

Original article

Legal argumentation focused on a Municipal Law in Cuba: an imperative for local development



La argumentación jurídica enfocada a una Ley de Municipios en Cuba: un imperativo para el desarrollo local

Argumentação jurídica focada em uma Lei Municipal em Cuba: um imperativo para o desenvolvimento local

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ABSTRACT

The Cuban Constitution upholds the role of municipalities as "the primary and fundamental political-administrative unit of the national organization" endowed with autonomy to manage their local development. In order to be able to enact a systemic, comprehensive, and coherent Municipal Law, in line with changes in management and administration methods in accordance with the current constitutional model and projected local development goals, it is necessary to contribute to the process of laying the groundwork for a Municipal Law, based on legal argumentation in the legislative arena. Consequently, this work aimed to explain the order, content, and scope of the levels of rationale for a Municipal Law in Cuba. To this end, legal methods and materials such as the theoretical-legal method and the document analysis technique were used, which support the relevance of the analyses. As a result of these reflections, the changes and adjustments that need to be introduced to provide content and contextualize the contributions of the authors of the theory

of legal argumentation in the legislative arena were specified. From such analysis it was concluded that the legal argument to support a Law of Municipalities in Cuba must be ordered in accordance with teleological, ethical, legal-formal, linguistic and pragmatic rationality, assuming these levels of rationality contained in Municipal Law and the scope allowed by the assumed local development model.

Keywords: municipality; legal argumentation; local development; law; rationality.

RESUMEN

La Carta Magna cubana reivindica el rol de los municipios como "la unidad política-administrativa primaria y fundamental de la organización nacional" dotada de autonomía para gestionar su desarrollo local. A fin de estar en condiciones de promulgar una Ley de Municipios sistémica, plena y coherente, acorde a los cambios en los métodos de dirección y gestión de conformidad con el modelo constitucional vigente y las metas de desarrollo local proyectadas, es preciso contribuir al proceso de conformación de las bases para una Ley de Municipios, desde la argumentación jurídica en sede legislativa. Consiguientemente, este trabajo se propuso explicar el orden, contenido y alcance de los niveles de racionalidad para una Ley de Municipios en Cuba. Para ello, se recurrió a métodos y materiales de perfil jurídico como el método teórico-jurídico y la técnica de análisis de documentos, que sustentan la pertinencia de los análisis. Como resultado de tales reflexiones se precisaron los cambios y adecuaciones que es necesario introducir para dotar de contenido y contextualizar los aportes de los autores de la teoría de la argumentación jurídica en sede legislativa. A partir de tales análisis se concluyó que la argumentación jurídica para sustentar una Ley de Municipios en Cuba debe ordenarse de conformidad con la racionalidad teleológica, ética, jurídico-formal, lingüística y pragmática, asumiendo estos niveles de racionalidad, contenidos propios del Derecho Municipal y el alcance que permite el modelo de desarrollo local asumido.

Palabras clave: municipio; argumentación jurídica; desarrollo local; ley; racionalidad.

RESUMO

A Constituição cubana consagra o papel dos municípios como "a unidade político-administrativa primária e fundamental da organização nacional", dotados de autonomia para gerir seu

desenvolvimento local. Para que seja possível promulgar uma Lei Municipal abrangente, coerente e sistemática, em consonância com as mudanças nos métodos de gestão e administração, de acordo com o modelo constitucional vigente e os objetivos de desenvolvimento local projetados, é necessário contribuir para o processo de preparação das bases de uma Lei Municipal, iniciando pela argumentação jurídica no processo legislativo. Consequentemente, este artigo tem como objetivo explicar a ordem, o conteúdo e o alcance dos níveis de racionalidade de uma Lei Municipal em Cuba. Para tanto, foram utilizados métodos e materiais jurídicos, como o método teórico-jurídico e a técnica de análise documental, que corroboram a relevância das análises. Como resultado dessas reflexões, foram especificadas as mudanças e adequações necessárias para dar conteúdo e contextualizar as contribuições dos autores da teoria da argumentação jurídica no âmbito legislativo. A partir dessa análise concluiu-se que a argumentação jurídica para sustentar uma Lei de Municipalidades em Cuba deve ser ordenada de acordo com a racionalidade teleológica, ética, jurídico-formal, linguística e pragmática, assumindo-se esses níveis de racionalidade contidos na Lei Municipal e a abrangência permitida pelo modelo de desenvolvimento local assumido.

