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Influence of the validity of the COGEP on speed in justice

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Abstract

One of the great problems that justice faced is the slowness in resolving conflicts, which generated inconvenience since the requests for unnecessary formalities prolonged the paperwork, returning to slow justice lacking in effectiveness, for which the COGEP sought to develop a procedure that dynamizes justice in an agile and effective way, for this the present investigation was based on the qualitative paradigm of bibliographic review with the use of documentary review, hermeneutic and analysis-synthesis methods that aims to display some considerations regarding to the influence that the application of the COGEP will continue in the procedural speed. With the findings found, it can be evidenced that the validity of this normative body avoids premeditated delays in the processes, transforming

the written system into an oral system that allows the reduction of conflict resolution time, providing the best scenario to comply with the principle of speed established in the Constitution of the Republic of Ecuador.

Key words

Procedural speed; COGEP validity; Justice; orality

Introduction

The present research work addresses the problem of the influence generated by the validity of COGEP in the speed of justice, considering that it is one of the guiding principles of COGEP that is also established in the CRE that indicates that;

The procedural system is a means for the realization of justice. The procedural rules shall enshrine the principles of simplification, uniformity, efficiency, immediacy, speed and procedural economy, and shall give effect to the guarantees of due process. (Const, 2008, art 169)

Principle that seeks that all processes are developed without delays with the deadlines established in the regulations, ending with the unnecessary practices of formalisms that generate delays in the processing of cases, prioritizing simple effective and agile procedures.

Having passed 7 years since the publication of COGEP it is essential to analyze the influence generated by this code to fully comply with the service of justice that should not prolong the processing of cases with unnecessary petitions or formulas that were previously practiced in the written procedure that prolonged the trials for several years even lasting 20 years or more in its paperwork without observing what the CRE establishes. In the principle of procedural speed, under this preamble Quispe mentions that "previously trials took three to four years, it was a very tortuous path. It will be a momentous and beneficial change thanks to this regulation."(Council of the Judiciary, 2015)

In primitive societies controversies were aired orally in front of third party group leaders because writing was not yet developed massively, while in classical Greece where the decisions of the wise elders who were predestined to be arbitrators were sought, with this antecedent arbitration would become obligatory and private in Greece and then be administered by the State for it historically according to Hans Julius Wolff the trial process in Greece was oral based on allegations and evidence presented in the agora before the decision-makers who decided the contentious matters and resolved the cases (Wolff, 2007)

With what has been noted, there is no doubt that the classical judicial system developed in Greece was oral.

While in Rome the process in the first instance was of a private nature where the parties submitted to the decisions of a judge, in the second moment the State decided that the process should be conducted by arbitrators authorized to initiate

the Roman Trial of the citizen consisting of the direction of a praetor, before whom the facts and terms of the controversy were presented in order to present his position and the defendant had to proceed with the *litis contestatio*, positions analyzed by the praetor to determine the origin of the cases to be referred to a judge to hear the case and rule on it.

In the third moment of the Roman procedural evolution appears the written process being of total responsibility of the State, extinguishing the two phases indicated, in addition relevance was given to the protagonism of the physical file giving rise to the writing and the secrecy complex the process, in addition to documenting the acts became a mandatory practice.

While the German Process was oral, public and formalistic continued to evolve the processes this is demonstrated by the *Lex Visigothorum* that lasted for centuries, a public official judge susceptible to recusal and responsible for the damages that may cause his ignorance is appointed, it was sought to guarantee equality in the process being this oral and public, The sentences could be appealed before a superior The procedural speed was one of the most worrying issues, so for example one of the rules provided: "The lawsuit should not be prolonged too much ... and especially if the one who complains is poor." (Prieto-Castro and Ferrándiz, 1968)

In Spain and Germany in 1877 a decisive milestone was developed in the orality of the civil process that established an oral process through a hearing in which the previous and incidental issues were resolved. (Alsina, 1941)

The procedural trend of orality was collected in the cart

a magna of 1978, in Art. 120.2 which states that "The procedure shall be predominantly oral, especially in criminal matters", under the criterion that orality is the one that best responds to the needs of the administration of justice to guarantee the protection of rights, in addition to this, which helps to promote the speed of justice.

However, it was only in the year 2000 that the oral procedure for civil litigation was concretized, emphasizing compliance with procedural principles.

