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Punctuality in the Commencement of Judicial Proceedings: A Critical Analysis of its Implementation and Consequences Under the General Organic Code of Procedures

La Puntualidad En El Inicio De Las Diligencias Judiciales: Un Análisis Crítico De Su Implementación Y Consecuencias En El Marco Del Código Orgánico General De Procesos

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Abstract

This scientific article addresses the issue of punctuality in the commencement of judicial proceedings in Ecuador, specifically after the transition to an oral justice system. The importance of orality in the administration of justice is emphasized, promoting principles such as immediacy, concentration, and contradiction to achieve greater transparency, efficiency, and participation of the parties in the processes. It is emphasized that punctuality in the commencement of judicial proceedings has been a challenge following the abolition of the old practice of the "judicial hour." This custom allowed unjustified delays, which affected the principles of effectiveness and expedition that were intended to be promoted by the oral system. The General Organic Code of Procedures in 2015 represented a significant step forward in addressing this issue by eliminating the "judicial hour" and establishing rules for the punctual commencement of judicial proceedings. This reform has contributed to improving punctuality, although challenges persist, such as strengthening the culture of punctuality among legal professionals and justice operators to ensure punctuality in practice. The article highlights that the debate on punctuality in the judicial system is relevant to maintaining effectiveness and trust in the system, and it emphasizes the importance of adhering to the established timelines for judicial proceedings to ensure legal certainty.

Keywords: *Abandonment; punctuality; legal security; orality and trust.*

Resumen

Este artículo científico aborda la temática de la puntualidad en el inicio de las diligencias judiciales en Ecuador, específicamente después de la transición a un sistema de justicia oral. Se destaca la importancia de la oralidad en la administración de justicia, promoviendo principios como la inmediación, concentración y contradicción, para lograr mayor transparencia, agilidad y participación de las partes en los procesos. Se enfatiza que la puntualidad

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en el inicio de las diligencias judiciales ha sido un desafío tras la abolición de la antigua práctica de la "hora judicial". Esta costumbre permitía retrasos injustificados, lo que afectaba los principios de eficacia y celeridad que se buscaban promover con el sistema oral. El Código Orgánico General de Procesos en 2015 representó un avance significativo para resolver este problema, al eliminar la "hora judicial" y establecer reglas para el inicio puntual de las diligencias judiciales. Esta reforma ha contribuido a mejorar la puntualidad, todavía persisten desafíos, como fortalecer la cultura de la puntualidad entre los profesionales del derecho y los operadores de justicia para garantizar la puntualidad en la práctica. El artículo destaca que el debate sobre la puntualidad en el sistema judicial es relevante para mantener la eficacia y confianza en dicho sistema, y enfatiza la importancia de cumplir con los tiempos establecidos para las diligencias judiciales para asegurar la seguridad jurídica.

Palabras Clave: *Abandono; puntualidad; seguridad jurídica; oralidad y confianza.*

Introduction

The right to legal certainty is a fundamental pillar in any legal system, as it ensures trust and confidence in the application of legal norms. In the context of the judicial system, this right assumes particular importance due to its direct impact on the public's trust in the functioning of justice.

For Colombian author Javier Salcedo, legal certainty consists of "the expectation that every legal operator has that the legal framework is and will be reliable, stable, and predictable and, as such, it is an essential foundation for the construction of the State and the proper functioning of the Public Administration, which implies that its consolidation and guarantee constitute one of the imperatives of action for the public administration of any State" (Salcedo, 2011).

Legal certainty is closely linked to the Rule of Law and is concretized through objective requirements of structural correctness (adequate formulation of legal norms) and functional correctness (compliance with the law by its addressees, especially by the authorities responsible for its application). Alongside this objective dimension, legal certainty is also present in its subjective sense, embodied by legal certainty, as the projection of the structural and functional guarantees of objective security into personal situations (LEGAL CERTAINTY: A GUARANTEE OF LAW AND JUSTICE, 2015).