Palavras-chave: município; argumentação jurídica; desenvolvimento local; direito; racionalidade.

INTRODUCTION

Legal argumentation is a complex process. It comprises a plurality of associated operations, varying in composition and degree, related to the spheres of legal practice. It is present in the production of legal norms, the application of these norms in resolving specific cases, and the substantiation of legal doctrine (Atienza, 2005, pp. 1-4).

Even though this conception has gained recognition, the predominant attention has been focused on the tasks of describing, interpreting, systematizing, and applying laws. However, if the creator of the general and abstract norm was able to produce a rational product, the interpreter and applier will perform their task more effectively than if they were faced with irrational legislation. Therefore, legislative activity, far from being a merely technical or political exercise, constitutes an argumentative process that demands rationality in multiple dimensions (Atienza, 2013).

From this integrative perspective, the process of establishing the foundations for a Municipalities Law must be considered. The Cuban Constitution affirms the role of municipalities as "the primary and

fundamental political-administrative unit of the national organization", endowed with autonomy to manage their local development. In order to be able to enact a comprehensive, coherent, and systematic Municipalities Law, in accordance with the changes in governance and management methods, the current constitutional model, and projected local development goals, it is necessary to contribute legal arguments within the legislative process.

Consequently, this work aimed to explain the order, content, and scope of the levels of rationality for legislative argumentation in a Municipal Law in Cuba. To this end, the analysis was structured around three converging lines. First, it addresses the role of argumentation in the legislative process; second, it analyzes the necessity of legislative argumentation for a Municipal Law in Cuba; and finally, it establishes the levels of rationality that must underpin a proposed Municipal Law in Cuba.

MATERIALS AND METHODS

The choice of methods corresponds to the approach and objective of the research. Note that, even though the topic has significant cross-cutting implications, the field of study has been limited to its manifestation in a particular legislative process: that of a Municipalities Law.

Consequently, the theoretical-legal method has been used to clarify the content and scope of the main categories and institutions that serve as a reference point for the reflections presented. Furthermore, this method has been employed to examine the current regulations related to the subject matter, with the aim of clarifying their meaning and defining the possibilities that, through interpretation and theoretical analysis, they may offer for future development.

The technique of document analysis has been used as a necessary support for the use of the aforementioned method, since this requires the study of doctrinal and legal sources, as necessary support for its development.

The materials that have supported this work have been, fundamentally, those that provide essential **references** for the topics to be addressed. In the area of legislative argumentation, studies have been considered that share the view on the need to organize legislative construction by levels of rationality, although there are differences of degree among them.

In matters specifically related to municipalities, the progress of the completed Project "Organization and functioning of Cuban municipalities: Bases for a draft Law of Municipalities in Cuba" has been

assumed, which was developed by a team under the direction of Professor Lissette Pérez Hernández, and of the Project, still in progress, "Foundations for legal argumentation in the professional practice of the law graduate" which supports the first edition of the Master's Degree in Legal Argumentation of the University of Pinar del Río.

In addition to the above, there are the current regulations governing the municipality and the enacted policies that impact its development needs.

RESULTS AND DISCUSSION

The argumentation surrounding the legislative process

Legislative argumentation, the process that informs the creation of laws, is fundamental to ensuring that regulations are the product of reason, conceived as a logical outcome that benefits the collective good, and not merely of political will. Understood in this way, the justification of legislative decisions is a requirement for democratic legitimacy.

According to Atienza (2005), the lawmaking process must be divided into five levels of rationality. Each of them has a separate entity, and at the same time, is essential so that, in the unified systemic construction that is the legislative result, a rational norm is achieved on the argumentative level.

