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## Illegality of Telematic Hearings in Evidence Assessment Processes as an Affection of Due Process

## Ilegalidad De Las Audiencias Telemáticas En Los Procesos De Valoración De Pruebas Como Afectación Al Debido Proceso

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### Abstract

*Telecommunications have experienced a transcendental boom since the beginning of the 21st century, addressing various aspects of life, including legal sciences, particularly in procedural matters. In this regard, it is necessary to mention that telecommunication aims to facilitate and enhance communication among individuals, with distance or the inability to be physically present being sufficient reasons to employ this resource. From a legal standpoint, teleconferencing has marked the birth and consolidation of a national and international procedure aimed at administering justice, preserving the fundamental rights of individuals, specifically due process and effective judicial protection—fundamental institutions for the exercise of justice and the rule of law (Portes 2021). Consequently, changes in justice systems must align with the legality of forms and substantive processes seeking to adapt to the new realities of the world. In modern times, communication operates on a high level, enveloping legal and judicial assistance activities, such as electronic evidence, the security and crimes of these systems. The emergence of new offenses and their regulation underscores the centrality, fluidity, and necessity of studying, regulating, and properly implementing digital and telematic activities to achieve the objective of justice (Ojeda 2021). This research aims to study the social and legal phenomenon, particularly in the case of teleconferences. While it has undoubtedly alleviated the procedural burden for state institutions, it has generated the need for a thorough, critical, doctrinal, and jurisprudential analysis of the negative effects and shortcomings that such communication means pose for the administration of justice and respect for the rights of parties in various legal processes where this resource may prove useful. Consequently, the implementation of such a communicative medium as a legal fact necessitates considering its acceptance and accommodation over time. This allows for the correction of errors and flaws that may lead to disruptions in the development of different procedural stages where the telematic medium is used to expedite and streamline judicial processes. The experience gained over time will guide the correction of present violations and irregularities concerning the application of internationally recognized fundamental rights and constitutional guarantees, with due process being the focal theme in this investigation. The violation of these constitutional and procedural rights and guarantees motivates an in-depth investigative effort from a legal hermeneutics perspective, examining each of the principles considered violated in teleconferences. Therefore, for the development of this thesis, it is essential to bring forth significant state-of-the-art contributions on the central axis of the doctoral work. In this context, Aguilar (2021) conducts research titled "Teleconferences and their Possible Violation of Due Process," analyzing the relevance of the applicability of teleconferences in judicial processes of the Ecuadorian state. It highlights, among other things, the violation of the principles of immediacy and contradiction in the processes, emphasizing the need to improve technical aspects regarding the utility of virtual processes to achieve a better understanding of procedures without compromising constitutional principles and guarantees.*

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## Resumen

*Las comunicaciones telemáticas, han tenido un auge trascendental desde inicios del siglo XXI, abordando diferentes aspectos de la vida, dentro de ellos, las ciencias jurídicas; y específicamente, el área procesal. A este respecto, es necesario mencionar que el acto telemático tiene por norte acercar y prevalecer las comunicaciones entre las personas, siendo la distancia o la imposibilidad de estar presentes el motivo suficiente para hacer uso de este recurso. Ahora bien, desde lo jurídico, las audiencias telemáticas han significado la nacimiento y consolidación de un procedimiento nacional e internacional en aras de administrar justicia, en preservación de los derechos fundamentales de las personas, en el caso en concreto, el debido proceso y la tutela judicial efectiva, como instituciones claves para el ejercicio del buen derecho y consigo la justicia. (Portes 2021). Es así, que los cambios en los sistemas de justicia deben ir de la mano con la legalidad de las formas y los procesos de fondo que buscan adaptarse a las nuevas realidades del mundo. En tiempos modernos, la comunicación se encuentra en escalas de alta esfera, la cual ha arropado las comunicaciones para el buen ejercicio de las asistencias jurídicas y judiciales, como es el caso de pruebas electrónicas, la seguridad y delitos de dichos sistemas, el nacer de nuevos delitos y consigo la regulación de estos, hacen la actividad digital y telemática, un eje central, móvil y de necesidad de estudio, regulación y debida aplicación para su objetivo; hacer justicia. (Ojeda 2021). La presente investigación tiene como finalidad el estudio del hecho social y jurídico, en el caso puntual de las audiencias telemáticas, la cual si bien es cierto que ha permitido aliviar la carga procesal para las instituciones de los Estados, se ha generado la necesidad de analizar de manera exhaustiva, crítica, así como doctrinal y jurisprudencial, sobre los efectos negativos y carencias que tal medio comunicativo representan para la administración de justicia y el respeto a los derechos de las partes en los distintos procesos judiciales, en los cual puedan presentarse la utilidad de tal recurso. De tal manera, que producto de la implementación de tal medio comunicativo como hecho jurídico, es necesaria considerar su aceptación y acomodamiento en el tiempo. El cual permitirá ir corrigiendo cada uno de los errores y vicios que puedan generar afectaciones en el desarrollo de las distintas etapas procesales donde sea utilizado el medio telemático, para agilizar y dar celeridad a los procesos judiciales, los cuales en razón de la experiencia podrán ir dictando el camino ante presentes violaciones e irregularidades ante la aplicación de los derechos fundamentales internacionalmente reconocidos, las garantías constitucionales, siendo el debido proceso el eje temático en la presente investigación. Es, por lo tanto, que la vulneración de tales derechos y garantías constitucionales y procesales genera el ímpetu investigativo de profundizar desde la hermenéutica jurídica, cada uno de los principios que se consideran vulnerados en las audiencias telemáticas. Por lo tanto, para el desarrollo de la presente tesis, es menester traer a colación estados del arte significativos sobre el eje central del trabajo doctoral. En consecuencia, (Aguilar 2021), desarrolla una investigación titulada "Las Audiencias Telemáticas y su posible Vulneración del Debido Proceso", la cual analiza la relevancia de la aplicabilidad de las audiencias telemáticas en los procesos judiciales del Estado ecuatoriano, señalando entre otras cosas la vulneración de los principios de inmediación y contrariedad en los procesos, observando la necesidad de mejorar las formas desde lo técnico en cuanto a la utilidad de los procesos virtuales, logrando una mejor percepción de los procesos, sin afectar los principios y garantías constitucionales.*