The notion of "legal certainty" refers to the need to establish a civil coexistence based on a set of stable and enduring rules that are not provisional or easily nullified. These rules should protect individuals from any abuse of power and ensure legal equality for all. Throughout history, legal certainty has aimed to consolidate the supremacy of law over custom and legislative law over the power of judges (Beltrán, 2015).

In relation to the understanding of the law, legal certainty is concerned with ensuring the certainty of both objective law and subjective rights. This manifests itself as the right to have the rules be clear, accessible, and known by all. In terms of "recognition of the law," legal certainty protects the stability, respect, and applicability of objective law, legal institutions, and subjective rights, avoiding any form of ignorance, instability, or violation. (Chiriboga, 2007)

Within the framework of the General Organic Code of Procedures, it is necessary to analyze the implementation and consequences of punctuality in the commencement of judicial proceedings. Adhering to the established timelines for the commencement of judicial hearings is a key aspect of ensuring legal certainty and the efficiency of access to justice.

For Molina, effective judicial protection is a procedural constitutional guarantee that must be present from the moment access to the judicial system is granted until the definitive execution

of the judgment rendered in the specific case. In other words, once access to justice is guaranteed, each of the other constitutional principles and guarantees that inform the process, such as due process, expeditiousness, defense, and gratuity, must be protected, with the understanding that any infringement of these guarantees would simultaneously violate the principle of effective judicial protection (Molina Galicia, 2002).

Article 82 of the Constitution of the Republic of Ecuador establishes that the right to legal certainty is based on respect for the Constitution and the existence of prior, clear, public legal norms applied by competent authorities (ECUADOR, 2008). This right is considered transversal to the entire legal system and guarantees that the actions of public powers adhere to the conditions and rules established by law.

The Ecuadorian Constitutional Court has stated that the constitutional right to legal certainty provides credibility, certainty, and trust to citizens, as it implies that factual events are determined through the application of previously established norms. For this right to be effective, all judicial actions and proceedings must take place under the constitutional and legal regulations in force.

Regarding the right to legal certainty, the Constitution of the Republic of Ecuador states: "Art. 82.- The right to legal certainty is based on respect for the Constitution and the existence of prior, clear, public legal norms applied by competent authorities." The Ecuadorian Constitutional Court has pointed out that legal certainty allows individuals to have a predictable, determined, stable, and coherent legal framework that provides a reasonable understanding of the rules that will be applied to them. The legal framework must be strictly followed by public authorities to provide certainty to individuals that their legal status will not be altered except through previously established regular procedures by competent authorities to avoid arbitrariness. Furthermore, it clarified that a violation of the right to legal certainty requires that the normative violations have constitutional significance, i.e., that they result in the violation of another constitutional provision (Quevedo, 2023).

Punctuality in the commencement of judicial proceedings (hearings) is a decisive aspect of ensuring the proper development of legal processes (in all areas) and safeguarding the right to due process. The General Organic Code of Procedures establishes clear provisions regarding the effects of non-appearance at hearings, as described in Article 87. These provisions seek to regulate the legal consequences of the absence of the parties involved in a formal process and establish rules to maintain the proper continuity of judicial procedures (GENERAL ORGANIC CODE OF PROCEDURES, COGEP, 2021).

Article 87 of the General Organic Code of Procedures establishes the legal consequences of non-appearance at hearings in different scenarios, namely: a) if the plaintiff or applicant does not attend the corresponding hearing, it is considered that they have abandoned the process; b) if the defendant or required party does not attend the hearing, the procedure continues, and sanctions and effects are applied, which entail the loss of the procedural opportunity to assert their rights; c) in case of delay by the defendant or the required party, their participation is allowed, but the hearing proceeds as it is, and d) if the judge orders the holding of a hearing *ex officio*, it is conducted, and the appropriate decisions are made according to its purpose (GENERAL ORGANIC CODE OF PROCEDURES, COGEP, 2021).