The first level proposed by the aforementioned author is that of linguistic rationality (R1). It focuses on the sender's ability to transmit the goal is to clearly convey a message to the receiver through the correct use of language. In this case, the roles of sender, receiver, message, and language are defined by the nature of the legislative process. Thus, the sender is the legislative body, at whatever level; the receiver is the general or specific addressee; the message is the normative act itself; and the language is legal in nature. This raises the question of whether the law is drafted with clarity, precision, and grammatical coherence to serve its purpose, even at the most basic level.

The second level corresponds to legal-formal rationality (R2). Its content derives from the systemic conception of law. Since the resulting norm must be inserted into this system, while respecting the logical principles that govern it, care must be taken to ensure that it operates harmoniously with the rest of the legal framework. Insofar as it examines the coherence of the new norm with the legal system as a whole, it serves to verify validity in the Kelsenian sense.

The third level deals with pragmatic rationality (R3). Since the norm establishes provisions that must be externalized through conduct, rationality achieved in the practical order is only verified when the conduct of those subject to it conforms to what is legally prescribed. Its purpose is to provide a basis for an analysis of feasibility and outcome, given that it focuses on effectiveness and consequences.

The fourth level entails a teleological rationality (R4). Normative production is inspired by the need to achieve certain ends. Consequently, this requirement is satisfied only to the extent that the norm achieves the specific objectives that inspired its creation. This involves evaluating the "ratio legis," the ultimate purpose pursued, and the positive or negative nature of the intended ends.

The fifth and final level proposed by Atienza is that of ethical rationality (R5). Provisions, by prescribing certain behaviors and pursuing specific ends, presuppose values that must be susceptible to ethical justification. This allows for judging their conformity to higher moral principles, making it a sphere for weighing values.

The sequence of levels of rationality just described is methodologically sound: it is difficult to discuss the justice of a norm (R5) if one does not even understand what it says (R1) or if it is invalid (R2). Its very structure constitutes a powerful and fundamental analytical tool for dismantling and critically evaluating any legislative product.

However, although the order proposed by Atienza is heuristically valuable as a guide for ex post analysis and for teaching, since it leads from the simplest to the most complex, in the living praxis of the legislative process these levels overlap and influence each other.

If it is considered the reality of the legislative process as dialectical, complex, and recursive, one will find that, more regularly, the debate begins with the ends and values (R4 and R5) in order to establish the relevance and meaning of anticipating certain regulatory needs in the legislative work, and then use levels R1, R2, and R3 as means to realize, limit, or, sometimes, discard them.

Consequently, it could be acknowledged that, from the outset, a primacy of the teleological and the ethical operates. The legislative process does not begin with the drafting of articles, but rather with the identification of a social problem and the conception of an end (R4) that is considered valuable and a solution that is deemed just (R5).

The above must be followed by an evaluation of the consequences (R3). This can, and should, require a rethinking of all other levels. A laudable and ethically impeccable goal may be unfeasible. A feasibility study (R3) can reconsider the teleological goal (R4) and even the ethical judgment (R5), while also influencing how it should be integrated into the systemic logic of the legal framework (R2) and how the guidelines should be formulated (R1). In this case, pragmatic rationality acts as a reality filter that provides feedback and modifies the remaining levels, but this is only possible when the generality of the goals and values pursued has been at least minimally considered.

Diez Ripollés (2019, p. 91) argues that, in practice, the study of the various rationalities should be carried out in the reverse order to Atienza's approach, in order to establish a rational procedure for drafting laws, and not simply a tool for the rational analysis of existing laws. Specifically, the thesis presented in this work, as has been explained, shares his view regarding the need to introduce an alteration to the ordering proposed by Atienza.

However, the position presented here does not share Diez Ripollés's opinion that there should be a perfect inversion of the proposed levels. Instead, it should be structured according to the previously established order of priority R4-R5-R3-R2-R1. At the same time, it is acknowledged that beyond this primary sequence, there is continuous interdependence and feedback between the different levels. The levels are not isolated compartments, and therefore there is constant interaction between them in a two-way process.

