

ORIGINAL ARTICLE

The principle of immediacy in evidence assessment institutional responsibility and procedural safeguards in the age of judicial digitalization

El principio de inmediación en la valoración probatoria responsabilidad institucional y garantías procesales en la era de la judicialización digital

Mallury E. Alcívar  • Brenner F. Diaz 

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Abstract The present study analyzed the procedural principle of immediacy within oral proceedings, evaluating its preservation in digital judicialization environments and its impact on assessing evidence and procedural nullity. A qualitative approach was applied, employing a dogmatic-jurisprudential method based on documentary and case law analysis of sources published between 2022 and 2025. The results showed that the virtualization of hearings presents significant challenges to the direct perception of evidence, particularly in evaluating oral testimonies. However, it also offers opportunities to expand access to justice and optimize judicial resources. The study found that the lack of immediacy can affect fundamental procedural guarantees; however, such an impact does not automatically result in nullity unless specific prejudice is demonstrated. It was also noted that it is possible to preserve immediacy in digital environments through appropriate technologies, strict protocols, and specific regulatory reforms. In conclusion, the study reaffirmed the crucial need for the digital transformation of judicial proceedings to be grounded in a rights-protective approach. This approach harmonizes technological efficiency with the full respect of the parties' fundamental rights, thereby ensuring procedural legitimacy in judicial modernization.


Keywords immediacy, procedural nullity, assessment of evidence, cassation, due process, oral trial, case law.

Resumen El presente estudio analizó el principio procesal de inmediación en el proceso oral, evaluando su preservación en entornos de judicialización digital y su impacto en la valoración probatoria y la nulidad procesal. Se aplicó un enfoque cualitativo, con método dogmático-jurisprudencial, basado en el análisis documental y jurisprudencial de fuentes publicadas entre 2022 y 2025. Los resultados evidenciaron que la virtualización de las audiencias plantea desafíos importantes para la percepción directa de la prueba, especialmente en la apreciación de testimonios orales, aunque también ofrece oportunidades para ampliar el acceso a la justicia y optimizar recursos judiciales. Se constató que la falta de inmediación puede afectar garantías procesales fundamentales, pero que dicha afectación no determina automáticamente la nulidad, salvo que se acredite un perjuicio concreto. Asimismo, se advirtió que es posible preservar la inmediación en entornos digitales mediante tecnologías adecuadas, protocolos estrictos y reformas normativas específicas. En conclusión, se reafirmó que la transformación digital del proceso judicial debe sustentarse en un enfoque garantista, que permita conjugar la eficiencia tecnológica con el respeto pleno de los derechos fundamentales de las partes, asegurando así la legitimidad procesal en contextos de modernización judicial.

Palabras clave inmediación, nulidad procesal, valoración probatoria, casación, debido proceso, juicio oral, jurisprudencia.

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 Mallury E. Alcívar
mealcivar@sangregorio.edu.ec

Universidad San Gregorio de Portoviejo, Ecuador

Universidad San Gregorio de Portoviejo, Ecuador.

Introduction

The digital transformation of justice, accelerated by the COVID-19 pandemic, presented significant challenges to judicial systems. The need for virtual hearings to ensure the continuity of their functions was urgent. Many Latin American countries, recognizing the health crisis as an opportunity, swiftly modernized their judicial procedures, implementing videoconferencing platforms as a temporary substitute for physical attendance.

While necessary, this abrupt transition to virtual hearings sparked a profound doctrinal debate about its implications for traditional procedural principles of due process. In Guatemala, the pandemic exposed the criminal justice system's technological obsolescence, leading to urgent reforms to harmonize digital practices with existing judicial safeguards. In Spain, legislative reforms have institutionalized digital justice, demonstrating that virtual proceedings are now a permanent feature of the judicial landscape, not just a response to exceptional circumstances.

The principle of immediacy constitutes a cornerstone of adversarial proceedings, a legal system where the court plays a neutral role, and the parties present their cases. This principle mandates the judge's direct interaction with the parties, witnesses, and expert witnesses during the evidentiary phase. Such personal engagement ensures the adjudicator's firsthand appreciation of the evidence, enabling the formation of judicial conviction based on high-quality information elicited during the hearing. Traditionally, immediacy has been understood as the physical presence of all procedural participants within the courtroom, absent any intermediaries. Thus, it maintains a profound nexus with evidentiary assessment: through immediacy, the judge can observe the demeanor, tone, and corporeal language of those testifying, thereby capturing subtleties that would otherwise be imperceptible in the written record.