## Introduction

A notable fact is that by implementing telecommunication means erroneously or with flaws as alternatives to the communicative development of the legal process, it cannot progress effectively. Its effectiveness lacks other elements that complement the real utility for the parties involved in the process. Additionally, the Inter-American Commission on Human Rights, in one of its reports issued in 2021, took a stance by establishing the need to standardize hearings using telematic resources but considering all the negative effects that could arise due to fundamental rights during the judicial process, especially those related to due process (Reneaum 2021).

Continuing along the same lines, Castillo (2015), in his research titled "The Use of ICTs in Trial Hearings of the Accused," provides a positive and negative approach to the application of videoconferencing in criminal hearings. He demonstrates that while the use of telematics safeguards the rights of the parties and the continuity of justice, its application cannot become a rule but an exception. In certain cases, its use generates violations of constitutional principles, such as

contradiction and expeditiousness.

Understanding the Constitutional Court's provisions on isolation measures due to the COVID-19 pandemic is straightforward. However, for the exercise of the right in the practice of telematic hearings to contribute to the study's problem, it is evident through surveys that 90% do not correctly apply Articles 75 and 76 of the Constitution of the Republic of Ecuador regarding due process in telematic hearings. Therefore, inconsistencies arise when evaluating evidence to dispense justice to the parties involved. Thus, ensuring a fair and transparent trial is crucial. The study aims to establish the best precedents for the judicial sphere.

Regarding the principle of immediacy, 78% of the respondents stated that the immediacy principles established in the Constitution and the Comprehensive Organic Penal Code for access to justice are violated in telematic hearings. These principles, crucial for the hearing and decisions made by the judge, need to collect adequate information based on the legal regulations of the Constitution and the Comprehensive Organic Penal Code, ensuring transparency, legal certainty, and effective protection for a fair trial for the parties involved.

The new virtual modality for legal professionals and judicial officers represents a radical change in their activities. Therefore, better information and communication for monitoring legal cases are necessary. Moreover, judges require all documentation of evidence to be evaluated. A 90% majority responded that the legal regulations that must be considered in telematic hearings to respect the principles of equality, immediacy, and due process are constitutional regulations. Consequently, there must be regulations governing the violation of due process and constitutional rights.

## Methods

The present study is qualitative in nature, aiming to understand the object of study and conduct a quantitative diagnosis. However, due to its design, it is not experimental; its respective diagnosis is cross-sectional. Its scope is exploratory, descriptive, and explanatory.

