

## Rational assessment of evidence in Brazilian criminal proceedings

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BRUNO RAFAEL RODRIGUES DIAS

### ABSTRACT

**Introduction:** The rational assessment of evidence in Brazilian criminal proceedings is an essential element to ensure that judicial decisions are fair, impartial and duly substantiated. This practice ensures the protection of the rights of all parties involved, promoting fairness in the trial and avoiding arbitrariness in the judicial system. **Objective:** The general objective of this work is to analyze in detail the main theoretical, doctrinal and jurisprudential foundations that guide the process of assessing evidence in Brazilian criminal law, with emphasis on essential constitutional principles, such as the presumption of innocence, free reasoned conviction and the rational persuasion of the judge. **Methodology:** The study is based on a comprehensive bibliographic review, including renowned authors in the area of criminal proceedings, in addition to a careful analysis of national jurisprudence. The main focus is to examine relevant decisions of the Brazilian Supreme Court (STF) and the Superior Court of Justice (STJ), which shape the application of these principles in practice. **Results:** The results indicate that the correct application of these principles is essential to protect the fundamental rights of defendants, preventing unfair convictions and ensuring the fairness and integrity of criminal proceedings. However, challenges such as subjectivity in testimonial evidence and the increasing complexity of digital evidence still represent significant barriers to the full effectiveness of these guarantees. **Discussion:** The discussion focuses on the need to improve legal and technical guidelines for the assessment of evidence, in order to promote greater legal certainty and uniformity in judicial decisions. These improvements are essential in view of the new demands brought about by technology and the evolution of modern crimes. **Conclusion:** It is concluded that continuous and specialized training of legal professionals, combined with the creation of clear and effective protocols for the analysis of digital and technological evidence, are essential measures for strengthening and improving the Brazilian criminal justice system, ensuring fairer and more coherent trials.

**Keywords:** Assessment of evidence; Criminal procedure; Fundamental rights.

### ABSTRACT

**Introduction:** The rational evaluation of evidence in Brazilian criminal proceedings is an indispensable element to ensure that judicial decisions are fair, implicit and duly substantiated. This practice ensures the protection of the rights of all parties involved, promoting fairness in the trial and avoiding arbitrariness in the judicial system. **Objective:** The general objective of this work is to analyze in detail the main theoretical, doctrinal and jurisprudential foundations that guide the process of evaluation of evidence in Brazilian criminal law, with emphasis on essential constitutional principles, such as the presumption of innocence the free motivated conviction and the rational persuasion of the judge. **Methodology:** The study is based on an open literature review, including renowned authors in the area of criminal proceedings, as well as a careful analysis of national jurisprudence. The main focus is to examine relevant decisions of the Supreme Court (STF) and the Superior Court of Justice (STJ), which shape the application of the principles in practice. **Results:** The results indicate that the correct application of the principles is fundamental for the protection of the fundamental rights of the defendants, preventing unjust convictions and ensuring equity and integration of criminal proceedings. However, challenges such as subjectivity in witness evidence and the increasing

complexity of digital evidence still represents significant barriers to the full effectiveness of guarantees. Discussion: The discussion focuses on the need to improve the legal and technical guidelines for the evaluation of evidence, in order to promote greater legal certainty and uniformity in judicial decisions. These best ones are essential in the face of the new demands brought by technology and the evolution of modern crimes. Conclusion: It is concluded that the continuous and specialized training of legal operators, combined with the creation of clear protocols for the analysis of digital and technological evidence, are essential measures for the strengthening and development of the Brazilian criminal justice system, ensuring fairer and more consistent judgments.