The General Organic Code of Procedures (COGEP) of Ecuador establishes clear procedures for handling the absence of the parties involved in a judicial hearing. The first section of Article 88 of the COGEP indicates how to proceed in case of non-appearance. Although it does not

provide a comprehensive resolution, it is understood that by not arriving at the time set by the judicial authority, the case would also be considered abandoned. For example, if the plaintiff or the party who filed the lawsuit does not attend the hearing or is delayed, it is considered that the lawsuit has been abandoned. In such cases, according to Article 249 of the COGEP, a new lawsuit cannot be filed, except when it concerns the rights of children, labor rights, or the State, and in accordance with Article 286.1 of the COGEP, a cost penalty is imposed on the absent party.

If the defendant or required party does not attend, the hearing continues without them, and the corresponding sanctions and effects are applied. However, if the defendant arrives before the end of the hearing, they are allowed to participate in the remaining parts of the hearing, but what has already been done is not reversed. In this case, it is recorded as part of what is pending in the hearing, with the corresponding documentary record.

When it comes to hearings convened by the judge *ex officio*, they begin and operate to resolve the purpose of the hearing, recording the arguments of the parties present about the purpose of the hearing. Once the hearing is concluded, an interlocutory order is issued, according to Article 88 of the COGEP (García Falconí, 2018).

In light of this regulation, it is imperative to conduct a critical analysis of the implementation of punctuality in the commencement of judicial proceedings in the context of the General Organic Code of Procedures. This analysis will focus on examining the consequences and repercussions of non-appearance at hearings by the various parties involved. This scientific article aims to critically examine the implementation of punctuality in the commencement of judicial proceedings and its effects, taking into consideration the criteria established in Article 87 of the General Organic Code of Procedures. Through rigorous analysis, it is intended to assess whether these legal provisions are effective in practice and contribute to ensuring due process and equitable access to justice.

To carry out this analysis, surveys will be conducted among legal professionals in private practice (litigants) and judicial operators (judges) with questions related to punctuality in judicial proceedings. The objective is to gain a comprehensive understanding of the implementation of these legal provisions and their potential consequences in the administration of justice.

This scientific article is intended to contribute to knowledge and foster a debate on the importance of punctuality in the commencement of judicial proceedings, in line with the General Organic Code of Procedures. It is expected that the results of this critical analysis can contribute to improving judicial processes and strengthening respect for due process, the right to effective judicial protection, and, significantly, the right to legal certainty.

The current state of the problem of punctuality in the commencement of judicial proceedings, with a critical analysis of past issues, reveals significant challenges that impact the effectiveness and legal certainty within the judicial system. There is a consistent lack of adherence to the established timelines for the commencement of judicial proceedings. It is common for litigants, whether plaintiffs or defendants, to arrive late for hearings, which delays the process and generates uncertainty. This negatively affects the public's trust in the judicial system and undermines their positive perception of justice.

The lack of punctuality can lead to the suspension or postponement of hearings, which creates an additional burden on the courts and prolongs the duration of judicial processes (to the detriment of judges and the parties involved). This has implications for the efficiency of the

system, as more resources and time are required to resolve cases, resulting in necessary delays in the administration of justice. Furthermore, the lack of clear and consistent consequences for parties who do not adhere to the scheduled times is a problem. Although Article 87 of the General Organic Code of Procedures establishes effects for non-appearance, their application, and enforcement can vary among different actors in the judicial system (resulting in lenient and subjective rulings). This can create uncertainty and inequality in how parties who do not adhere to the schedules are treated, which affects the fairness and legal certainty of those who are users of the justice system.

Therefore, it is necessary to consider and establish more effective monitoring and supervision mechanisms to ensure compliance with the established timelines. The lack of adequate supervision leads to lenient practices and a culture of tolerance towards punctuality issues, which undermines efficiency and trust in the judicial system.

Consequently, the current state of the punctuality problem in the commencement of judicial proceedings reveals persistent challenges in terms of adherence to established timelines, the lack of consistent enforcement of consequences, and the need for more effective supervision. These past issues impact the effectiveness and legal certainty within the judicial system. As such, it is necessary to address these challenges and seek solutions that promote punctuality, efficiency, and fairness in the commencement of judicial proceedings, to strengthen trust and credibility in the judicial system.