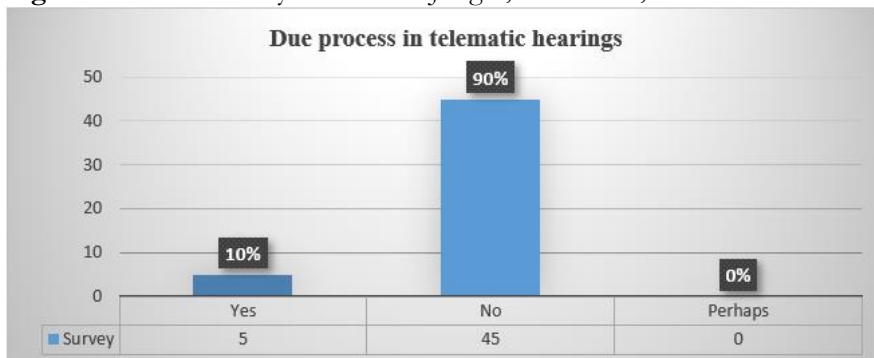
The theoretical level methods used include the analytical and synthetic methods. Constitutional regulations were analyzed concerning the object of study, focusing on constitutional principles based on Articles 75 and 76 of the Constitution of the Republic regarding due process and Article 610 on the principle of immediacy of the Comprehensive Organic Penal Code. This involved examining these regulations, gathering their parts, and synthesizing the information clearly and precisely to contribute to the study's problem.

The deductive and inductive methods were employed to complement specific information about evidence in telematic hearings and identify possible conclusions and recommendations. The empirical level method involved reviewing legal regulations, judgments issued by the Constitutional Court, and the respective verification of the violation of rights enshrined in the Constitution.

The technique used was a survey for a population of 50 individuals, including 2 judges from the Judiciary of the Quevedo canton, 10 secretaries, and 38 lawyers in private practice. This aimed to verify the potential advantages and disadvantages of the evidence of telematic hearings.

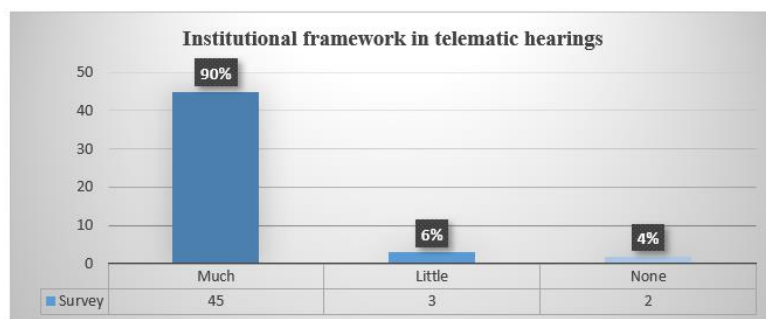
## Results

**Question No. 1** Do you consider that Article 75 of the Constitution of the Republic of Ecuador regarding due process in telematic hearings is correctly applied?

**Figure 1:** Source: Survey Directed at Judges, Secretaries, and Free Practice Lawyers.

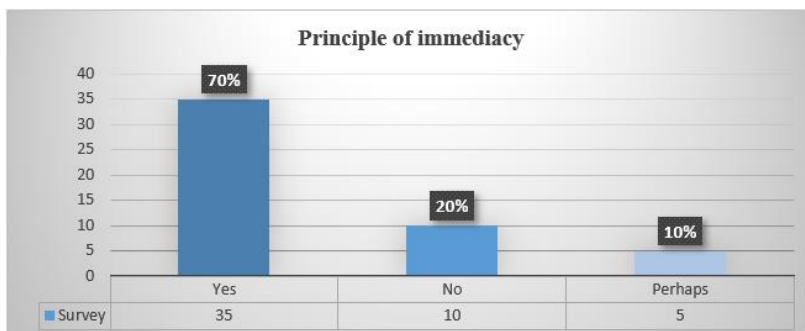
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**Question No. 2** Do you think there is a legal institutional framework in telematic hearings during trials?

**Figure 2:** Source: Survey Directed at Judges, Secretaries, And Free Practice Lawyers.

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**Question No. 3** Do you know if the principles of immediacy established in the Constitution and the Comprehensive Organic Penal Code for access to justice are violated by the implementation of telematic hearings?

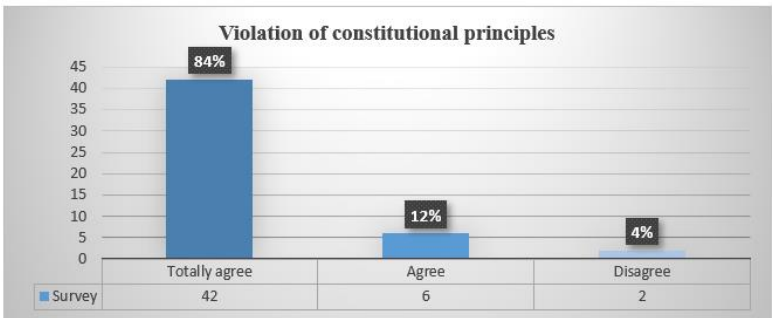
**Figure 3:** Source: Survey Directed at Judges, Secretaries, and Free Practice Lawyers.