In Ecuador once constituted as a republic in 1980 saw the need to legislatively build the first law of civil procedure being this dictated in 1831, considered this as incomplete by the legislative body, so thesecond civil procedural law was dictated in 1835, this law is followed by the law of civil procedure of December 7, 1848 in force until the elaboration of the e a new law in 1863, reaching until 1869 where the Code of Judgment in Civil Matters was issued, which remained in force until 1938, until the issuance of the Code of Civil Procedure that went through a series of reforms remained in force until May 22, 2016 with the use of a process that predominates the written with certain phases of immediacy. of oral debate, date on which the current General Organic Code of Processes enters into force, which regulates all matters except constitutional, electoral and criminal.

As for the constitutional content on orality in proceedings dates from 1945, which in effect in the Constitution was mentioned in art. 93 "The procedural laws

predominate the simplification and efficiency of the procedures, adopting as far as possible the verbal system " (Constitution of the Republic of Ecuador, 1945), as well as in the Constitution of 1967 the orality emerges as mentioned in Art. 200 which states "Procedural laws shall seek to simplify and make procedures more efficient; adopt as far as possible the oral system"(Constitution of the Republic of Ecuador, 1967), until reaching the Constituent Assembly of 1998 which adopted the following imperative:

The substantiation of the processes, which includes the presentation and contradiction of the evidence, will be carried out before the oral system, in accordance with the principles: device, concentration and immediacy (Const, 2008, art 169)

This provides for an oral and inflexible system of application at all stages, stages of the process, subjects and instances. As for the procedural model applied in Article 169, it is ordered that the procedural rules applied seek speed, agility and simplicity in the dispatch and processing of cases under the principles of simplification, uniformity, efficiency, immediacy, speed and procedural economy, in order to safeguard the procedural and constitutional rights and guarantees so that justice operators have the necessary tools to expedite justice.

With this historical preambulo on the evolution and with crecion of the oral procedure and the search for the cerelidad of the judicial procedures for Richard Urrego, the congestion in the justice system and the endless waiting times to solve a cause originated the need to reform the system of judicial procedures to a simpler and more agile alternative through orality and the reduction of conflict resolution times. (R, 2020)

The written judicial system presented shortcomings and weaknesses that had an impact on distrust and social uncertainty for a long time, so it was essential "judicial reform that is an integral part of institutional development and a key element in the development of the private sector", with a slow justice institutional incapacity is generated that violated citizen rights.(Buscaglia, Edgardo and Maria Dakolias.)

And it seems that legal professionals have not made an evaluation that allows citizens to perceive if there are really positive changes that are currently being experienced in the judicial system, especially with the reform of procedural scope that developed a transition from a written procedure to an oral procedure, that is why this research aims to evaluate the effect of COGEP on judicial speed measured by time of resolution of claims compared to the previous system.

The application of the principle of speed is fundamental for the development of justice without delays, complying with the times predisposed in the regulations with agile, effective and simple procedures(Flores, 2014), added to this that the existence of due process requires the existence of a justice governed by the principle of celerity , to reward society with a justice free of uncertainties, conflict of particular interests slowness and disloyalty to arrive at a justice based on good faith, procedural loyalty and aboveall the protection of the law.

In addition, the application of COGEP allows a non-criminal administration of justice that is consistent with what is established by constitutional regulations as established in Article 168 Numeral 6 "The substantiation of the processes in all matters, instances, stages and proceedings will be carried out through the oral system, in accordance with the principles of concentration, contradiction and device" in (Constitution of the Republic of Ecuador, 2008) order to integrate the procedural principle of variable speed that will be debatable in this research work.

It is also important to refer to the alternative means of justice established in Article 190 of the CRE such as conciliation, mediation and arbitration, resources that are used significantly within the procedural activity all this due to the great positive help they provide to the Administration of Justice resolving cases in an agile way in civil matters guaranteeing the principle of speed of justice, Through the application of effective conciliation, the pre-existing paradigms are being changed not only in justice but in people in order to build paths towards a culture of peace.

