Incorporation of evidence to the trial: forbiddance from introduction by reading of testimonial and material exhibit

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1. Immediacy in the new criminal proceedings adversarial.

The immediacy could be taken as a true principle in criminal rites as in the CPPN according law 27063 in art. 2 giving a bonus to the traditional look as does operating not only in the judgment and makingact also regarding the High Criminal Investigation to fix it forwhole process.(1)

This principle requires in turn the continued presence of the accused, his defense technical, fiscal and complainant, without forgetting the judges of the court must resolve the issue, totally contrary to the practice of writing process that allowed the delegation of tasks in all roles concerned about all of the judges at the hearings.

Another aspect of immediacy is the material, which requires the courtform his conviction according to the facts by itself,(2) without being ableuse other evidence(3) prohibiting many rites incorporation by reading depositions of instruction or prevention, etc.

2. Introduction to trial testimony by reading

The axis of all procedural reforms has been through trial and establish the appropriate process to constitutional guarantees imposed the intervention of a judge or more impartial judges, the public, concentrated so thatends with a sentence in the same trial or days, especially with full observance of the principle of immediacy aforementioned by which the judge or court must receive and personally perceive the test where personal arraignment of witnesses is highlighted and experts to testify and be examined by the parties, without let these testimonies Suphan by previous statements and out of the trial, eg. research through reading, exceptextreme cases.

The source of production test has no other place that judgment is needed so that all documents (written and unwritten) objects, records, etc. are incorporated and reproduced in the judgment (viz listening recordings, watching films, photographs, etc.) in the presence of the court's testimony is great importance since even the expert reports must be *witnessed.*the value of the expert objectnot be the opinion held before the trial hearing but the way the expert can realize both their own suitability but to the extent that trialconvince why its findings. As witnesses the fact there only one way they are and not is another that declaring in judgment arises.

But a question the *trial* criminal not born as civil directly from an application without prior procedures (except precautionary preparatory measures, or demand) to havestage. *trial* criminal must have a previous proving the existence of a fact, that is crime, and the accused may be the author of the same degree of stronger conviction that a sufficient suspicion that motivated perhaps his call for hearing and detention.

Therefore at this stage the criminal investigation process evidence is collected to found the indictment, among which are statements of the parties.

We will then discuss the fate of the same in the future oral and public trial.

3. Assumptions specific to be read in court.

This means that some times witnesses have testified before the prosecution, the judge guarantee or research, or exceptionally in other areas such as the police when the police prevented in the summary, the administrative the civil proceedings or military courts, for example. Is also usual that is contemplated introduce testimony at trial for his expert reading when witnesses or experts fail appear or parties do not consider necessary call a witness.

The CPPBA in art. 366 inc. 4 referred to asexception may be incorporated as reading performances of the preparatory criminal investigation among which mentions the complaint, documentary or report testing, inspection reports, staff requisitions, kidnappings and recognition that the witness aludiere in his statement during the debatethe sole purpose of verifying its contradictions or omissions without it can supplied oral version documented.

Old Santa Fe rite exceptionally implemented the trial atrequest of the accused and serious acts with five years in prison at least (art. CPPSF 455) as the national criminal rite own force in his art. 391, the aforementioned art. 366 inc. 4 CPPBA, art. art. 241 CPP CABA among others regulate the course of reading we have been dealing with others as exceptional.

The truth is that exceptions are such that the rule prohibiting the introduction depositions by reading sometimes becomes the rule since any reading by simple agreement of parties is allowed, when witnesses fail appear, etc. (.. art 391 CPPN inc 1, 3, 4). This rule on the point we are trying not bring greater vigilance in doctrine, since it focused only on the issue of pretrial depositions - not reading documents and display of material elements.

