

ORIGINAL

The importance of evidence in environmental matters

La importancia de la prueba en cuestiones ambientales

Yanina Elisabeth Cerdeira¹, Mirna Lozano Bosch¹

¹Universidad Siglo 21, Abogacía. Argentina.

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ABSTRACT

The Argentine Chamber of Fireworks Companies (CAEFA), together with private traders, brought legal action against the Municipality of Paraná, challenging the constitutionality of Decree No. 1469/2017, which prohibited the sale of fireworks to the public. The plaintiffs argued that the regulation violated the right to free trade and infringed on federal powers. The Municipality, in its defence, raised objections of lack of jurisdiction and lack of standing, arguing that the decree fell within its police powers. The trial judge dismissed the lawsuit and upheld the validity of the decree, prompting the plaintiffs to appeal. The Second Chamber of Appeals in Civil and Commercial Matters - Courtroom III - reviewed the case, noting the lack of relevant evidence provided by the plaintiffs. Even so, it requested an expert opinion to determine the damage caused by fireworks to health and the environment. The judges emphasised that declaring a law unconstitutional should be a last resort and that the municipal authority to regulate the use of fireworks was supported by national and provincial legislation. They also stressed that the analysis should focus on environmental and health damage, especially to people with autism spectrum disorders, animals and the community in general. Finally, the Chamber decided to uphold the first instance ruling and dismiss the appeal, arguing that free trade arguments could not prevail over the protection of the environment and public health.

Keywords: Pyrotechnics; Unconstitutionality; Health; Environment; Municipal Powers.

RESUMEN

La Cámara Argentina de Empresas de Fuegos Artificiales (CAEFA), junto con comerciantes particulares, promovió una acción judicial contra la Municipalidad de Paraná, cuestionando la constitucionalidad del Decreto N° 1469/2017 que prohibía la venta al público de pirotecnia. La parte actora sostuvo que la norma vulneraba el derecho al libre comercio y transgredía competencias federales. La Municipalidad, en su defensa, planteó excepciones de incompetencia y falta de legitimación, argumentando que el decreto se enmarcaba en sus atribuciones de poder de policía. El juez de primera instancia rechazó la demanda y confirmó la validez del decreto, lo que motivó la apelación de los actores. La Cámara Segunda de Apelaciones en lo Civil y Comercial - Sala III - revisó el caso, señalando la falta de pruebas relevantes aportadas por los demandantes. Aun así, solicitó de oficio una pericia para determinar los daños de la pirotecnia en la salud y el medio ambiente. Los magistrados destacaron que declarar la inconstitucionalidad de una norma debía ser un acto de "ultima ratio" y que la potestad municipal para regular el uso de fuegos artificiales se encontraba avalada por legislación nacional y provincial. Subrayaron además que el análisis debía centrarse en los perjuicios ambientales y sanitarios, especialmente en personas con trastornos del espectro autista, animales y la comunidad en general. Finalmente, la Cámara resolvió confirmar el fallo de primera instancia y desestimar el recurso, sosteniendo que los argumentos de libre comercio no podían prevalecer sobre la protección del ambiente y la salud pública.

Palabras clave: Pirotecnia; Inconstitucionalidad; Salud; Medio Ambiente; Competencias Municipales.

INTRODUCTION

The Argentine Chamber of Fireworks Companies (hereinafter referred to as CAEFA), together with private traders, brought an action against the Municipality of the city of Paraná to challenge the constitutionality of the municipal decree regulating the use and prohibition of the sale of fireworks to the public.

The plaintiff argues that Decree No. 1469/2017 has been legislated in clear violation of the Constitution and federal and local regulations, breaching the distribution of federal powers, all of which refers to the violation of the right to free trade, sale, and use of fireworks.⁽¹⁾

The defendant municipality appears and files preliminary objections of lack of jurisdiction and lack of standing to sue, while also indicating in its response that the decree was instituted within the framework of its powers as a municipal police authority and that it complies with current state policy on matters relating to fireworks.

The substance of the matter concerns the environmental damage caused by the material, where the court, given the paucity of evidence provided by the plaintiffs, cannot fail to address the issue of pyrotechnics and the severe noise pollution that their use causes to the environment, and even more importantly, the damage to health, issues that were not raised by the parties in this case.

The choice of ruling is justified because it raises a currently hotly debated issue, namely whether civil judges, to establish the truth and reach a fair judgment, have the tools permitted by law at their disposal, with the dispute centering on whether procedural doctrine supports decisions when a judge must provide the necessary evidence “to clarify the truth of the disputed facts, to avoid violating the equality of the parties, thereby safeguarding the principle of the right to defense in court, a pillar of due process”.⁽²⁾

On the other hand, the verdict raises the issue of the principle of consistency, as it necessitates analyzing the problem addressed by the court in presenting evidence *ex officio*, since it departs from what was requested by the plaintiffs, given that fundamental normative principles are at stake. Highly personal rights and collective rights are involved.

METHOD

The procedural history begins when CAEFA, together with other merchants, files an action of unconstitutionality in the city of Paraná before Civil and Commercial Court No. 7, of first instance. The lawsuit was filed against the municipality of that city, requesting that the decree prohibiting the sale of fireworks to the public be overturned. The judge of first instance ruled in favor of the decree and dismissed the plaintiffs’ claim, which they were aggrieved by, and appealed.

The appeal was heard by the Second Chamber of Appeals in Civil and Commercial Matters - Courtroom III, where the plaintiff argued that the decree in question violated the right to free trade, enshrined in our Constitution, as well as federal and local regulations, as the other party had transgressed its federal jurisdiction.