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**Question No. 4** Do you think that a reform in the Comprehensive Organic Penal Code should be

implemented during the trial stage to avoid violating the principle of immediacy?

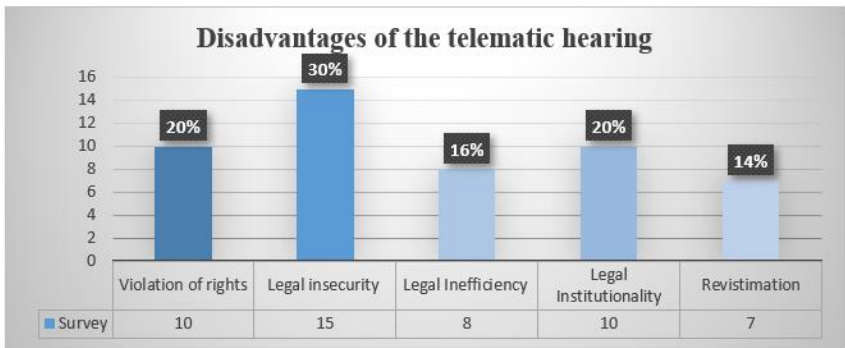
**Figure 4:** Source: Survey Directed at Judges, Secretaries, and Free Practice Lawyers.



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**Question No. 5** What are the disadvantages caused by telematic hearing in the process of the hearing led by the judge?

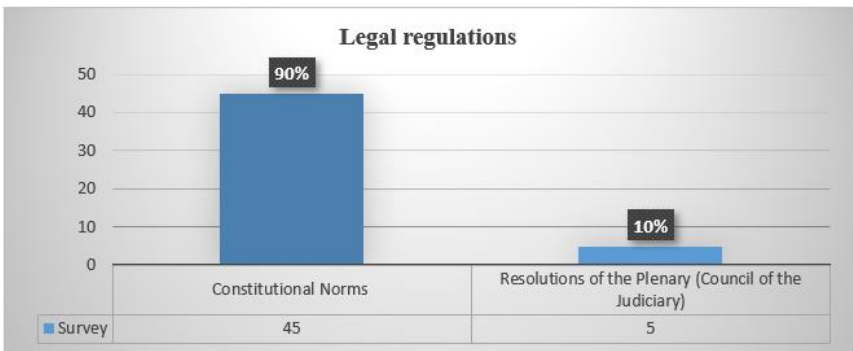
**Figure 5:** Source: Survey Directed at Judges, Secretaries, and Free Practice Lawyers.



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**Question No. 6** What are the legal regulations that must be considered in a telematic hearing to respect the principles of equality, immediacy, and due process?

**Figure 6:** Source: Survey Directed at Judges, Secretaries, and Free Practice Lawyers.



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**Question No. 1:** According to survey data, it was determined that 90% of respondents believe that Article 75 of the Constitution of the Republic of Ecuador regarding due process in telematic hearings is not applied correctly, while 10% believe it is applied. This shows that the majority of respondents do not agree with the new virtual judicial process.

**Question No. 2:** According to survey data, 90% of respondents believe that there is a good legal formality in telematic hearings during trials, with 6% saying there is little and 4% saying there is none. This indicates that judicial officials and practicing lawyers are legally dissatisfied with telematic hearings.

**Question No. 3:** According to survey data, 78% of respondents stated that the principles of immediacy established in the Constitution and the Comprehensive Organic Penal Code for access to justice are violated in telematic hearings, while 22% believe they are not. There is dissatisfaction due to the lack of legality, as due process is not respected in telematic hearings.

**Question No. 4:** According to survey data, 84% agree to implement a reform in the Comprehensive Organic Penal Code during the trial stage to avoid violating the principle of immediacy, while 12% agree and 4% disagree. This demonstrates the interest in having a new legal interpretation to avoid violating the principles of immediacy, equality, and due process.

**Question No. 5:** According to survey data, 30% believe there is legal uncertainty, 20% responded with legal inefficiency and violation of rights, 16% mentioned legal formality, and 14% mentioned delay in legal proceedings. This shows the disadvantages of telematic hearing.

**Question No. 6:** According to survey data, 90% answered that the legal regulations that must be considered in telematic hearings to respect the principles of equality, immediacy, and due process are constitutional regulations, while 10% mentioned resolutions of the plenary (Judicial Council).