For María Belén

With the new procedural body COGEP, judges will have the possibility of shortening times and deadlines, because they become active subjects, leaving aside their role as simple recipients of writings; These judicial officials at any time, before there is a final order or sentence, can call a conciliation board so that the parties – if the case warrants it – can meet and talk without the conflict coming to an end because of the sentence as such, but because of the resolution that is subsequently endorsed by the judge through the sentence." (Dominguez, 2016)

The validity of the COGEP (Code of Organic Judiciary Processes) has been shown to have a significant impact on the speed of justice. As Lozada López et al. (2020) noted, understanding legal procedures is crucial for students to be able to diagnose and prevent diseases such as oral cancer. Similarly, in the joint custody process, success factors such as clear and concise legal procedures have been identified as essential for the well-being of minors (Méndez Cabrita et al., 2022). Solano Moreno et al. (2022) applied compensatory fuzzy logic to analyze the legal concept of abandonment of causes, demonstrating the potential of advanced computational techniques in legal studies. Therefore, it is important to ensure the validity of the COGEP and other legal procedures to guarantee a fair and efficient justice system.

Methods

The present research belongs to the qualitative paradigm of descriptive depth level of the transversal axis with the use of descriptive, documentary, inductive deductive, historical, comparative causistic methods.

Through the application of the aforementioned research methodology, it was possible to carry out a historical analysis on the evolution of the procedures applied to justice in the context of ancient civilizations, until reaching the today applied in Ecuador in procedural matters.

Technique

A survey was applied to a focus group of 8 experts or connoisseurs of the law themselves who were chosen for their professional profile and their work experience, a technique that was selected as the most appropriate because it allows us to determine the value of the research variable in this case the speed, from a trial study that measures the times of dispatch of the cases before and after the application of the COGEP.

Documentary Research. Undoubtedly, this technique serves to get in touch with the information provided by different authors treatises on the subject raised, criteria that give us the theoretical foundations necessary to support the background of the research.

Research Tool

For the development of the focus group meeting, a standardized questionnaire of 5 questions or discussion topics was carried out that allowed documenting the criteria of the experts, which helped to expand knowledge and clarify the current panorama of COGEP in front of professional practice.

Results

Based on the data collected, the following results are presented

Status of cases	Quantity	Percentage
Step	45327	52%
Cases with interlocutory order	19689	23%
Inadmissible applications	4350	5%
Resolved Cases	17243	20%
TOTAL	86609	100%

Source: Authorship Own (2022 based on data Council of the Judiciary, 2016)

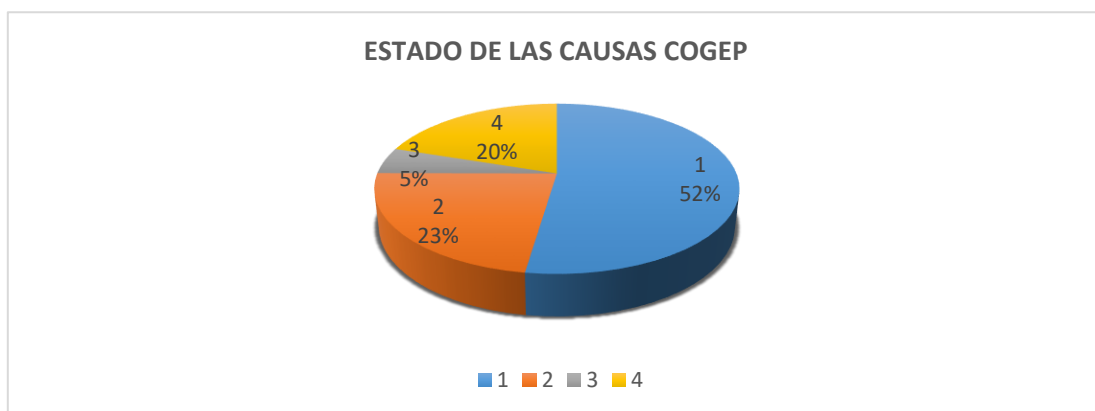


Figure 1. Perceived aspects COGEP application.