In turn, in this second instance, the Municipality—as the defendant—only raises preliminary objections of lack of jurisdiction and lack of standing to sue, and when it appears, it makes no mention of the reasons for such a ban, nor of the impact that the material has, but only argues that its decision is within its powers, in accordance with the guidelines issued by the State.

The Court dismissed the claims of the aggrieved parties and, utilizing the measures to provide better protection, requested expert evidence to determine whether the sound emitted by fireworks is harmful to health and the environment.

As González Lagier⁽³⁾ mentions, “the facts that must be proven in the process are all those that are relevant to resolving the case and those that allow the relevant facts to be presumed”, and those facts that in each specific case allow the assumptions provided for in the regulation to be confirmed will be relevant.

The judges ruled to dismiss the appeal filed by the plaintiff CAEFA, stating that the thesis of the appeal, which asserts that the law “punishes registered sellers and favors clandestine sales, is a political argument, not a legal one, and cannot be upheld as an argument of unconstitutionality because it implies, from a legal standpoint, demanding the right to cause harm because others do so”, as this is unacceptable, and therefore confirm the decision of the lower Court.

Analysis of the Ratio Decidendi

To respond to the appeal, the Chamber begins its analysis by focusing on each point of the conflict that has been presented to it. First, it dismisses the argument that the abandonment of grounds is sufficient evidence to reject the appeal and, therefore, reflects that it will consider the arguments regardless of whether or not they were raised, citing the Chamber’s own case law in this regard.

The judges maintain that the issue at hand is centered on retail trade and the use of fireworks, and that declaring a law unconstitutional is “an act of extreme institutional gravity, such that it must be considered a ‘last resort’ of the legal system”.

Likewise, the Chamber asserts that the lack of evidence, as well as the absence of arguments in the brief

presented by the complainants that support the claim of unconstitutionality they have raised, is also a factor. It underscores the determination that the municipality of Entre Ríos has the authority to regulate the use of fireworks, as it falls within the scope of issues related to community coexistence.

Where a fundamental analysis is needed, according to the judges, and which has not been raised by the parties, is in the damage that fireworks cause to health and the environment. For this reason, the Chamber is requesting, *ex officio*, a report on the consequences of fireworks on the health of people with ASD (autism spectrum disorders) and those who do not suffer from it; Also, based on the fact that the parties bring the National Law on Weapons and Explosives No. 20.429⁽⁴⁾ and its decree 302/83⁽⁵⁾ on the “Use of Fireworks” into these proceedings, it should be noted that the legislature dictates that municipalities are responsible for regulating their use, which must not disturb or cause harm to third parties.

Furthermore, in relation to the environment, they refer to relevant regulations from the National and Provincial Constitutions, as well as the General Environmental Law, which places municipalities under an obligation to take preventive measures when the environment is damaged or potentially harmed.^(6,7) The Chamber maintains that there is also currently broad constitutional protection in the areas of health, persons with disabilities, and the environment in general, so that the question raised regarding the unconstitutionality of a rule based on free trade is an isolated analysis that goes beyond the national law on the use of weapons and explosives, as essential components of the issue.

The judges argue that the point under analysis is not the free sale of a harmless item that has administrative authorization, but rather the trade of a component that disrupts human health “and that of certain disabled persons in particular; as well as the environment in general and the health of companion animals in particular”, and they conclude by confirming the lower Court’s ruling.^(8,9,10)

RESULTS

The ruling under analysis addresses the issue of *ex officio* evidence required by the Court as a measure to provide better protection, where the judges depart from the rules of consistency by relating this institution to environmental protection, health, and the harm caused by fireworks to people with ASD.^(11,12,13,14,15)

It also examines, in relation to environmental protection, the vast and novel body of international agreements, with Argentine national and provincial procedural laws that have incorporated this institution as an evidentiary proceeding to be used by judges when it is imperative to reach a fair decision, provided that they are valuable and necessary for that purpose.^(16,17,18)

Finally, two opposing positions in the procedural field have been noted: those who relate the *ex officio* nature of evidence to the rule of consistency and, consequently, argue that it departs from the guarantee of due process, where the judge abandons their role as an impartial third party in any dispositive process. On the other hand, the thesis that supports this institution, where the magistrate requests evidence in search of legal truth and is committed to it, also places the parties on an equal footing.⁽¹⁹⁾

The latter is the position adopted by the author, in support of legal activism that gives judges the freedom to reach a fair judgment, where in those cases in which the parties have not provided the necessary evidence, it is the judge who gives it *ex officio*, to safeguard all rights, and even more so when these rights relate to health, living beings, and natural resources.

CONCLUSIONS

It is argued that the provision of *ex officio* evidence does not violate due process in any way, as its use is understood to be a rational and impartial technique necessary for the Court to seek the truth of the facts and render a judgment based on the principle of social justice.

Likewise, it is agreed that, currently, in such sensitive issues as the care of human beings, living beings, and the environment, the Court should play an active role and have tools such as measures to provide better—or the evidentiary proceedings of comparative law—to be used to clarify its doubts or improve its knowledge of the facts invoked.

We are not talking about environmental issues, where the informal use of evidence is then used to appeal decisions based on inconsistency, or where they are considered unconstitutional when their ruling is intended to guarantee the impartiality of those who use them. And suppose the parties, as in the verdict analyzed, raise issues that pose a risk to the health of citizens. In that case, it is the prerogative of the judges to arbitrate the necessary means to defend and protect our constitutional rights.

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AUTHORSHIP CONTRIBUTION

Conceptualization: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Data curation: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Formal analysis: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Research: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Methodology: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Project management: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Resources: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Software: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Supervision: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Validation: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Visualization: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Writing - original draft: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.

Writing - review and editing: Yanina Elisabeth Cerdeira, Mirna Lozano Bosch.