**Keywords:** Valuation of evidence; Criminal proceedings; Fundamental rights.

## 1 INTRODUCTION

The rational assessment of evidence in Brazilian criminal proceedings is an extremely relevant topic for the justice system, as it directly impacts the search for the real truth and, consequently, the decision to convict or acquit a defendant. The correct analysis of evidence is one of the central pillars of criminal proceedings, as it defines the course of investigations, the conduct of the trial and the very basis of the sentence. According to Lopes Jr. (2017, p. 312), the analysis of evidence in criminal proceedings is not just a technical act, but something central to the very application of justice, since, as the author explains:

"The assessment of evidence is the central core of criminal proceedings, being the element that supports the judicial decision. Without a careful and rational assessment of the evidence, the process can result in arbitrary decisions and, worse, unjust convictions. The judge, when analyzing the evidence, must always bear in mind the need to base his decision on logical, objective criteria and in accordance with constitutional principles. In this way, the assessment of evidence serves as a procedural guarantee for both the prosecution and the defense, ensuring a fair and balanced trial."

In this way, the way in which evidence is presented and analyzed shapes the outcome of a criminal case, defining an individual's future and, often, society's trust in the justice system.

The assessment of evidence is not a simple process, and is permeated by a series of complex issues, ranging from obtaining to analyzing and interpreting this evidence. In practice, each type of evidence – whether testimonial, documentary, expert or electronic – presents particularities that demand a significant analytical effort from the judge, guided by the constitutional principles that underpin due process. Nucci (2014, p. 45) emphasizes the crucial role of constitutional principles in assessing evidence:

"The assessment of evidence in criminal proceedings must be guided by the constitutional principles of the presumption of innocence, adversarial proceedings and full defense. The judge, when assessing the evidence, must follow these guidelines rigorously, as they are what ensure the fairness and legitimacy of the proceedings. The adversarial proceedings, for example, ensure that the defense is fully aware of the evidence produced by the defendant."



prosecution, while the broad defense allows the defendant to present his own evidence and arguments. These principles are not mere formalities, but fundamental guarantees that must be observed under penalty of procedural nullity."

These principles are the basis of all criminal proceedings and ensure that the defendant has the opportunity to challenge evidence that is unfavorable to him and to produce his own evidence, ensuring a fair and balanced trial.

The principle of presumption of innocence, enshrined in Article 5, item LVII, of the 1988 Federal Constitution, is one of the most important procedural guarantees. The Constitution ensures that "no one shall be considered guilty until a final criminal conviction has been handed down" (BRAZIL, 1988, p. 1). This principle aims to protect the accused against state arbitrariness, ensuring that he will only be declared guilty if there is irrefutable evidence that demonstrates his guilt beyond any reasonable doubt. Throughout the proceedings, the defendant must be treated as innocent, and any uncertainty regarding the facts must be resolved in his favor.

According to Renato Brasileiro de Lima, "the presumption of innocence is not limited to the treatment given to the accused, but imposes on the prosecution the burden of proving, unequivocally, the criminal responsibility of the defendant. Any residual doubt must be interpreted in favor of the accused, preventing conviction based on mere assumptions" (BRASILEIRO, 2021, p. 112).

Additionally, Gustavo Badaró adds that "the presumption of innocence is not just a rule of treatment, but a true procedural principle that guides the entire unfolding of the criminal action, imposing that guilt be proven and not presumed. It is a protection against undue and arbitrary convictions" (BADARÓ, 2020, p. 289).

This principle not only protects the individual against state arbitrariness, but also establishes the need for a fair and impartial criminal process, in which all stages – from the collection of evidence to the final sentence – are conducted with respect for fundamental rights. According to Ferrajoli (2010, p. 112), one of the greatest theorists of criminal guarantees:

"The presumption of innocence is the rule that places the burden of proof on the prosecution, and any doubt must always favor the defendant (in dubio pro reo). This principle, deeply rooted in the liberal and democratic tradition, is essential to avoid arbitrary convictions. In the context of criminal guarantees, the presumption of innocence is not just a procedural guarantee, but a true condition for criminal justice, preventing the State from using its power in an oppressive manner against individuals who have not yet been definitively convicted."

In his work *Direito e Razão*, Ferrajoli discusses how the presumption of innocence is a barrier against the abuse of power and how the criminal process must protect the rights of the accused, avoiding unfair convictions based on mere assumptions or weak evidence.