However there were those who advocated for those witness statements can notclose to trial or by agreement ofparties as they destroyed the rationale of the oral debate and the impossibility of a part of having been ablecontradict, whichonly guaranteed in the trial [(4)] we agree, exceptvery exceptional circumstances such as the flight of an accused, not locating a witness, disease, etc. [(5)]

In this sense,consider it in the statements of witnesses and experts which acquires special relevance personal impression of the judge regarding the deposition of the declarant. This was highlighted by the Supreme Court in the known leading case "CASAL", in paragraph 25: "As rule, much of the evidence is in the cause itself recorded in writing, whether documentary or expert. The main issue generally is limited to witnesses. Either way it is controllable by what they depose minutes. The not controllable is the personal impression that witnesses can cause in court [(6)]

"in this context as result of Article 255 of the CPP by Law 27063 not yet force, which has orality as trademark system order that any intervention by those involved in the hearing will debate orally. Resolutions are passed and substantiated, then the exceptions the reto are established in the art. 256 among those referredin item c precisely. records of previous statements of witnesses or experts who have died or fallen into physical or mental disability, or were absent from the country, or whose residence is ignorare or for any subjectdifficult to overcome are unabletestify at the trial, provided thatsubjunctive been received prior notice to the defense and in accordance with the other guidelines set forth in this Code.

Then it provides that any other test that is intendedintroduce the trial by reading or display, except as providedin Article 158 paragraph f (contemplating the declaration of minors, victims of trafficking, serious human rights violations or people with restricted capacity) to not grant any value.

4. Using previous statements of the witness, expert or accused who is declaring in the trial.

The course is different the previous, since here the question is whether the witness, expert or defendant who is declared in the trial, as we saw original source and exclusive computable test for sentencing, you can read or do . hearing written or oral statements expressed above. Until the advent of the new adversarial procedural codes dealing with the issue, the issue had some legislative anomie; it is more on self CPPSF law 12734 of these characteristics had omitted any reference tocourse.

Seems appropriate take hand then of litigation techniques. Implemented in countries with ancient experience in the field especially in AngloSaxon as especially the prevailing adversarial model modern rites as santafecino or national feed on them.

Always think and so we resolved integrate these gaps analogically to what the CPP of Chile that has advanced to the pure adversarial method regulatory body accusatory model which several Latin American and especially Argentines, rites have taken as model. So things in art. 332 chilean repressive rite has two ends that allow reading these previous statements to contrast witnesses - also the accused and the expert - with his statements or reports: when necessary to help the memory of the accused concerned or witness to prove or overcome contradictions or to request clarifications. (7)

But do not believe that this is an inventiona result of this new way of litigating under trial and adversarial public, but is nothing than the logical consequence of a principle General evidence that witnesses more expert witnesses. "They must give account of his statements." (8)

In support of memory and given the time between the incident and the trial if the witness in those previous statements had specified time done and now does not remembercan fall back then time reading your first statement.

The other case is when the witness contradicts previous statements for example if the witness had said earlier he did not see the color a motorcycle and at the trial said it was green, or vice versa.

The new CPPN Law Act 27063 it has also taken over the thing in art. 256 previously referred toexcept the null value of the evidence introduced by reading or display, also the "submission of documents towitness, expert or the accused to facilitate memory or explain what there has prior authorization from the judges . In any case, such discharges at the hearing will be valued.

"The essential requirement is that the witness testify in the trial and during the consideration of the party proposes or contraéxamen the contrary, readings above these are made to newly designated purposes

If the reading is made to confront the witness - of this we going to take on more - with a previous inconsistency and for the court to assess the credibility of the witness, which of the two statements is the evidence? Does the previous or current statement? There no doubt that the computable test is the testimony given at the trial (9) which was given not out and before trial. This is only one element for the Court assess the credibility or accuracy of the witness and not asbasis for the decision in the judgment.(10) The course is well marked by art. 241 of the CPP CABA to regulate that "in any case such discharges the matter at the hearing will be valued" axiom collecting national procedural rite own criminal law not adversarial as 27063 in the art. 256 transcript before.

As for payroll statements prior to the abovemay be set out well provided by the witness or expert based in minoril referred tovery fact that aired in the debate. (11)

5. Procedure for reading previous statements

the procedure for using these foregoing statements obviously also it is provided so the practice and jurisprudence must be outlining their actions, especially when often can not anticipate the court to make such use since it depends if the witness is imprecise , contradictory, etc. at the hearing itself. But we think that whenever they have declared witnesses or experts by opinion before the trial and have obtained such material held by the parties - even when not it be offered as evidence in a timely stay - will be abledraw on reading for these purposes . at the hearing

when the time if the party decidesuse such statements must ask the court after asking the witness ifsaid another time, as and when, he displays the same to read silently or loudly; although the Chilean doctrine that must be read by the witness himself, nothing prevents it being read by the lawyer himself or prosecutor interested in this confrontation. This selects the mode; ifto prove a statement of *intercadencia* testimonialis advisable it loudly so that everyone, the court included and the public become aware of that vital piece and can judge whether the witnesslying or not, if it is totally inaccurate or could pointbetter their sayings, etc.