## **Discussion**

The legal institutionalization of telematic hearings is a problem that arises when the competent authorities of the National Court of Justice establish new judicial provisions due to the COVID-19 pandemic that generated turmoil throughout the country since 2020. Despite biosecurity protocols, officials, judges, and secretaries must comply with the provisions of the Judicial Council authorities regarding cases that must be attended to promptly by the competent judges for due process. However, there are certain shortcomings and inconveniences when Articles 75 and 76 of the Constitution of the Republic of Ecuador (2009) are not fully complied with. According to the author Juan Carlos Gil (2017, p. 192), "the concept of Due Process is mentioned, and the evident expansion of this fundamental right to fields different from those in which this guarantee is traditionally used is highlighted." Some limitations do not allow the process to be applied correctly, complying with constitutional norms as prescribed by law.

According to survey data, it was determined that 90% of respondents believe that Article 75 of the Constitution of the Republic of Ecuador regarding due process in telematic hearings is not applied correctly. Although this problem has been ongoing since hearings for individuals in custody using audiovisual hearings, the consequences of this legal institutionalization affect the application of fundamental principles such as the right to defense and the principles of equality and immediacy.

The principle of immediacy is considered a process in the oral participation of direct interaction with the judge when verifying the evidence. In the hearing, judicial officers involved in the legal procedure,



such as witnesses, experts, and the parties involved, must be committed. Judges make decisions to implement justice, but they need all the documentation, inspection, and observation of the entire legal structure that makes up the case. They determine new hearings, annulment of what has been done, and prepare the sentence, among other things. However, the difference in telematic hearings results in a total violation of the immediacy principles since justice cannot be executed correctly. Problems arise among litigants due to poor internet connection, and inability to obtain physical documents to provide more information and thoroughly understand the case. This can create confusion for the parties involved when issuing a sentence, and unfortunately, a person called guilty can be judged without observing or delving deeper into the facts with relevant evidence. Ensuring constitutional guarantees and administering legitimate and transparent justice is the way to safeguard the rights of the parties involved.

According to survey data, 78% of respondents stated that the principles of immediacy established in the Constitution and the Comprehensive Organic Penal Code for access to justice are violated in telematic hearings. This causes outrage because constitutional rights are not respected, and hearings have been suspended due to the absence of the parties involved.

The judicial advantages and disadvantages in the application of evidence in telematic hearings for the parties involved in the city of Quevedo reveal several legal inconsistencies that prevent the correct development of the hearing, complying with due process. The principles of immediacy and equality are violated. The advantages mentioned in the surveys are in line with 84% agreeing to implement a reform in the Comprehensive Organic Penal Code during the trial stage to avoid violating the principle of immediacy in telematic hearings. This suggests that these hearings are subject to deception, fraud, and simulation; dishonesty increasingly prevails in justice in exchange for political or economic interests.

Perhaps for some, technology in telematic hearings seems more agile, direct, and fast, but beyond an audiovisual screen, the process, immediacy, to qualify and issue a sentence that transcends the truth of the facts must be thoroughly understood. According to survey data, 30% believe there is legal uncertainty, 20% responded with legal inefficiency and violation of rights, 16% mentioned legal formality, and 14% mentioned revictimization. The disadvantages of telematic hearings are evident, and the survey data shows that respondents are witnesses to the real issues that have arisen with telematic hearings in the city of Quevedo.

## Conclusions

It is easy to understand the provisions of the Constitutional Court regarding isolation measures due to the COVID-19 pandemic. However, for the exercise of the right in the practice of telematic hearings, to contribute to the study's issues, it is evident through surveys that 90% of respondents believe that Articles 75 and 76 of the Constitution of the Republic of Ecuador regarding due process in telematic hearings are not correctly applied. Therefore, there are inconsistencies when evaluating evidence to administer justice to the parties involved. Hence, a fair and transparent trial must be guaranteed, and the study aims to achieve the best foundations for the judicial scope.

Regarding the principle of immediacy, 78% of respondents stated that the principles of immediacy established in the Constitution and the Comprehensive Organic Penal Code for access to justice are violated in telematic hearings. Important principles for the hearing and decisions issued by the judge, who needs to gather adequate information based on the legal regulations of the Constitution of the Republic and the Comprehensive Organic Penal Code, ensuring transparency, legal security, and effective protection for a fair trial for the parties involved.

The new virtual modality for legal professionals and judicial servants is a radical change in their activities.

Therefore, there is a need for better information and communication for the follow-up of procedural cases. Still, even more so for judges who require all the documentation of the evidence to be evaluated. A percentage of 90% answered that the legal regulations that must be considered in telematic hearings to respect the principles of equality, immediacy, and due process are constitutional regulations. Therefore, there must be regulations that govern the violation of due process and constitutional rights.

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