According to Zaffaroni (2020, p. 315), "the presumption of innocence is a pillar of the accusatory system, placing in the hands of the judge the function of ensuring that the State respects the defendant's right not to be treated as guilty before the sentence becomes final".

Another essential principle is that of adversarial proceedings, guaranteed by Article 5, item LV, of the Federal Constitution, which ensures that "litigants in judicial or administrative proceedings, and defendants in general, are guaranteed adversarial proceedings and full defense, with the means and resources inherent to it" (BRAZIL, 1988, p. 1). This right, fundamental in any Democratic State of Law, guarantees that all parties involved in a judicial or administrative proceeding

can actively participate in the formation of evidence and in the production of arguments. The adversarial system ensures that the defendant has full access to the evidence presented against him, being able to question it and present his own version of the facts.

Renato Brasileiro (2021, p. 855) explains that "the adversarial system is the guarantee that the accused effectively participates in the process, being informed about all procedural acts and being able to present counter-evidence and contest the allegations of the prosecution." This principle is essential to guarantee parity of arms between prosecution and defense, ensuring a fair and balanced trial.

Badaró (2020, p. 102) also highlights the importance of the adversarial system, stating that "it is not just a right to information, but a right to react, allowing the defendant to effectively contest the evidence and accusations made against him."

This device, in addition to protecting the right to defense, also ensures that the defendant knows and has access to all evidence and information produced in the process, ensuring that he is able to defend himself adequately. The role of the adversarial system is, therefore, central to ensuring the fairness of the process. According to Lopes Jr. (2017, p. 315):

"The adversarial system is essential to ensure that the criminal process is balanced, allowing the defendant to have an effective defense against the charges. It is not just a procedural formality, but a true mechanism of justice, which provides the defense with the opportunity to confront the evidence and arguments presented by the prosecution. Without the adversarial system, the defense would be reduced to a mere spectator of the process, without the chance to intervene and influence the judgment. Furthermore, the adversarial system is complemented by the broad defense, which means that the defendant can use all the means and legal resources at his disposal to ensure a complete and effective defense."

In this sense, the adversarial system is complemented by the principle of full defense, which allows the defendant to use all lawful means to guarantee his defense, as established in the Constitution. Together, these principles form the foundation of the right to defense in Brazilian criminal proceedings, ensuring that the defendant is not convicted without having had the full opportunity to contest all evidence and accusations against him. Another fundamental pillar of the right to defense in Brazilian criminal proceedings is the principle of full defense, which guarantees the defendant the right to use all available legal means and resources to prove his innocence or refute the accusations made against him. This principle is enshrined in article 5, item LV, of the Federal Constitution, which determines that "litigants, in judicial or administrative proceedings, and defendants in general are guaranteed the adversarial system and full defense, with the means and resources inherent to it."

(BRAZIL, 1988, p. 1). The broad defense is not limited to the mere opportunity for the accused to speak, but encompasses the right of access to all evidence and documents that may influence the decision, as well as the possibility of producing evidence and contesting that which was produced by the prosecution. According to Renato Brasileiro, this complementarity is discussed:

"The adversarial system and full defense are constitutional guarantees that are indispensable to the legitimacy of the democratic criminal process. The adversarial system ensures that the accused participates effectively in the process, being informed of all the evidence and procedural acts against him, allowing him to present counter-evidence and arguments. The full defense, on the other hand,



defense ensures that he can use all means of defense permitted by law, whether technical or material, without limitations."  
(BRAZILIAN, 2021, p. 855).

As Gustavo Badaró highlights:

"The adversarial system and broad defense, alongside other constitutional principles, form the structural basis of a fair criminal process. It is not enough for the defendant to be present at the hearings and procedural acts; it is essential that he has unrestricted access to all elements of the proceedings, so that he can challenge evidence and present his own evidence. A full defense, therefore, is the right of the defendant to use all means of defense, whether material or technical, to ensure that the accusation is duly confronted, and that no decision is made unilaterally or without due analysis of all the facts and evidence presented" (BADARÓ, 2020, p. 93).