Methods

To have a comprehensive study on the implementation of punctuality in the commencement of judicial proceedings, a mixed-method approach, incorporating both qualitative and quantitative methods is adopted.

Documentary Analysis: The study begins with systematic documentary analysis of relevant legislation, such as the Constitution of the Republic, the General Organic Code of Procedures, and other normative bodies in Ecuadorian positive law. Additionally, records of judicial hearings to gather data on the starting times and durations of these hearings are reviewed.

Surveys: Subsequently, surveys to a representative sample of legal professionals and judicial operators will be designed and distributed. The surveys will include closed-ended questions to obtain quantitative and qualitative data. The topics will be aimed at exploring individual experiences with punctuality in the commencement of judicial proceedings and perceptions regarding potential solutions to any identified problems.

Interviews: The data collected will be complemented through surveys with interviews with a select group of participants. These interviews will allow for a more in-depth examination of experiences and opinions related to punctuality in judicial proceedings.

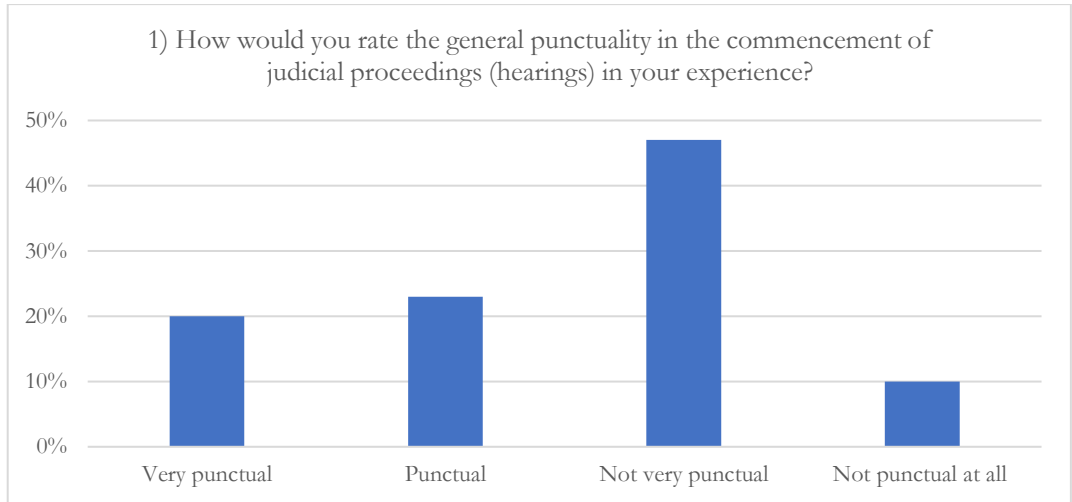
Data Analysis: Methods for both quantitative and qualitative data analysis will be employed. For quantitative data, statistical methods to identify patterns and trends will be used. In the case of qualitative data, content analysis or thematic analysis techniques will be utilized.

Comparative Method: To better understand the problem and potentially identify solutions, a comparative analysis with other countries will be conducted. This analysis provides a broader context and allows for the identification of best practices that could be implemented in Ecuador.