Source: Authorship Own (2022 based on data Council of the Judiciary, 2016)

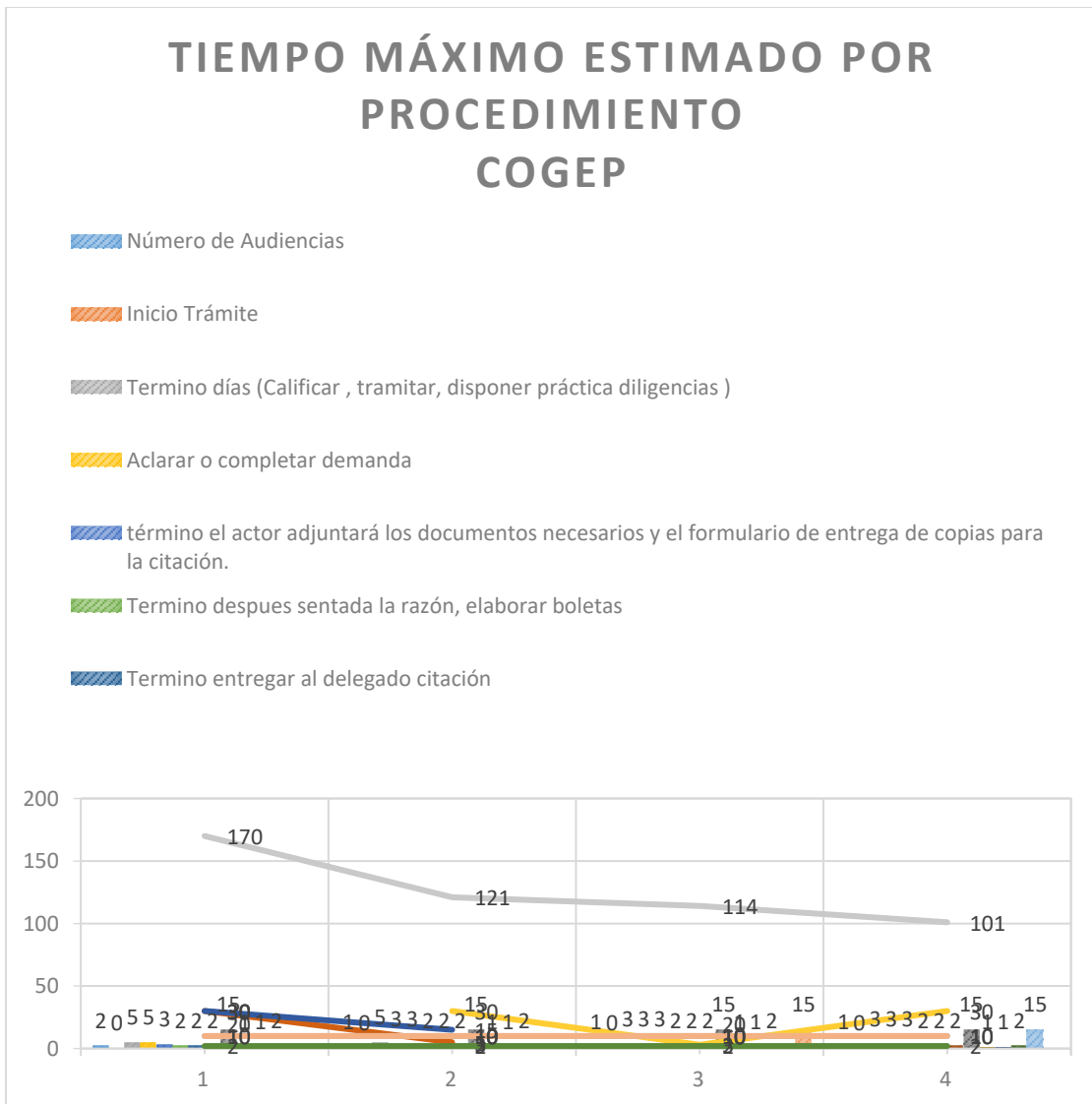
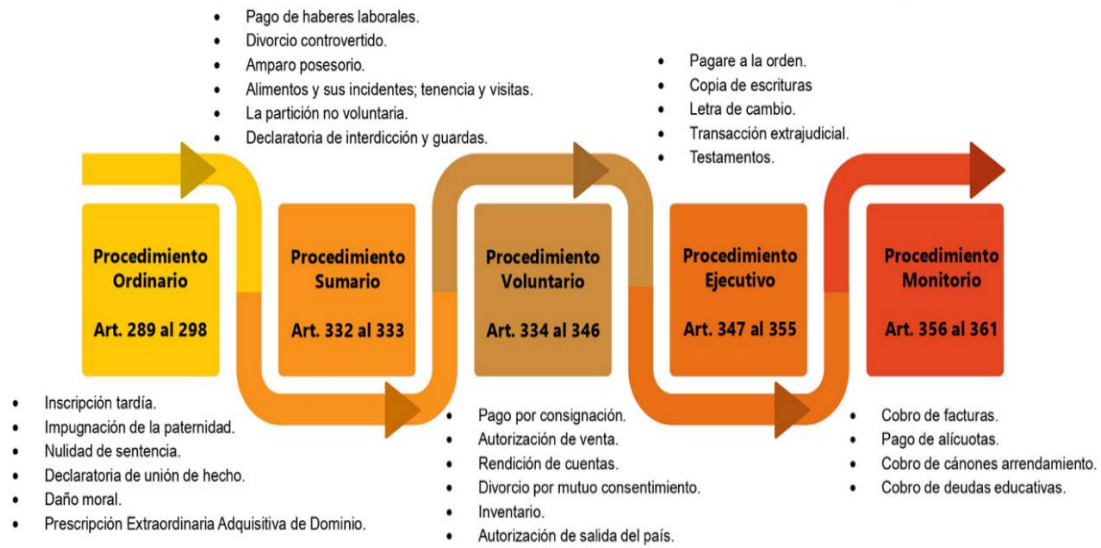


