



REMOTE SENSING AS EVIDENCE

Legal Framework

Satellite images are an effective and objective way of evidence, both in administrative and judicial proceedings. However, it is necessary to have sufficient experience and adequate training to present legal evidence in courts.

Evidences can be defined as the procedural activity to achieve the judge/juries conviction about the veracity of facts or data.

In Spanish law, article 217 of Law 1/2000 of Civil Procedure (hereinafter LCP), in lawsuits governs the principle of contribution of the party, which gives to the parties the burden of evidence in court.

When satellite images have been presented as documental evidence in lawsuits not enough assessment has been granted.

However, the expert advice is a form of evidence (art. 299.1.4º LCP) provided by a person outside the procedure, with expertise, that brings this knowledge to the court for a better assessment about the facts or to acquire certainty about them.

The duty of experts is to prepare the report, appear at the trial or hearing to ratify the opinion, proceed to the explanation and emission of answers to questions, objections and requests about an extension of that opinion.

The Court may formulate questions or require explanations to the experts, and the expert evidence will be freely valued by the judge not being subject to the opinion of experts (article 348 LCP).

Irrigation rights

Our experience in the use of remote sensing as evidence in administrative and judicial proceedings begins with the implementation of the Law 29/1985 of Water.

In its Transitory Provisions 2nd and 3rd it stipulates that *within three years, after its entry into force, the holders of any right, in agreement with legislation to be repealed, about private waters from springs, wells or galleries in exploitation, can prove it, as well as the regime of resource use, to the Basin Authority, for its inclusion in the Water Register as temporal exploitation of private water.*

The holders of any rights, on waters considered as private by previous legislation must prove them; and the Basin Authority must decide on the recognition of these rights, collecting them in the Catalog or in the Register of Private Waters of the basin.



Evolution of irrigated surface of an exploitation at the entry into force of the Water Law.

To know, years later and in an objective way, what was in irrigation before the implementation of the Water Law it is an impossible task by means of conventional techniques (existing aerial photography, agricultural statistics, surveys of the Chambers of Agriculture...). So, the Water Board of the Guadiana River Basin Authority used satellite imagery to identify irrigated surfaces and therefore the wells under exploitation at the entry into force of the Law.

If a holder is in disagree with the administrative decision, he has the right to appeal to the Courts of Justice, being the Remote Sensing the way of evidence that may support the resolution.

The sentence of May 11th, 1998, of the High Court of Justice of Castilla-La Mancha was the first one who used Remote Sensing as evidence in a legal proceeding in Spain (Montesinos et al., 1999).

Remote Sensing has not only been used by Public Administration, but also by farmers against Basin Authorities to prove the situation of their exploitations at a given moment.

Destruction of habitats in Doñana environment

The case of Avispero farm (Moguer, Huelva) was resolved by the Supreme Court with a sentence that condemns the owners to restore the destroyed habitats (over 50 ha) returning them to their original state, as well as to restore the Avispero stream, supporting all the economic cost, valued at more than € 500.000, in addition to prison sentence.

In this case, WWF acted as expert providing as evidence the satellite images, prepared by SM, illustrating the irregular use of the territory.

WWF General Secretary, Juan Carlos Del Olmo, considers the use of Remote Sensing

as an irrefutable proof for the sentence. www.wwf.es/noticias/sala_de_prensa/?uNewSID=20624.



Crops under plastic (in blue) in the Doñana National Park environment.

Building modifications

Review of urban planning by city councils often entails situations about properties acquired in the past with particular characteristics that at present fail to fulfill the urban planning. The result may be a fine of up to € 15.000 for works made without the corresponding municipal license (ICIO).

In the case of enclosure of balconies and terraces, there are many owners who use Very High Resolution satellite images to prove the prescription of the infraction (at least 4 years before).



Detail of a QuickBird satellite image submitted as evidence of a terrace enclosure prior to certain date.

Contact with:

Dr. Salomón Montesinos Aranda
smontesinos@geodim.es