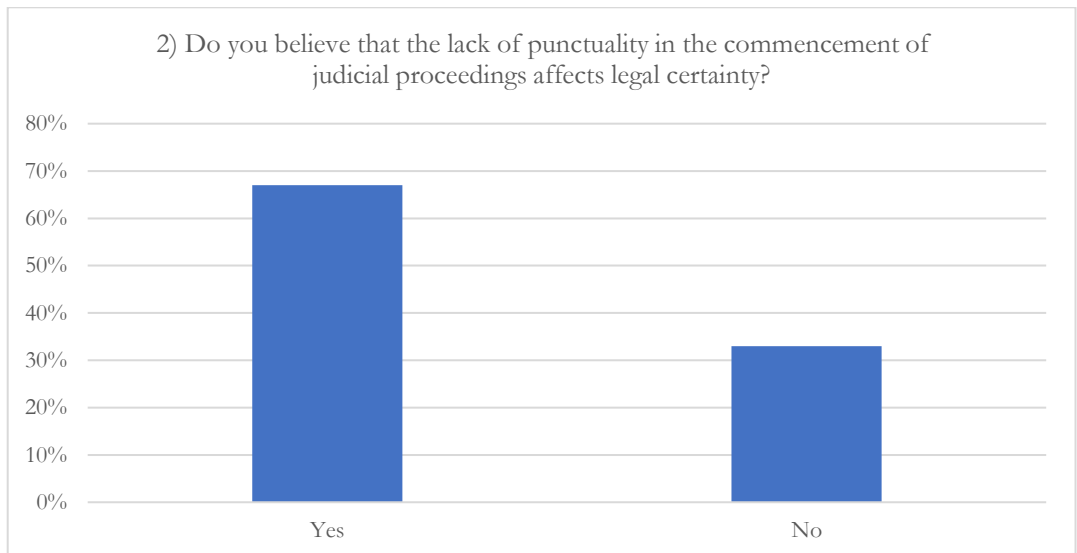
Collectively, these methods will provide a broad and detailed understanding of the issue of punctuality at the commencement of judicial proceedings, which will, in turn, inform the conclusions of this research work.

Results

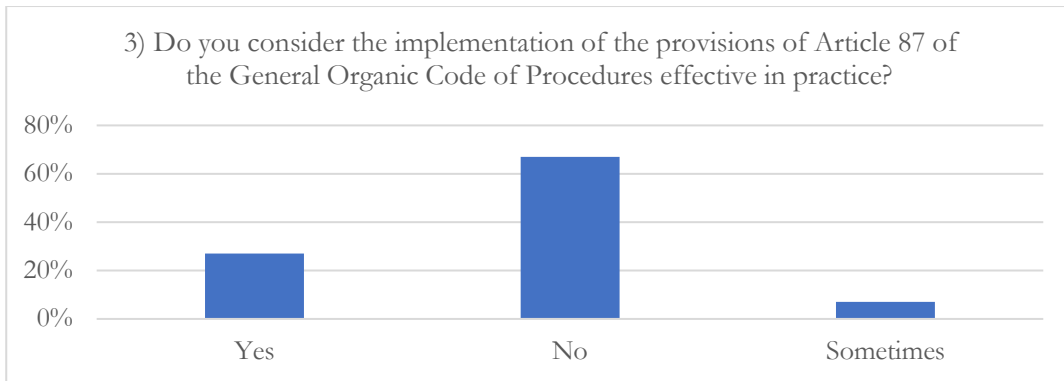
To the questions raised, the following results are obtained:



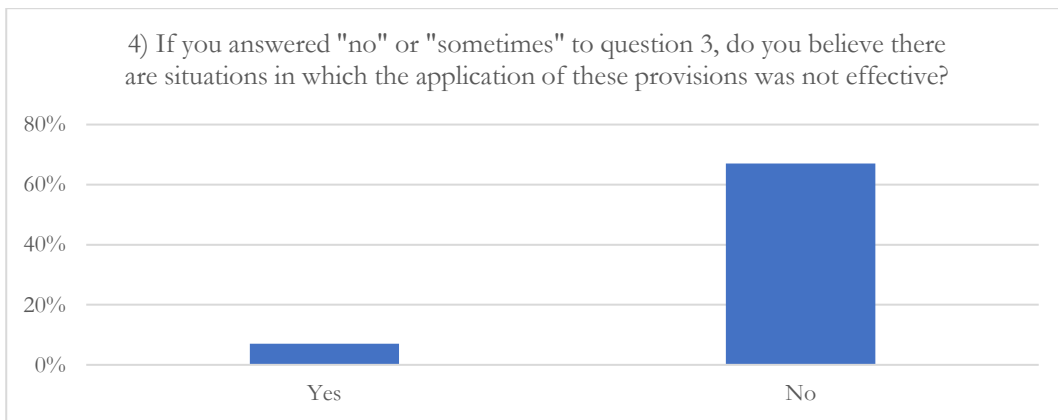
The first question, where 47% of the participants indicated that judicial proceedings are not very punctual, suggests a widespread perception of delays in the commencement of proceedings. However, 23% consider them punctual, and 20% consider them very punctual, indicating a significant variation in experiences or perceptions.