As for whether should read whole statement or only the part to be tested inconsistent with the oral testimony has been providing, we believe that as strategy to part you ought to be read the part or the relevant parts as stated the criminal rite of Chile without prejudice that the adversary requested to be read in its entirety if think that the context may obtain a justification for not lose credibility witness who cares for his theory of the case.

For this reading contradictions must be evident and relevant discarding the different expressions on any question or modifications to the oral testimony inconsequential [(12)]

So computed a case of a prosecution witness that while said at the trial hearing the accused sitting on the respective bank and surrounded by police, not he had done the same at the hearing reconnaissance wheels people fought in the investigation, and his claim to have been present in the fact neither sympathized with his previous statements thatnot throwing accuracy on the point.

That is the witness not could provide efficient because of their incriminating said at the trial because he could not givesatisfactory account of their oral testimony inconsistent with those previous statements.

6. Except for incorporation by reading documents, reports, certifications. Legal for offering and production.

Article 256 of the CPP Act 27063 that before recall referred to asexception to orality that "only will be incorporated into the trial by reading or audiovisual display, without prejudice tocase of previous statements aforementioned , the evidence received under the rules of the court anticipated evidence, provided itnot possible the presence of who participated or witnessed the act; b. documentary or test reports and certifications."

In this regard Article 266 of the same rite under the heading of" other evidence "ordered that the documents be read and displayed at the hearing, indicating their origin. Objects and other elements of kidnapped conviction will be exhibited for its recognition by witnesses, experts or the accused. Recordings and audiovisual elements test will be played. The parties may agree unanimously reading, exhibition or partial reproduction of that evidence as sufficient for the purposes of debate.

But its santafecinian predecessor in a reform of 2014 gives a Copernican twist to this state of affairs because although the CPPSF original text of law 12734 expressly in art. 326 forced the judge to *order* the reading of documents and expert reports and minutes of the IPP, Law 13405 of December 2014, to amend the said rule it provides that "may only be used in the courtroom for the trial, after authorization of the Court, documents, expert reports, records or any other technical support that have registered acts or events prior to trial, if a witness, expert or interpreter forget relevant information or to comparewith your current statement" (viz tutoring or probationary assurance).

And this is of utmost importance to the socalled material evidence in reverse national criminal adversarial rite force and cited above, does not allow reading whatever material evidence, but can only be introduced by witnesses. When we talk about the test material shouldunderstood the material consists of objects, documents and any other support containing or constituting relevant evidence of the commission of a crime test. For use in oral proceedings objects and documents will be displayed, read and / or reproduced, as appropriate (art. 326 CPPSF)

But this bill is conditionalthe prior statement of the witness in the trial that has occurred as we saw: that is by the testimony in trial of officials or agents as they will always "will always introduced at trial through witnesses and experts and may be incorporated only those objects that were previously displayed trial". (Art. 326 CPPSF)

Is necessarydifferentiate those in technical reports are flushed whose content is exhausted practically with its mere reading of those others whose informationis always possible to be extended and controversial.

In the first group analyzes breathalyzer are, sketches, surveys, reports dermotest, certificates in general, tax assessments, determination of blood group, blood alcohol content, etc. In these cases is considered unnecessary the statement of the person providing the data, because reliability or simplicity of the document content. However the marker line is not clear and if thereany doubt about the information, the declaration principle prevails.

In the second group, cases of statements of witnesses and experts is this need deposition is the rule because, the nature of the information that is going to tip over, has numerous vicissitudes that exceed mere written documentation of his sayings. The idea is that the court receives the declarationorder to obtain a finished what the witness said see, hear or perceive vision, and in turn, assess their reliability, safety, reliability, etc. (13)

Prima facie a thorough difference is observed: ha changed the rule because now reads "in any case the judgeorder the reading ofminutes of the Preparatory criminal investigation" when the previous, as we saw, it was a routine activity. (14)

the standard fills a void respect to the inconsistencies and oversights of respondents in the trial in relation to previous interventions, subject to which we have dedicated ourselves previously. But is not a good interpretation inescindiblemente integrate the content of art.