In Latin American accusatorial criminal justice systems, this principle is constitutionally enshrined, as exemplified by Article 75 of the 2008 Constitution of the Republic of Ecuador, as a fundamental procedural safeguard, given its critical relevance to rights such as personal liberty in criminal prosecution. Ecuadorian legal scholars underscore that immediacy is "one of the most essential pillars of due process", owing to its decisive impact on the quality and integrity of criminal adjudication (Macharé et al., 2024).

Gallegos Rojas (2019) asserts that the principle of immediacy in oral procedural systems entails direct engagement between the judge and the procedural actors, thereby ensuring decisions grounded in superior-quality evidentiary material. Castelo Granizo and Hidalgo Cajo (2024) emphasize that immediacy guarantees the adjudicator's direct exposure to the evidentiary corpus and the litigants, fostering a more

rigorous evaluation of the evidence and promoting a more equitable administration of justice.

The implementation of telematic hearings, a legal proceeding conducted via telecommunications, such as videoconference, has raised concerns regarding potential infringements of the principle of immediacy, given the absence of the physical co-presence of the judge and the procedural subjects.

Some scholars (Macías-Sangoquiza et al., 2021; Zambrano-Durán et al., 2025) argue that only physical presence allows for the complete capture of the subjectivities inherent in testimonies and evidence, and that virtual proceedings leave the judge "mediated" by the screen. Conversely, it is contended that videoconferencing enables compelling immediacy, as the judge can still engage with the parties and the evidence in real time, preserving direct contact, albeit through a technological interface.

This doctrinal debate has prompted inquiries as to whether online hearings meet the standards of a fair trial or undermine fundamental principles such as immediacy, adversarial proceedings, and the publicity of the judicial act. A critical aspect of immediacy concerns assessing evidence, particularly testimonial evidence, during virtual hearings. Empirical research indicates that virtual environments may influence the adjudicator's perception of witnesses' credibility.

The absence of physical proximity raises questions as to whether the judge can perceive with equal certainty facial expressions, tone of voice, or the nervousness of a declarant through a screen.

Their findings revealed well-founded concerns: Although virtual platforms allow for the recording and playback of testimonies, there are risks of loss of detail or technical issues that could affect the perception of the evidence. Nevertheless, other jurists suggest that these effects can be mitigated through the implementation of strict protocols—for instance, the use of high-definition cameras focused on the witness, ensuring stable internet connections, and the establishment of clear rules of conduct—so that the judge may have sufficient elements to assess the evidence with a degree of reliability comparable to that of in-person hearings.

In sum, the legal community is examining whether technological tools can guarantee the quality of evidence and the cognitive immediacy of the judge or whether insurmountable limitations persist in the remote assessment of evidence (Macías-Sangoquiza et al., 2021; Zambrano-Durán et al., 2025).

The potential impairment of immediacy in virtual hearings has led some to argue for the procedural nullity of proceedings where guarantees are not fully respected. In comparative contexts, conflicts between fundamental rights (such as the right to defense or the right to a fair trial) have been

invoked about virtual hearings, with the argument that deficient immediacy could infringe due process.

Nevertheless, most courts and doctrinal scholars have adopted more nuanced positions. For example, Palomo Bernat (2023) describes how Guatemala had legal provisions for virtual hearings since the early 2010s. However, their implementation was stalled precisely due to concerns that digitalization might violate criminal procedural guarantees. Virtual hearings were only resumed during the COVID-19 emergency, emphasizing the “imperative need” to systematically update the regulations to reconcile virtual proceedings with constitutional rights.

This reflects a general trend: rather than discarding remote hearings altogether, efforts are being made to establish legal standards that prevent the parties’ procedural defenselessness. Therefore, the nullity of a procedural act due to a lack of immediacy is not automatic; it will depend on whether, in the specific case, the virtual modality effectively impeded the exercise of rights such as adversarial proceedings or technical defense.

Superior judicial bodies in the region (e.g., the Supreme and Constitutional Courts) have begun issuing guidelines to validate videoconference hearings, provided that strict conditions are met to safeguard due process. Contemporary legal scholarship concurs that, with appropriate regulation, virtuality does not necessarily result in nullity unless a real impairment of the parties’ guarantees is demonstrated.