The second question revealed that 67% of the respondents believe that the lack of punctuality in the commencement of judicial proceedings affects legal certainty. This high percentage indicates a perceived correlation between punctuality and the reliability of the judicial system.



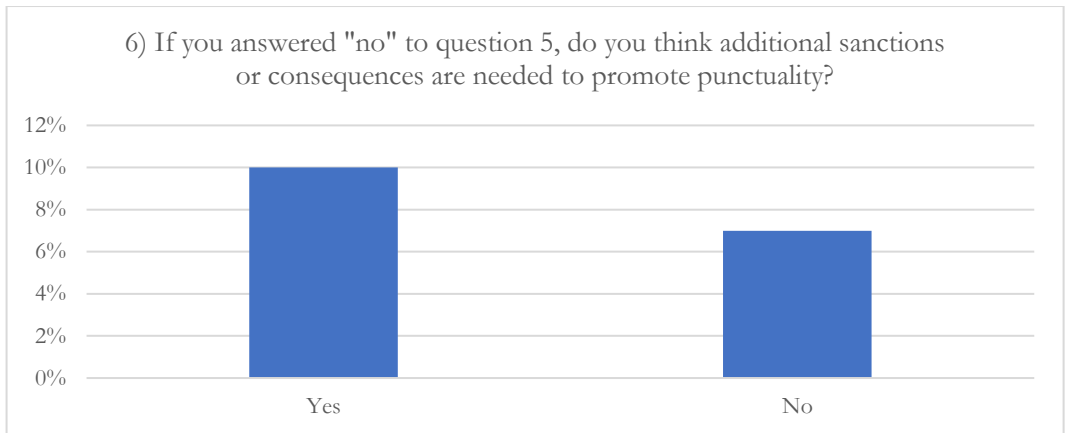
In the third question, 67% of the respondents consider that the application of the provisions of Article 87 of the General Organic Code of Judicial Processes is not effective in practice. This could indicate a perception that the existing rules are not effectively applied or are not necessary to ensure punctuality.



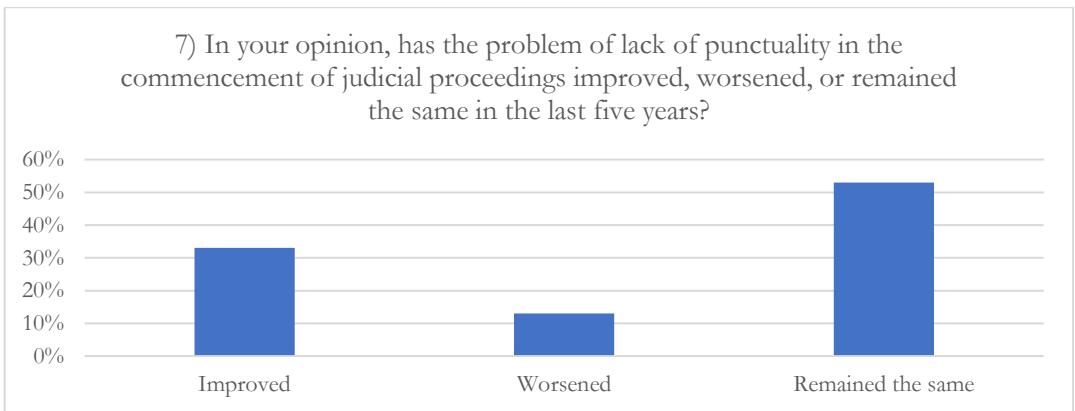
The fourth question was directed to those who selected "NO" or "SOMETIMES" in question 3. In response to this question, "NO" had a margin of 67%, while "YES" had a 7% margin.