A comprehensive defense ensures that the defendant has access to the necessary means to effectively face the charges, which includes the right to present witnesses, request investigations, use expert evidence, and, above all, have sufficient time and resources to organize his defense.  
According to Tourinho Filho (2017, p. 120):

"A full defense is a guarantee that transcends mere procedural formalities, and is the shield that protects the accused against a possible unjust conviction. It is not enough to allow the defendant to be present at the procedural acts; it is necessary to ensure that he has full access to all elements of the process, that he can express his opinion on each of them, and that he has at his disposal all possible resources to contradict the accusation. This principle, therefore, is a manifestation of justice itself, because without a full defense, the criminal process could not be considered legitimate or fair."

According to Badaró (2021, p. 253), "constitutional compliance with criminal procedural rules requires that fundamental rights and guarantees be fully respected, such as adversarial proceedings and full defense, which are essential elements for the legitimacy of criminal proceedings."

The importance of a full defense in Brazilian criminal proceedings lies in its role of balancing the State's punitive power, ensuring that the defendant can effectively counter all the evidence and arguments presented by the prosecution. As stated by Moraes (2020, p. 512), "the adversarial system and full defense are fundamental constitutional guarantees, without which there can be no talk of a fair trial or effective protection of fundamental rights". Their full application is what guarantees the legitimacy of judicial decisions and respect for due process.

The increasing complexity of modern crimes, especially those related to corruption, financial crimes and cybercrimes, poses new challenges to the assessment of evidence.  
The development of technology has introduced new forms of evidence, such as electronic records, telephone interceptions, digital recordings and social media data. These new types of evidence require more detailed technical analysis. Law No. 12,965/2014, known as the Civil Rights Framework for

Internet, establishes guidelines for obtaining and protecting digital data, and in its article 10, it states that "the provision of internet connection must observe respect for privacy, the protection of personal data and the confidentiality of private communications" (BRAZIL, 2014, p. 1). However, doctrine and jurisprudence are still consolidating on how to apply these parameters effectively in the criminal sphere.

A central point in obtaining evidence is respect for individual rights and guarantees, and the use of illicit evidence is expressly prohibited. Article 157 of the Code of Criminal Procedure establishes that "illicit evidence, understood as evidence obtained in violation of constitutional or legal norms, is inadmissible and must be removed from the proceedings" (BRAZIL, 1941).

This rule is in line with the theory of the fruits of the poisonous tree, which determines that evidence obtained by illicit means, as well as that which derives from them, is null and void. In the judgment of RE 601,314, the Supreme Federal Court reaffirmed the importance of excluding illicit evidence from the proceedings, thus preserving the fundamental rights of the defendant and the integrity of the judicial process (BRASIL, 2015). The rapporteur, Justice Luiz Fux, highlighted that "the exclusion of illicit evidence is an essential guarantee to ensure that the State does not use abusive methods to obtain evidence, protecting the right to a full defense and due process of law".

Another point of great relevance in the assessment of evidence in Brazilian criminal proceedings is the principle of free reasoned conviction, which is provided for in article 155 of the Code of Criminal Procedure. This principle grants the judge the freedom to form his conviction based on a broad assessment of the evidence, but requires that his decisions be based on rational, objective and duly reasoned criteria. Article 155 provides as follows:

"The judge will form his conviction through the free assessment of the evidence produced in judicial adversarial proceedings, and cannot base his decision exclusively on the information gathered during the investigation, with the exception of precautionary, non-repeatable and anticipated evidence" (BRASIL, 1941, p. 1).

Renato Brasileiro explains that free reasoned conviction requires the judge to base his decision on a detailed and objective analysis of the evidence, avoiding arbitrary decisions:

"The principle of free reasoned conviction, provided for in article 155 of the CPP, requires the judge to form his conviction based on the assessment of the evidence presented, but obliges him to substantiate his decisions clearly and precisely. The freedom to assess the evidence does not mean arbitrariness, but rather that the decision must be the result of a logical, objective and reasoned analysis, respecting the constitutional rights of the defendant." (BRASILEIRO, 2020, p. 1350).