Figure 1. Perceived aspects COGEP application.

Source: Authorship Own (2022 based on data Council of the Judiciary, 2016)

TIPO DE PROCEDIMIENTO	Número de Audiencias	Inicio Trámite	Termino días (Calificar, tramitar, disponer práctica diligencias)	Aclarar o completar demanda	actor adjuntará los documentos necesarios y el formulario de entrega de copias para la citación.	Termino despues sentada la razón, elaborar boletas	Termino entregar al delegado citación	En caso de necesitar completar demanda, para recepción de boletas	Termino máximo de citación, desde Citador subirlas actas	Citación acta no realizada	Termino para que el secretario anexe el acta de citación	Auto interlocutorio (Termino para pago)	Contestar demanda al actor	ón a audiencia en un término menor a diez días siguientes a la audiencia única	Señala Audiencia Juicio preliminar	Termino para alegar de fundamente	Apelación, Contraparte	Constatación del traslado de la demanda o desde última citación	Disponer que se actare o complete	Anuncio nueva reconvencción actor	Sihay reconvencción absoluta necesidad	Suspensión por complejidad	Suspensión audiencia por complejidad	Enviar sentencia escrita	TOTAL DE DIAS APLICACIÓN COGEP
Procedimiento Ordinario	2	5	5	3	2	2	2	15	1	1	2		20	30				30		30	2	10	10	170	
Procedimiento Sumario	1	5	3	3	2	2	2	15	1	1	2			30				5	3	10	15	2	10	10	121
Procedimiento Ejecutivo	1	3	3	3	2	2	2	15	1	1	2	15		3	20	10	10					2	10	10	114
Procedimiento Monitorio	1	3	3	3	2	2	2	15	1	1	2	15		30								2	10	10	101

Sources: Own Authorship (2022 from COGEP)



Source: Montalvo Jorge, 2020 (available in Legal Dosage)

TheCJ has carried out an analysis of the times of resolution of civil cases, before and after the validity of the COGEP.

After this study, it was determined that, for example, in the five months prior to the application of the new regulations, an ordinary trial could take an average of 824 days, while with the COGEP, 90 days. Similarly, a case processed by summary means, before it could be resolved in a referential time of 763 days and now in 61.

According to Dr. Jalkh, the times recorded in these first months of the new procedural system could stabilize between six and 12 months, but even then, there would be a huge difference with what happened before when civil cases could extend for several years. (Council of the Judiciary, 2016)

Survey applied to Focus Group

1. Indicate which of the following aspects you have perceived from the application of COGEP?

Descriptor	Answers
Conciliation	2
Celerity	4
Taking of Evidence	1
Congruence between claims and judgment	1
Delay in solving causes	0
TOTAL	8

Source: Own Authorship (2022 based on data collected)