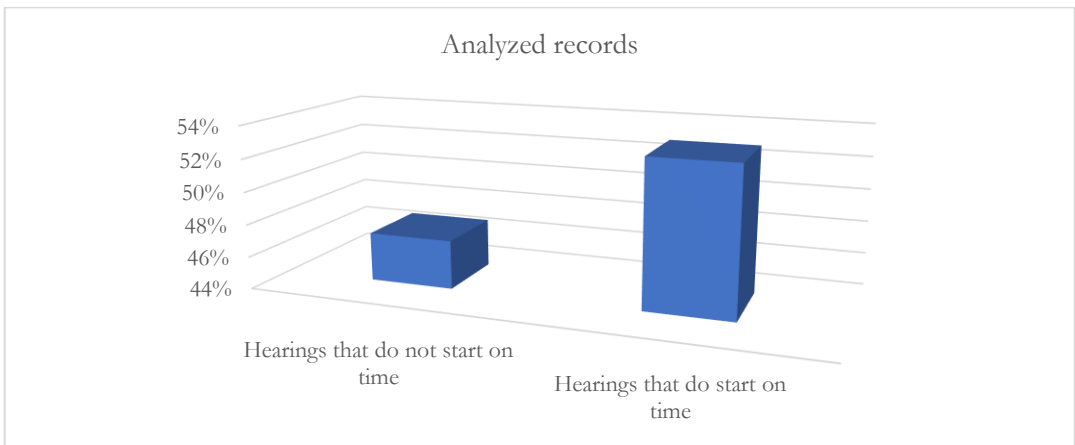
In the fifth question, 83% of the respondents believe that sanctions and consequences for lack of punctuality are necessary to ensure punctuality. This high percentage suggests strong support for punitive measures as a means to improve punctuality.



Question six was selected by those who chose "NO" in question 5. In this question, respondents could choose "YES" or "NO," and the "YES" option won with 10%, while the "NO" option lost with 7%.



Finally, in the seventh question, 53% of the respondents believe that the problem of lack of punctuality at the start of judicial proceedings has remained the same in the last five years. This could indicate that efforts to improve punctuality have not had a noticeable impact on most of the respondents.



To carry out this work, records of hearings were reviewed to verify whether the proceedings started on time or not. From the analyzed records, it was found that 47% of the hearings did not start on time, while 53% of them did. Taken together, these results suggest the need to improve punctuality in judicial proceedings and to review or strengthen existing measures to promote punctuality.

Discussion

Ecuador's transition to an oral justice system has been a process enshrined in several of its constitutions throughout its history, including those of 1945, 1967, 1998, and most recently, the 2008 constitution. This change has represented a significant transformation in the administration of justice. The implementation of the oral system is based on the principles of immediacy, concentration, and contradiction, aiming to promote transparency, efficiency, and active participation of the parties involved in judicial proceedings. (ALVAREZ, 2008)

However, one of the challenges that arose from this change was punctuality in the commencement of judicial proceedings. The old custom of the "judicial hour," a grace period of up to an hour or 10 minutes to start a hearing, became an obstacle to the effectiveness of the system. Not only did it lack valid legal grounds, but it also promoted unjustified delays and prolonged the processes, thus compromising the principles of efficiency and expeditiousness that oral justice sought to promote. The principle of expeditiousness prohibits the extension of deadlines and eliminates superfluous or costly procedures. Procedural acts must be carried out as quickly as possible while respecting the rules of due process; ultimately, this principle is the most concrete interpretation of saving time reasonably in line with procedural principles and procedural regulations (Studies and Publications Corporation, 2023).

The "term," as defined in Article 73, refers to the interval designated by the law or the judge for the execution of any judicial act or procedure. These terms are counted in business days. Each procedure must begin punctually at the predetermined place, day, and time. The terms or deadlines indicated in this Code and the law must be strictly observed for the implementation of legal actions. (General Organic Code of Processes, 2015).

The above information provides valuable insight into the importance of orality in the Ecuadorian judicial system. However, it is necessary to explore how this change has affected punctuality at the commencement of judicial proceedings and how lawyers and justice operators have adapted to this new paradigm. Thus, the publication of the General Organic Code of Processes in May 2015 and its full validity in 2016 (legal vacation) represented significant progress in solving this problem. This code eliminated the practice of the "judicial hour" and established clear and specific rules for the commencement of judicial proceedings, thus promoting punctuality and efficiency in the administration of justice.