In addition to the above, the position taken in this paper considers that the nature of the law and the context determine the priority that should be given at certain levels. Not all laws require the same emphasis at all levels. Certain subjects and contexts may lead to laws with high ethical tensions, while others may require more stringent technical or harmonization requirements.

Therefore, while a specific sequence is followed, it must be acknowledged that rationality, ultimately, is a holistic principle that should permeate the entire process, not a procedural straitjacket. A skilled legislator is one who handles these five levels like the strings of an instrument, knowing when and how to pluck each one to create a legally harmonious outcome.

Expertise in handling these levels of rationality, as previously mentioned, depends on understanding them within a specific subject matter and context. After determining the rationality criteria to be considered, their corresponding primary sequencing, and the criteria that govern their interrelation and intensity, their proper use must be ensured by providing them with the appropriate content. This

entails breaking down the specific content that gives meaning to the respective levels of rationality, in order to make them usable in the legislative process.

The need for legislative argumentation for a Municipalities Law in Cuba: a requirement for local development

An initial premise for considering the legislative arguments of a Cuban Municipalities Law is the foundation that the constitutional text provides for this institution. This premise must be understood in its proper context, as a determining basis for essential elements of the institution and a projection of its functionality. However, it must also be considered that these principled provisions have a limited scope and, therefore, must be developed by the legislator. Consequently, legislative activity starts from the basis provided by the fundamental norm, requiring for this endeavor an argumentative process that justifies the form and content assigned to such norms.

The Constitution of the Republic of Cuba (Asamblea Nacional del Poder Popular, 2019) in Article 168 assumes that: "The municipality is the local society, organized by law, which constitutes the primary and fundamental political-administrative unit of the national organization," thus placing it at the genesis of all processes, including those of development.

To fully occupy its position within the network of power relations and fulfill its functions, it "enjoys autonomy and its own legal personality for all legal purposes" (Art. 168), which is materialized in the political, administrative, organizational, and regulatory order (Art. 169). This autonomy constitutes a central element for defining the level of functionality attributed to it, since it implies the foundation of the principles that shape the capacity to satisfy communal needs within the local sphere to the extent of the assigned purposes.

The aforementioned provisions recognize the municipality as the foundation of the State, given its role as the level of government closest to the people. This makes it the key actor in perceiving and responding to the specific needs and aspirations of citizens, serving as both the starting point and the end goal for managing local development. It is granted its own scope of action to identify problems and generate solutions at the local level, understanding the concept of "minimum local needs" in a dynamic sense that must be interpreted within the context of each territory.

The organizational structure responsible for such a task is comprised of the Municipal Assembly of People's Power, its delegates, the Municipal Administration Council, and the People's Councils

(Asamblea Nacional del Poder Popular, 2020, 2021). While these bodies correspond to the previous design, it can be noted that a series of changes have been introduced that foster a general framework within which a commitment to greater decentralization can be pursued.

Precisely, this commitment to greater decentralization, based on strengthening municipal autonomy as a foundation for local development, is reflected in the "Policy to Promote Territorial Development" (MEP, 2020). This document clarifies the meaning attributed to the local development being pursued, establishing a uniform framework, underscoring the priority of the subject matter, and outlining the fundamental aspects that should guide subsequent actions while respecting constitutional mandates.

Thus, the Policy positions the municipality as the primary stage and key actor in development, not merely as an executor of national plans, but as a space and agent for coordinating all actors in their respective roles. It replaces the logic of centralized and top-down planning with that of the Local Development Strategy, recognizing the Municipal Assembly of People's Power, as the governing body, as responsible for leading the participatory development of this strategy, identifying the territory's potential and value chains. Furthermore, it fosters the strengthening of institutional capacities by entrusting the municipality with tasks related to project management, negotiation, planning, and consensus-building, promoting a shift in mindset from an administrative-supervisory approach to one of leadership and facilitation.