This legal provision makes it clear that the judge cannot rely solely on elements collected during the investigation phase, except in specific exceptions, such as in the case of evidence that cannot be reproduced during the course of the proceedings. According to Tourinho Filho (2017, p. 216), free reasoned conviction allows the judge to have flexibility to evaluate the evidence presented broadly, but does not grant him unrestricted freedom to decide arbitrarily. On the contrary, every decision must be based on a logical and legal analysis, duly substantiated, ensuring the transparency of the process and the legitimacy of the decisions.

conclusions reached. The judicial decision, therefore, must be the result of a careful and duly motivated analysis, avoiding the risk of arbitrariness and promoting a fair and balanced judgment. In the context of jurisprudence, the Superior Court of Justice (STJ) played an important role in consolidating criteria for assessing evidence in highly complex cases, as demonstrated in REsp 1,544,126/RS. In this decision, the STJ declared that telephone interceptions without adequate grounds are null and void, reinforcing the need for strict control of evidence obtained by invasive means (BRASIL, 2016). The rapporteur, Justice Sebastião Reis Júnior, emphasized that “the absence of clear and precise grounds compromises the validity of the evidence, which must be discarded to ensure respect for due process of law”.

Given this scenario, the assessment of evidence in Brazilian criminal proceedings is a topic that goes beyond national law and is connected to comparative law. Legal systems in countries such as Germany and the United States face similar challenges regarding the admissibility of technological evidence, and the adoption of international best practices can help Brazil improve its criminal procedural system, bringing greater clarity and efficiency to the assessment of evidence.

Therefore, the main objective of this paper is to analyze the theoretical, doctrinal and jurisprudential foundations that involve the rational assessment of evidence in Brazilian criminal proceedings. In addition, it seeks to explore the main practical challenges in the application of these principles, with a special focus on the analysis of digital and technological evidence, and to propose solutions that contribute to the improvement of the criminal justice system in Brazil, reinforcing the protection of fundamental rights.

## 2 METHODOLOGY

The methodology adopted in this study consists of a qualitative bibliographic review, focusing on the works of renowned authors in the area of criminal procedure, such as Guilherme Nucci, Aury Lopes Jr. and Fernando da Costa Tourinho Filho. In addition, recent decisions of the STF and STJ were analyzed, which contribute to the development of the doctrine on the assessment of evidence. The case law analysis included relevant cases such as HC 126,292/SP and RE 601,314, both dealing with issues regarding illicit evidence and its inadmissibility in criminal proceedings.

## 3 RESULTS

The results of the research indicate that the application of constitutional principles in the assessment of evidence is essential to ensure a fair trial. The decisions analyzed show that the STF and the STJ have reinforced the importance of free reasoned conviction, requiring judges to provide clear and detailed grounds for their decisions. In the case of HC 84,078/MG, the STF declared the provisional execution of a sentence before a final judgment to be unconstitutional, reaffirming the principle of the presumption of innocence. In addition, recent case law has also highlighted the need for a critical analysis of testimonial and digital evidence, as in REsp 1,544,126/RS, which addressed the validity of telephone interceptions without adequate grounds.

## 4 DISCUSSIONS

The discussion of the results demonstrates that, although the application of constitutional principles in the assessment of evidence is consolidated in doctrine and jurisprudence, there are significant practical challenges that persist in the daily forensic practice. One of the main obstacles to the uniform application of assessment criteria is the subjectivity of testimonial evidence. Evidence

Testimony-based evidence can be influenced by several factors, such as memory lapses, external pressures and even emotional interpretations of the facts. According to studies in legal psychology, such as those by Loftus (2003), human memory can be highly fallible, being susceptible to distortions and manipulations. In the Brazilian context, case law has already shown caution when dealing with this evidence, requiring that witness statements be corroborated by other means of proof. The Brazilian Supreme Court (STF), in several precedents, reaffirms that a conviction cannot be based exclusively on isolated witness evidence, which reinforces the need for a careful and integrated analysis of all evidence.