295 CPPSF- requirements accusation - the standard with art. 326 of the CPP amended, and infer that no material evidencethe statements of the accused in the imputed hearing may be accompanied by the prosecutor as evidence for trial.

Unlike the simplest national rite as either the regular requirements of the prosecution and the trial offer is not similar to the newly cometadas labels. (15)

Is in this sense the doctrine on the rule of art. 295 inc. 3) the CPPSF who commands support the accusation stating the evidence thatmotivate says perplexity that causes this subsection since in his view most of these items to indicate the tax "not be part the debate (statements accused, investigation records, documents, reports, records, technical support of acts or manifestations, accordingthe detail listed in art. 326)" adding "that the defense be prevented from referring to actions thathave no effect" (sic). (16)

You can not order without reading the trial judge talk about something else and never can be interpreted this text to prohibit the prosecutor his offer as incriminating evidence for trial in view of the preliminary hearing.

That doctrinal puzzlement that we quoted in around the elements and documents found the accusation (Art. 295 CPPSF inc. 3 and penultimate paragraph) regarding the inability to read at the hearing (art. 326 CPPSF) dissipates little analysis is done is studied of the latter regulation which recognizes that the exclusion of reading records in judgment striking down the rule, has less scope than "the dramatic beginning" of the text, as in the hypothesis that these documents be petitioned at the preliminary hearing and admitted by the judge. In this case will be a test medium with entry anddebate is noted that the standard is insufficient as the parties may require a crucial document that has nothing to do with memory or contradiction of the witness, but to give sustenance a fact indubitable accreditation on time or place emanating from a public document, (17) which we think should be admitted by the trial judge.

So it can only be used in the trial that material when such circumstances exist ifpreviously were offered and admitted to the IPP as emerged from the old text of art. 326 and thereno doubt that today also this circumstance is imperative.

If this were not so, a contradiction or forgetting the witness would not be material for confrontation since by more than this on filethe prosecutor, or any unit where the witness has given evidence, but is offered as evidence for the trial, you can not draw on them even in situations referred by the new wording of the standard. It goes without saying that attentive to the new provision prosecutors, accompanying such elements to eventually be used in the circumstances mentioned in art. 326 CPPSF renovated.

Well this is stated in accounting documentation that accompanied the Indictment is vital to the period prior to the preliminary hearing examination because through art. 296 of the CPP Judge IPP should put "available to the parties documents and material means of proof so that they can examine" (18)

This situation makes neither party can then claim bewilderment or surprise on the evidence produced and at trial ensuring the right defense and the principle of equal arms.

So we have decided against a proposal of the Public defender and the opposition of the Ministry of the indictment withsame tenor argument that presented in this (19) paper.

Also in other precedents similarly resolved (20)

7. Epitome

In an adversarial systemnet adversarial forbidding judges or judge the debate consult the proceedings of the investigation or make any question witnesses or parties to the fact, [21] litigation management and interrogation techniques witnesses that further conditions in some jurisdictions such as the Santa Fe incorporating material evidence, acquires a fundamental role where stands the proper handling of previous statements than those paid before trial especially when it is intendeddemonstrate the inconsistency of that oral testimony as discussed in other venues.

In same respect of acts documenting kidnappings, procedures, written or audiovisual documents, expert reports, technical reports mode, etc. care should be taken in any criminal rite the testimony of the experts to give their opinions on why proceed.

8. References

(1) Article 2. CPPN Law 27063 .- Principles of the accusatory process. Throughout the process must observe the principles of equality between the parties, orality, publicity, contradiction, concentration, immediacy, simplicity, speed and deformalization. All hearings must be public, except as otherwise expressly provided in this Code. See also art. 3 CPPSF Law 12734 among others

(2) Carbone, Carlos Alberto, "Principios procesales penales", In Book Principios Procesales. Jorge Peyrano (Director) García Sola - Barberio (Coordinators), Ed Rubinzal Culzoni, Santa Fe, 2011, T. II, pg. 817.