Notwithstanding the foregoing, the necessary legal frameworks for addressing the complexity of municipal institutions and their performance in local development are not yet exhausted (Consejo de Ministros, 2021). The regulations issued, despite their evident progress, have governed local bodies and specific, albeit complex, activities at this level. However, the municipality, as a single and indivisible whole, is a complex entity, since to fulfill its ultimate purpose it must exercise a range of powers, establish diverse types of relationships, and assume the obligations that legally define its capacity to act and its responsibility.

In this context, a Municipal Law is necessary in Cuba. Given its complexity as a legal, political, and social entity, and its central role in territorial development, this Law must harmoniously develop and systematize the ordinary constitutional and legal provisions on the matter. It must coherently regulate, in a single, superior-ranking provision, the principles that should govern municipal action and structure; municipal organization and operation; the powers of each body; the different types of relationships between them; comprehensively define municipal autonomy through the definition of

municipal powers and finances; and address the content and scope of local development and the mechanisms available for its management.

The absence of this Law creates gaps, overlaps, legal uncertainty, and limits the potential of local government. Only a rigorously argued legislative process, applying the five levels of rationality outlined, can produce a Municipalities Law that is simultaneously legally sound, ethically grounded, socially useful, and effectively applicable in the Cuban context.

The levels of rationality for a Municipal Law in Cuba

Based on the integration of the elements previously presented, the following sequential model of rationality for legislative production has been developed, focused essentially on a Law of Municipalities in the Cuban context.

In the order of teleological rationality, which becomes R1 in this model, the norm in question must pursue clear and achievable social goals. Due to its institutional nature and the legal-constitutional conception that frames it, the Cuban municipality has goals that align with the "common good" which, as part of the whole that is the socialist state of law and social justice, it is responsible for promoting (Rodríguez Acosta & Tamayo Pineda, 2022).

Bellver Cano (1924, pp. 63-79) developed a comprehensive list of municipal purposes, systematizing them within the framework of the relationships the municipality maintains with the various entities with which it interacts. Four of its fundamental lines are taken from this list. First, there are the preservation purposes, concerning its existence, continuity, and conservation as an organization. Secondly, there are the purposes related to individuals, encompassing its police power, in the administrative sense, and the management of government in terms of public works and services. A third category addresses the purposes related to territory, including its conservation, distribution, and delimitation. Finally, there are the purposes with respect to the State and its administrative divisions, which include the system of relationships to be established and the techniques to be adopted for this purpose.

All of these are valid and necessary goals in the legislative process concerning the municipal institution, since the absence or failure in any of them compromises the functionality and/or legitimacy of the locality.

Ethical rationality, understood as R2, dictates that the prescribed ends and means must be based on justifiable ethical values. Public institutions, especially local ones such as municipalities, must be governed by ethical principles and values that guarantee their legitimacy, effectiveness, and connection with the citizenry.

Among the principles that should inform national municipal legislation and actions are transparency, accountability, integrity and probity, equity and inclusion, citizen participation, efficiency and austerity, legality, environmental sustainability, solidarity and inter-institutional cooperation, respect for rights, and innovation and adaptability. Their inclusion is justified in some cases by constitutionally principle provisions and, in others, by their inherent connection to the deontological logic of the system of organs of People's Power.

Municipal transparency should be understood as clear and timely access to information about decisions, expenditures, and institutional processes. Its importance lies in the fact that it builds trust and prevents opacity in governance.

Accountability consists of the obligation to justify actions and assume responsibility for their results. It prevents impunity and promotes citizen evaluation.

Integrity and probity reside in the consistency between actions and ethical values, leading to the rejection of corruption. This protects public resources and institutional credibility.

Equity and inclusion stem from fair and non-discriminatory treatment, prioritizing vulnerable groups. This ensures universal services and reduces inequalities.

Citizen participation involves the active involvement of the population in decision-making. Its structure strengthens local democracy and adapts solutions to real needs.

Efficiency and austerity imply optimizing the use of public resources, assuming the necessary fiscal rigor. Their practice allows for maximizing social impact in contexts of budgetary constraints.

