be the subject of further research, if necessary, since it is outside the scope of this paper.

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Date received: 05/10/2023
Revision date: 12/11/2023
Date of acceptance: 29/11/2023