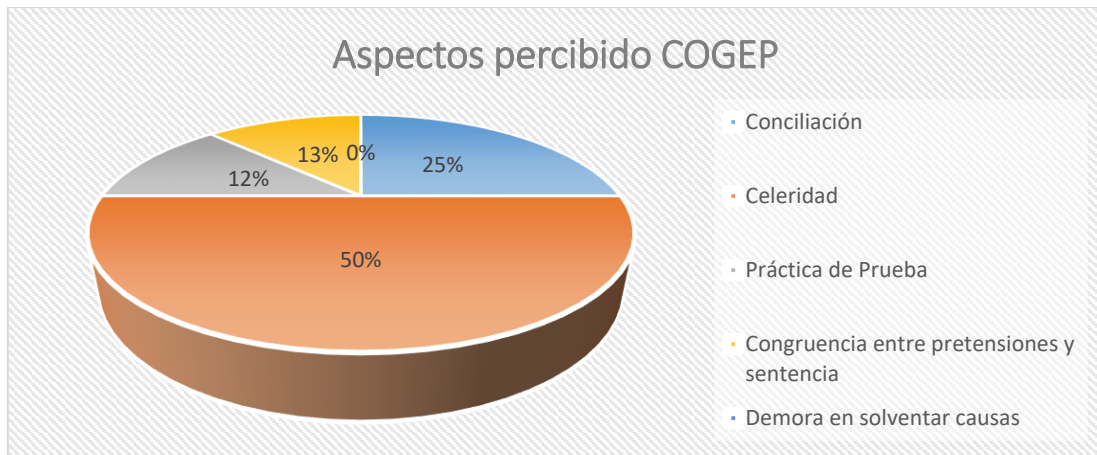


Figure 2. Perceived aspects COGEP application.
 Source: Data collected, 2022.

In which procedure is it possible to resolve the cases most quickly?

Descriptor	Answers
Written	0
Oral	8

Source: Own Authorship (2022 based on data collected)

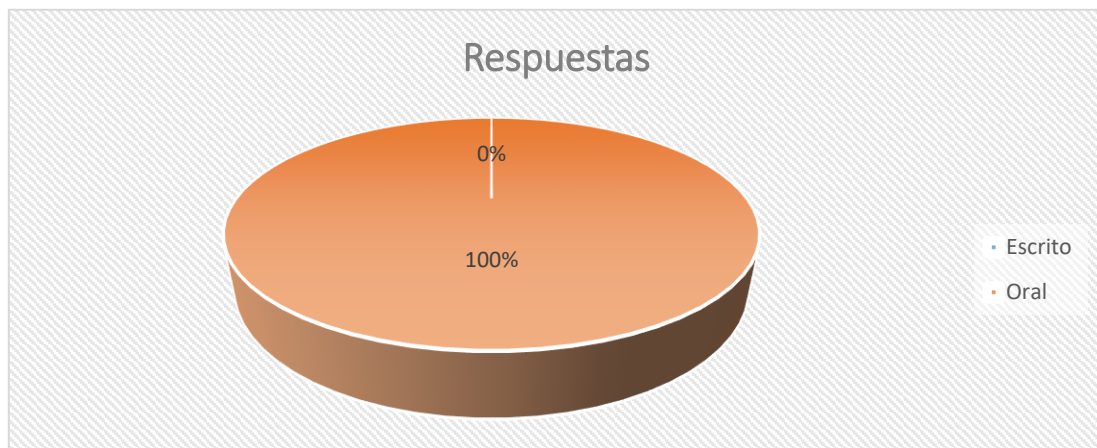


Figure 3. Perceived aspects COGEP application.
 Source: Data collected, 2022.

How long does it take on average to resolve a case in the following types of procedures?

Descriptor	Time / days
Ordinary Procedure	100
Summary Procedure	85
Executive Procedure	75
Order for payment procedure	70

Source: Own Authorship (2022 based on data collected)