The debate over punctuality in the commencement of judicial proceedings is highly relevant to the proper functioning of the judicial system and the guarantee of legal certainty. The effectiveness of the judicial system is largely based on the trust that citizens have in it, which is directly affected by compliance with the established times for judicial proceedings.

The results obtained indicate a diversity of opinions and perceptions regarding punctuality in judicial proceedings. A significant proportion of the respondents (47%) reported that proceedings were not very punctual, while a notable percentage also reported that they were punctual (23%) or not very punctual (20%). These data point to a lack of efficiency in the

judicial administration in terms of time and may show differences in the types of cases or even individual needs among judges.

Panamanian law, in this regard, sets a high standard of behavior for judicial servants, including the need for punctuality, promptness, and respect in the performance of their duties. The introduction of these high ethical standards has significant implications for the administration of justice and offers a useful reference framework for Ecuador in its oral judicial system and the punctuality that must govern it. In this sense, the comparison between Panama and Ecuador is relevant. Both countries share the vision of a judicial system that must be efficient and respectful. However, while Panama has established clear conduct rules in its legislation, Ecuador has opted for a more systemic approach, incorporating orality as a means to achieve efficiency and transparency in the administration of justice.

The emphasis on the individual conduct of judicial servants reflected in Article 447 of the Panamanian Judicial Code could provide a useful framework to complement Ecuador's transition to orality. Punctuality, promptness, and respect are aspects that can be improved through orality, and the ethical standards set in Panamanian law could serve as a guide for Ecuadorian judicial servants in this new system.

Thus, the implementation and consequences of the provisions contained in Article 87 of the General Organic Code of Processes take on special relevance. In theory, this article establishes the consequences of non-appearance at hearings in different scenarios. However, the responses obtained in our surveys and interviews showed that its application in practice can vary, undermining the principle of punctuality for the commencement of judicial proceedings, and creating an atmosphere of uncertainty and potential inequality.

In the oral system, the hearing, whether it is a single hearing, a preliminary hearing, or a trial, is a central procedural stage that demands the mandatory attendance of the parties and the judge. It is crucial to avoid necessary delays in order to promote a fast and efficient procedure, following the principles of procedural economy, and leading to a substantive judgment. Non-appearance at these hearings has different consequences depending on who is absent: the plaintiff, the defendant, third parties (such as witnesses, third-party claims, joint litigation, experts, etc.), or the judge. Thus, the non-appearance entails specific duties and effects. (Soria, 2017)

Punctuality and attendance are two essential elements within the legal framework, and their absence can have legal consequences for the parties involved. As Salvatierra (2019) expresses, "the requirement that the parties attend the hearings in person is a rule and a prerequisite for their development," unless attendance by telematic means is allowed. The presence of the parties, whether in person through a representative, and either in person or by telematic means, is crucial.

Conclusions

The conclusions indicate that the perception of punctuality varies considerably among participants. Although a significant percentage of respondents perceive a lack of punctuality, there is also a significant proportion that considers judicial proceedings to be punctual. This reflects evidence of efficiency in the administration of justice.

The comparative analysis between Ecuador and Panama has revealed the importance of ethical and behavioral standards for judicial servants and participants in legal conflicts. While Panama

has established explicit standards in its legislation, Ecuador has adopted a more systemic approach with the implementation of orality. Both approaches have their merits and could be combined to strengthen the efficiency and transparency of the judicial system

The implementation of the oral system in Ecuador has proven promising in terms of improving punctuality. However, it has also highlighted challenges, including the need for adequate training among the actors in a judicial dispute. The Panamanian model, with its emphasis on individual conduct standards, can provide valuable guidance in overcoming these challenges and complement punctuality in judicial proceedings within the oral system.

In conclusion, the transition to orality and the adoption of clear standards for judicial servants and participants in a legal dispute represent a significant opportunity to improve the administration of justice in Ecuador. Improving punctuality in judicial proceedings will not only increase the efficiency of the system but can also strengthen the user's confidence in the administration of justice.

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