Legality, as a guiding principle for society as a whole, stems from respect for legal norms, both in their letter and their spirit. This is the prerequisite for providing legal certainty and justice throughout all aspects of governance.

Environmental sustainability seeks to develop actions that balance development and ecological protection. Its value lies in its preventative and mitigating effects on the local environment and in improving the community's quality of life.

Interinstitutional solidarity and cooperation depend on establishing collaborative relationships with other levels of government and organizations. Essentially, these relationships should be used to facilitate comprehensive solutions to complex problems.

Respect for rights is intrinsically linked to the institutional legal duty to ensure the protection of dignity and fundamental freedoms. This constitutes an ethical pillar for all public policies and for the ways in which their implementation is planned.

Finally, innovation and adaptability require the capacity to modernize processes and respond to social changes. This should lead to improved institutional resilience in the face of complex or crisis scenarios.

Municipalities, as entities close to the citizens, must embody these principles to transform ethics into concrete action. Their application is key to strengthening the relationship between citizens and local government and promoting holistic human development.

Legal-formal rationality, designated as R3, presupposes that the law must be coherently integrated into the existing legal system. This implies ensuring that it meets the requirements of completeness and coherence.

Comprehensiveness requires attention to two aspects: first, that all necessary content be covered, based on the categories accepted within the system; and second, that such regulation be carried out in a manner appropriate to the intended purposes, assuming a level of generality commensurate with the nature of the content. To achieve comprehensive regulation of the essential aspects of the municipality, it is necessary to address, among other things, issues related to its nature, its system of bodies, its powers, its finances, its autonomy and the guarantees thereof, its intergovernmental relations, the techniques and means for managing local development, and the mechanisms for popular participation.

Coherence must be ensured by observing a correct articulation in harmony with the Constitution and other general laws related to the municipal institution and its performance in pursuit of local

development, and ensuring that the hierarchical location in the order of the proposed norm is the one corresponding, according to the logical principles of the system, to the importance of the subject matter.

Linguistic rationality, now R4, is crucial for Cuban municipal regulations that must regulate very specific and immediate aspects of daily life, while also constituting the first instance of contact of citizens with the dynamics of public-political relations.

Legislative language, therefore, must be precise, clear, and accessible to its intended audience, which in this case is primarily citizens and administrative staff at the grassroots level. Ambiguity and vagueness must be minimized through refined legislative drafting techniques and strict adherence to the most widely accepted doctrinal meanings of legal terms.

Pragmatic rationality, designated R5, is verified when the conduct of the recipients tends to conform to what is prescribed. This will depend on the convergence of factors from the other levels of rationality. Therefore, legislative work must strive to achieve a harmonious balance between the clarity and meaning of the provisions, the perception of legitimacy, their suitability to the local social reality, and the existence of realistic implementation and control mechanisms.

In summary, the above allows concluding that:

- The drafting of a Municipal Law in Cuba must be the result of a rigorous argumentative process that demonstrates its rationality in five interconnected and equally necessary dimensions. In this way, legal argumentation is revealed not as an academic luxury, but as the indispensable tool for rational and high-quality municipal legislation in the country.
- The model proposed here is based on the doctrine of legal argumentation and adapted to the Cuban constitutional reality and its local development policy, in order to offer a robust framework to guide the drafting and justification of this essential law.
- To this end, a treatment of the levels of rationality has been proposed that starts from the teleological, with clear and socially valuable purposes; moves to the ethical, based on fundamental public values; the legal-formal, through the coherence and completeness of the norm within the normative system; the linguistic, in terms of normative clarity and precision; and culminates in the pragmatic, in terms of effectiveness and adequacy to social reality.
- The conscious and systematic application of these rationality criteria throughout the legislative process from conceptualization to final drafting is the guarantee for achieving a Municipalities

Law that not only legally orders the basic institution of the Cuban State, but also effectively contributes to good local governance and local development.

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Conflict of interest

The author declares no conflicts of interest.

Authors' contribution

Orisel Hernández Aguilar wrote the manuscript and approves the version finally submitted.



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