(3) Roxin, Claus "Derecho Procesal Penal" Ed Del Puerto, Bs As 2000 pg. 102 & 394

(4) Chiara Díaz, Carlos Alberto (Director) La Rosa, Mariano (Coordinator) "Criminal Procedure Law" Ed. Astrea Bs As 2013 Pg 443 et seq.; Baclini, Jorge " Santa Fe Criminal Procedure Code Law 12734" Ed. Juris, Rosario 2011 T III pg. 218 et seq.

(5) Aliau, Mariano Ramón "A constitutional interpretation of Article 326 of the santafesinian new penal code regarding incorporation by reading earlier statements to the hearing debate" Zeus Bulletin No. 11406 12/10/2010

(6) CSJN Verdicts: 328:3399.

(7) Art. 332 CPP Chile. Reading for memory support at the hearing of the trial. Only once the accused or witness have rendered statement, you can read in the interrogation part or parts of his earlier statements given to the prosecutor or judge shall, where necessary to help the memory of the accused concerned or witness, to demonstrate or overcome contradictions or to request clarifications. With the same goals, it will be read during the testimony of an expert parts of the report that behave been made.

(8) See our vote integrated in the Court Criminal Sentencing No. 5 of Rosario in re Aranda, Verdict from June 7 2011.

(9) Jauchen, Eduardo " El juicio oral en el proceso penal" Ed Rubinzal y Culzoni, Sta Fe 2005 pg. 210

(10) Baytellamn Andrés y Duce Mauricio "Litigación penal. Juicio oral y prueba" Ed Fondo de Cultura económica México 2005 Pg. 59

(11) Argument of verdict from Buenos Aires Criminal Cassation Chamber II in re Arevalo Carlos del 19/09/2000

(12) Jauchen, Eduardo " El juicio oral en el proceso penal" Ed Rubinzal y Culzoni, Sta Fe 2005 pg. 210.

(13) Aliau, M op cit.

(14) Carbone Carlos Alberto "¿Puede acompañar el fiscal en su acusación prueba documental que no podrá ser leída en el juicio?" LL litoral 2014 (august), 701 • ar/doc/2466/2014

(15) Article 245 CPPN Law 27063 . Offering evidence for trial. By offering the test for trial, the parties shall submit the list of witnesses, experts and interpreters should be convened to debate and judgment on it. Article 245. Offering evidence for trial. By offering the test for trial, the parties shall submit the list of witnesses, experts and interpreters should be convened to debate and judgment on it.

(16) Büsser, Roberto "El Proceso Penal en Santa Fe" Edit. Librería Cívica, Santa Fe 2014 p. 373.

(17) Büsser, op. cit. ps. 422 y 423.

(18) Erbetta, Orso, Franceschetti y Chiara Díaz "Nuevo Código Procesal Penal de Santa Fe ley 12734 Editorial Zeus, Rosario, p. 559.

(19) Rosario Bar of Second Instance Judges, Unipersonal Court headed by Dr. Carlos Carbone, in re Reinaud Eduardo s / aggravated robbery "Case File (cuij) from this Bar's Management Office No. 21-07000046-3 Audience and oral decision appeal held on 5/19/14 recorded and filmed.

(20) Rosario Bar of Second Instance Judges, Unipersonal Court headed by Dr. Daniel Acosta in re "Coria" cuij 21-07000057-9 oral hearing 23 -4-14, Dr. Prunotto cuij 21-060000060-9 in re "Eduardo Flores s / grand theft" Resolution No. 23 of 24/04/14; Dr. Carlos Ramos Depetris in re s / grand theft, cuij 21-07000072-. 2 oral hearing 23-4-14.

(21) CPPN Law 27063 Art. 156.- Form of the statement during the debate. Before beginning the statement the witness shall be instructed about their obligations ... Judges may not ask questions. . Art 308 Law 12734 CPPSF in fine: "..in no case may take foreknowledge of the evidence that can be valued at trial" Art 366 CPPBA "The actions of the Criminal Investigation Preparatory not be used to found the conviction. imputed. As an exception may be incorporated reading ... "