

The principle of immediacy and virtual hearings in criminal proceedings

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ABSTRACT

In the accusatory criminal process, the trial is based on principles of contradiction, publicity, immediacy, orality, unity, concentration, among others, which are indispensable for its application in the criminal process, especially in the oral trial, although some principles are exceptionally limited by the type of crime being investigated or tried, as occurs in crimes of sexual violation, since the hearings are not public. This limitation is presented during the health emergency by COVID-19, since the hearings are conducted virtually.

Key words: virtual hearings; state of emergency; COVID-19.

INTRODUCTION

One of the objectives of computer systems is to provide a fast and easy service, in addition, they are present in all areas of daily life, including the administration of justice, seeking greater procedural speed and prompt results, meeting the needs and expectations of citizenship, but always demanding adherence to constitutional principles (Cano-Paredes et al., 2022; Cueva Olivos, 2022; Durand, 2022). Currently and according to the circumstances that we find ourselves in (health emergency), what is certain and concrete is that without access to modern technology, it is not possible to participate in judicial processes without being connected to the Internet (Moreno Hernandez, 2021; OSIPTEL et al. al., 2021; Roseth et al., 2021).

This is especially true when the courtroom is located outside the defendant's place of residence or place of residence, which is a situation that is more instructive when the judicial office is located off-site, giving an advantage to being connected at hearings, if the parties involved are immersed in the use of technologies (Donayre, 2022; Hacha & Uska, 2022; Navarrete-Ballen, 2022). With regard to legal or judicial processes, it can be seen that one of the most common problems is the delay in the process, which persists despite the solutions offered by the judicial authorities (Baque, 2022; Salinas, 2022). One of the reasons is the prolongation of the criminal process, which accentuates the inconsistency of the evidence of the accuser, accused or prosecutor, which generates delays of months or even years in the scheduled hearings (Flores, 2022; Medina & Lopez, 2022). It is well known that the pandemic caused by COVID-19 and the mandatory social isolation imposed by the government, Flores (2022) defines us, had a lasting effect on all social activities, including health, politics and the economy. This required the development of new methods to ensure the normal development of society.

It is in this context that virtual systems are transformed into process management tools, where the information and communications of all parties allow a faster response to the judicial process, and its solution. The Judiciary of Peru (2020), in view of the extraordinary measures adopted to respond to the health emergency, it is justified that the judiciary, through

its governing body, adopt extraordinary measures to organize the judicial system in order to attend to the period after the emergency and ensure that the right of people to the administration of justice is not endangered and the right to public health is guaranteed (Mendoza & Cristina, 2022; Suasnabar & Hugo, 2022). In his study Salinas (2022), the Peruvian judicial system has not been exempt from this impact, since the Judicial Power, through its Executive Council, has developed and implemented a series of technological tools to streamline judicial processes, among them, perhaps the most significant is the fact of conducting virtual hearings through the Google Meet application, added to this there are virtual platforms for the timely attention of citizens.

In his opinion, the Superior Court of Justice of Ancash (2020), in addition to allowing teams to work together in one place, Google Meet helps teams collaborate more effectively and efficiently by facilitating group conversations and meeting rooms that simplify the monitoring of the progress of the files and the monitoring of the processes. Where currently, up to 100 people can participate. Medina and Lopez (2022) tell us, although studies are still lacking, on the influence of technological systems in the judicial sector. They consider that the progressive use of technological systems has a positive impact on judicial processes, making it necessary to use procedures that comply with applicable legal standards.

This is because the correct application of new technologies depends on a set of principles appropriate to their use.

The use of these technological tools for Mendoza and Cristina (2022), constitutes a kind of "lifesaver" for the justice administration system, since they allowed the development of procedural actions aimed at advancing judicial processes and avoiding their slowdown over time. In the course of this investigation, we will examine whether the use of technology in the development of oral trial hearings contravenes due process, specifically the right to defense in certain actions, such as the practice of evidence or the stage of producing evidence of evidence. a trial (Cuenca and Vargas, 2018; Diaz Dumont, 2018; Rodríguez Albán, 2020).

The due process.

According to the Constitution of the Republic, the procedural system must make due process guarantees effective and include in its procedural rules the principles of simplicity, uniformity, efficiency, speed and procedural economy. Rodríguez (2021), due process is a fundamental right that naturally applies to any process or procedure where the rights and interests of any individual are discussed or challenged, when the right to life has been violated, and due process is understood as an essential aspect of the general obligation to investigate human rights violations.

Salmon and Blanco (2020), consequently, a culture of compliance with international obligations should be fostered, as well as a standard implementation system that serves to ensure that the normative and moral values of human rights are implemented effectively. This ambiguously implies that the right to the relevant process is vulnerable only if the formal rules previously established for its development are violated, that is, only if the relevant process is vulnerable when its formal manifestation is attacked (Corte Superior de Justicia de Ancash, 2020; Judicial Power of Peru, 2020; Salmon and Blanco, 2020).

Principio de intermediación.

According to this principle and within the due process, it means the interaction of the judge, in obtaining the evidence, the parties, witnesses and experts, enabling the decision-making of the judge, with high-quality information obtained in court (Caldas, 2019; Gallegos, 2019a). In her research Laura et al., (2004), the prosecution through the oral criminal system is a method that guarantees the fundamental principles and rights enshrined in the constitution, providing equality to the accused against the state, especially when evidence is duly presented. presented before the judge, allowing them to know more clearly about any doubt. Gallegos (2019), the judge can sentence him immediately based on the evidence obtained at the hearing. For this reason, Palacios (2020) stated that its use is especially important in terms of evidence, since only a healthy and complete assessment of the facts can guarantee a fair decision.