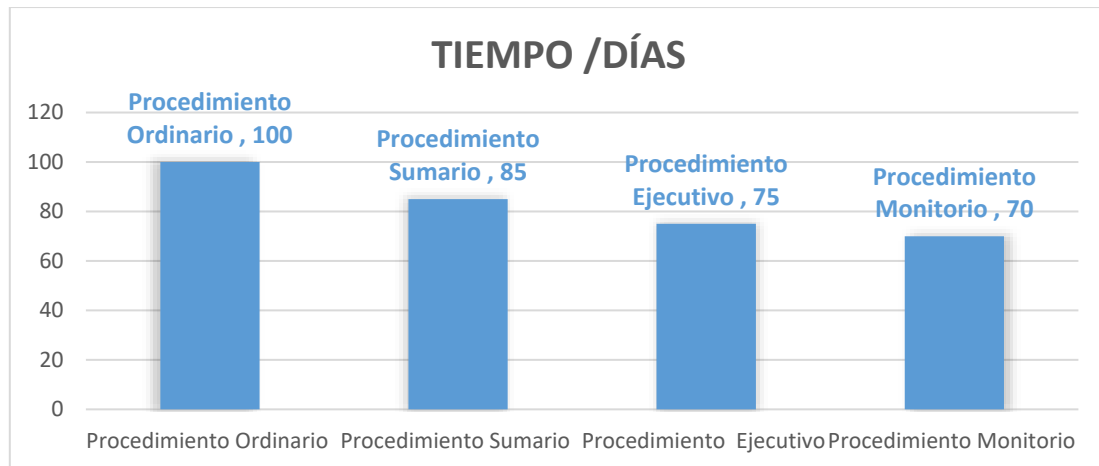


Figure 3. Perceived aspects COGEP application.

Source: Data collected, 2022.

Discussion

With the insertion of the oral procedure with the COGEP, the paperwork of several causes is synthesized in five types of processes such as ordinary, voluntary, executive, summary and monitorial, so one of the main novelties found is the approach of the ways to follow in each procedure

As Pereira mentions:

Procedural roads are like highways with their own traffic rules, which state that each type of transport must travel in its own lane and go at a certain speed; No one would think of building a road for every type of vehicle. The same goes for COGEP: no one proposes that there are exclusive procedural channels, these must be general and, within them, defend, in the debate, the particularities of the substantive norm (Pereira Ocampo, S, 2015)

Likewise, according to the sources reviewed, the written procedure was full of paperwork and formalisms that only caused a delay in the resolution of cases, as we can see in the words of Ramiro López when referring to the ordinary procedure.

To the one who, due to his long and solemn procedures, offers the parties greater opportunities and better guarantees for the defense of their rights, contrary to what happens in summary and summary trials. (...) We can then state that the ordinary trial is a way in which uncertain law is discussed; and that the parties have equality in the process and an almost unlimited breadth in the search for a peaceful solution to their problems. (Lopez)

With what can be noted that apparently the advantage of processing in this procedure is the large amount of time available for the resolution of conflicts which is not consistent with the new model of judicial management driven by constitutional principles.

It is also essential to observe the passive role that the judge had that turned the judges into receivers of writings and passive spectators of the processes, the processes were too slow did not comply with the procedural principles which caused

unjustified and malicious delays, in addition the conciliation that is established in the constitution of the Republic of Ecuador was not applied as one of the alternatives that help expedite the resolution of conflicts fostering a culture of peace in the citizenry.

In addition to all this, the written procedure generated distrust and legal uncertainty in the procedural parties.

The oral procedure generates an evolution that seeks to be consistent with the principles established in the C.R.E. that seeks to protect the rights of litigants and the citizen in general, being the active and direct protagonists in each of the phases of the judicial processes which makes them overseers of their litigation.

The role of the judge is dynamic because he is a facilitator and rector within the judicial process promoting scenarios to fully comply with the principles of transparency, immediacy, procedural economy, contradiction and publicity which is perceived in legal certainty and credibility in the administrators of justice, added to it the timely execution of alternative resources of conciliation, as a fundamental tool to solve conflicts between the procedural parties through consensus where both parties win.

In addition, it is possible to evidence, according to the criteria of experts in the legal area, the significant reduction in the processing of cases.

Conclusions

The validity of COGEP has great significant changes for the way of doing justice from the synthesis of the types of procedures fitting them into five types of procedures.

The principle of speed in the resolution of cases is a key factor for compliance with the provisions of COGEP, as well as to seek consistency with what is established in the constitution, so the application of this norm helped expedite justice in Ecuador.

With the validity of COGEP it was possible to reduce conflict resolution times significantly, since with the oral procedure there were processes that could last more than 20 years

The insertion of alternative means of conflict is fundamental within the application of COGEP and the speed of conflict resolution as mentioned to promote a culture of peace and justice from the initiative of the citizens themselves.

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