Another growing challenge is the complexity of digital evidence, the collection, preservation and interpretation of which require specialized technical knowledge. Digital evidence, which includes emails, social media messages, electronic records and telephone interceptions, has become essential in modern criminal proceedings, especially in complex crimes such as corruption, financial fraud and cybercrimes. However, the lack of clear regulations and standardized protocols for the collection and analysis of this evidence in Brazil leaves room for uncertainty and legal disputes. Unlike countries such as Germany, which has specific legislation for the collection of digital evidence and which follows strict guidelines to preserve the chain of custody, Brazil is still in the process of adapting to these demands. In the US legal system, for example, the Electronic Communications Privacy Act (ECPA) sets out clear rules for the interception of electronic communications and the preservation of data privacy, striking a balance between the need for criminal investigation and the protection of constitutional rights.

A comparison with these international legal systems reveals that the adoption of clear and detailed protocols for the analysis of technological evidence is crucial to ensuring greater uniformity and legal certainty in Brazil. The German experience with the implementation of guidelines for obtaining electronic evidence demonstrates that specific regulation of this evidence not only facilitates investigative work, but also strengthens the defense, by ensuring that evidence is collected and analyzed in a transparent and impartial manner. Brazil, in turn, is in the process of improving, with recent decisions by the Superior Court of Justice (STJ) reinforcing the need for clear and precise grounds for authorizing interceptions and other forms of obtaining digital evidence. Brazilian case law has already begun to move in this direction, but the lack of formal regulation and standardization of procedures still generates legal uncertainty and inequality in the application of valuation criteria.

Another important aspect for improving the application of evidence assessment criteria in Brazilian criminal proceedings is the ongoing training of judges and experts. Technological developments and the emergence of new types of crimes require that legal professionals be constantly updated. Digital crimes and complex technical evidence require a different approach from traditional evidence. The training of judges and experts is essential to ensure that these professionals are able to correctly interpret and assess digital evidence, respecting fundamental rights and constitutional principles. In countries such as the United States, ongoing training of judges and experts in areas such as digital forensics is encouraged through specialized programs. In Brazil, the creation of training programs aimed at technical and legal improvement, such as digital forensics training courses, can significantly contribute to improving the quality of evidence assessment, reducing the risk of decisions based on incorrect interpretations of complex evidence.

Furthermore, it is important to highlight that the assessment of technological evidence must be aligned with respect for fundamental rights, such as the right to privacy and intimacy, guaranteed by the Federal Constitution. The balance between the need to obtain evidence in criminal investigations and the protection of individual rights is delicate, but essential.

The use of evidence obtained through wiretaps or other invasive methods, without due legal basis, can lead to the nullity of the entire process, compromising not only justice, but also society's trust in the judicial system. Brazilian jurisprudence, by applying principles such as the theory of the fruits of the poisonous tree, reinforces the need for a criminal process that is not only based on robust evidence, but that also strictly respects constitutional rights, preventing the State from using abusive methods to achieve convictions.

## 5 FINAL CONSIDERATIONS

It is concluded that the rational assessment of evidence in Brazilian criminal proceedings still faces significant challenges, especially regarding the subjectivity of testimonial evidence and the increasing complexity of digital evidence. Testimonial evidence is susceptible to memory lapses and external influences, requiring careful analysis by judges to avoid decisions based on inconsistent statements. Digital evidence, in turn, lacks clear standardization, which makes its uniform application difficult.

Despite this, advances in case law, such as the reaffirmation of the principle of presumption of innocence and the prohibition of the use of illicit evidence, have strengthened constitutional guarantees. The application of the theory of the fruits of the poisonous tree has been crucial to avoid abuses in investigations.

For these advances to be consolidated, it is essential to create clear guidelines for the assessment of digital evidence and to invest in the ongoing training of judges and experts. With these measures, it will be possible to guarantee fairness in criminal proceedings, ensuring the protection of the fundamental rights of defendants.

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## 7 CONFLICTS OF INTEREST

There are no conflicts of interest to declare.

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