Virtual Hearings.

The holding of virtual hearings in Peru is the result of a rule issued by the Judiciary in relation to the national emergency caused by COVID-19 and even more allows the hearings that are given to be faster and that the established times are respected. by the judge. We have interesting precedents for the growth of the use of electronic media in relation to the implementation of a fully digital initiative (Grande et al., 2002; Moreno et al., 2010; Urquiza et al., 2011).

The videoconference is used to hold hearings as part of its process, so that the hearings are not interrupted by the PANDEMIC health emergency and that the hearings are conducted through video interviews (Ortega, 2022; Quispe, 2022; Rodríguez Chávez, 2021a). In principle, it can be said that the experience of using virtual tools shows the ability to maintain and improve relationships, the ability to develop communication skills and resolve conflicts between people in dispute, and strengthen the parties in making their own decisions. solutions, the opportunity to tell their story and be heard and, in general, the ability of the parties to reach an independent resolution of the conflict (García, 2021; Mamani Cárdenas & De Piérola García, 2021; Rodríguez, 2021). Cosmer (2021), It is necessary to make adequate provisions for the installation and development of virtual courts in civil proceedings to: protect and guarantee the fundamental procedural rights of the parties; and in this way, a fair trial is carried out under equal conditions technology that allows procedural agents to better achieve their efficiency Basic laws.

Rodríguez Chávez (2021), Today virtual interviews are a model of representation of the truth, embodied by technologies in

the domain of the process, which not only respond to situational requirements, but also to a specific need. cope with different situations such as lack of sides, distance, physical obstacles, etc. they share a frustrated common denominator with some evidence and testimony, testimony of the expert or of the accused. Ruiz Bringas (2017). The videoconferencing system is considered partially adequate because it is well equipped, has enough space to operate, and meets regulatory objectives, in accordance with the law (Mendoza and Cristina, 2022; Suasnabar and Hugo, 2022; Valle, 2022).

MATERIALS AND METHODSTYPE AND DESIGN

This research corresponds to the hypothetical deductive method, of a descriptive type and transversal correctional design, since we proceeded to work from the observation of the phenomenon to be studied, which are virtual audiences, the theoretical bases allowed us to formulate the hypothesis and the implications were deduced. of the results (Graw-hill et al., 2006; Herber, 2012; Lopez and Sandoval, 2015).

VARIABLES

Table 1. Variables and their dimensions

Variables	Dimensions
Immediacy Principle (Decap Fernandez, 2019)	The trial The Legal Nature Contradiction
Virtual audiences (Angélica Paz, 2016)	Virtual hearings Fingering Judicial processes in pandemic

Population

This population is made up of 50 legal professionals, all of them specialists in criminal, civil, and corporate law. The 50 more members are people who have led or participated in virtual hearings in the Piura Superior Court of Justice.

Instrument

To measure the satisfaction of the subjects, a survey was applied to the virtual audiences in the covid-19season by Rosa A. Ávila Paz de Robledo. This instrument is characterized by its closed structure, in its dimensions the Likert scale was applied (1=YES, 2=NO). Doing a pilot test, a 0.95 degree of reliability was determined in Cronbach's alpha.

To measure the satisfaction of the subjects, a survey "The principle of immediacy and the virtual audiences of Mauricio Decap Fernández" was applied. This instrument is characterized by a closed, dimensional structure on the Likert scale (1=YES, 2=NO). Doing a pilot test, a 0.95 degree of reliability was determined in Cronbach's alpha.

Statistical Processing

The data was analyzed through the Spearman correlation statistical test, since it was parametric data, these data have a study by Kolgomorov Smirnov because they present more than 50 samples.

Ethical consideration

Data collection was done with the prior consent of the participants. There were no conflicts of interest in any aspect.

RESULTS

Correlations

		VIRTUAL HEARINGS	IMMEDIATE PRINCIPLE
Rho Spearman	VIRTUAL HEARINGS	Correlation coefficient	1,000
		Sig. (bilateral)	.077
		N	50
	IMMEDIATE PRINCIPLE	Correlation coefficient	,252
		Sig. (bilateral)	,077
		N	50

CONCLUSIONS

An essential and basic component, in a criminal process, where immediacy and orality prevail, is the reception of the evidence, where not only the procedural subjects participate but also the judge, who is the one who conducts and directs the hearing, this allows the judge to make a decision based on everything that was done in plenary.

As a result of the principle of immediacy, there is an immediate response and the judge who determines the case must be the one who maintained direct contact with the participants in the trial throughout the process.

Studying the principles of the process is important, however, they are useless unless they are used and respected in daily judicial practice, in probate, their application is crucial since only a fair and complete evaluation of the facts can provide a fair decision.

As lawyers and, therefore, interpreters of the norm, we are obliged to make them respect by materializing their application in order to contribute to materializing the purpose of the process: to achieve social peace through fair decisions. If we do not have an active conduct and do not ensure respect for the principles, we will be complicit in the crisis of the process and the injustice generated by the violation of the right to effective jurisdictional protection.

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