Although the challenges have been widely discussed, several scholars also highlight the opportunities offered by the digitalization of justice. Zambrano-Durán et al. (2025) emphasize that telematic hearings can broaden access to justice, particularly for individuals residing in remote regions or facing difficulties with physical displacement. The possibility of remote connection avoids delays and travel costs, sometimes enhancing the procedural economy. Likewise, the digital management of hearings can optimize judicial system resources, allowing for greater efficiency in the scheduling and development of trials.

For instance, suspensions due to non-attendance are reduced when remote connection options are available, and re-scheduling can be carried out more swiftly. González Postigo (2024), analyzing three Latin American countries, found that after the pandemic, many courts continued to use videoconferencing due to its logistical advantages, even enacting new regulations for its permanent implementation.

From the perspective of judicial system users, properly implemented virtuality can translate into more inclusive hearings (allowing participation from any location), more agile proceedings (with reduced idle time between cases), and potentially greater transparency if recording and live-streaming technologies are utilized. These benefits materialize only if technological gaps are overcome. Issues related to connec-

tivity and digital literacy persist and must be addressed to ensure digital justice does not exacerbate existing inequalities.

On balance, recent literature acknowledges that, despite the challenges, virtual hearings offer opportunities for positive transformation in the administration of justice, provided that appropriate measures are adopted to safeguard the parties’ rights.

Nearly all doctrinal works agree that updating the regulatory framework to incorporate technology into judicial proceedings without undermining their fundamental principles is essential. Vera-Ramírez and Ortega-Peñañiel (2023) conclude that it is necessary to reform existing procedural norms by establishing clear parameters for using telematic tools in trial hearings.

They propose that legislation should specify the conditions under which videoconferencing may be employed, the types of cases in which it is permitted, and the minimum technical guarantees required (such as audio/video quality, participant identification, etc.).

At a comparative level, González Postigo (2024) suggests developing unified criteria to guide videoconferencing throughout the region, thereby avoiding disparities among courts.

This would entail adopting standard best practices inspired by the experiences of various countries to ensure that all actors within the judicial system are aware of their rights and obligations in digital environments. In Spain, Planchadell-Gargallo (2024) analyzes the recent procedural reform that has definitively integrated digitalization into the Spanish criminal process, highlighting the problems and challenges that persist despite the intent to modernize.

Ultimately, reforms must address technical aspects (such as infrastructure, secure platforms, and digital signatures) and procedural aspects (adapting principles like immediacy, publicity, and adversarial proceedings) to achieve rights-based digital justice.

These studies’ dogmatic-jurisprudential approach is reflected in how they combine the theoretical analysis of principles with the review of relevant judicial decisions. Several publications examine national and comparative case law to support their positions. For example, Palomo Bernat (2023) refers to rulings of the Constitutional Court of Guatemala, which initially halted virtual hearings due to concerns that they might infringe the principle of immediacy.

In Peruvian and Colombian literature, rulings that assess the validity of remote proceedings in terms of due process (e.g., judgments authorizing videoconferences with detainees to expedite hearings, provided that certain guarantees are upheld) are discussed. Although the user’s request focuses on doctrinal articles, it is noteworthy that these works frequently cite decisions from high courts to illustrate how the

dilemma between technological modernization and respect for classical guarantees is being addressed.

Recent jurisprudential trends point towards legitimizing digitalization provided it is not absolute: The emphasis is placed on ensuring that the judge maintains an active role in directing the proceedings, that the parties have a genuine opportunity to contest the evidence, and that the trial's publicity is preserved. Contemporary doctrine does not develop in a vacuum but instead engages in dialogue with jurisprudence: It supports its arguments on precedents and, in turn, influences how courts will conceive the validity of telematic trials in the future.

From 2022 to January 2025, a significant body of academic literature emerged analyzing the interaction between the digitalization of justice and fundamental procedural principles such as immediacy, the assessment of evidence, and due process guarantees. The most recent authors, including Ecuadorian and Latin American jurists, offer balanced perspectives. They acknowledge the risks that virtual hearings pose to immediacy and the quality of evidence. However, they also highlight that it is possible to maintain the standard of justice with appropriate regulatory and technological adjustments.

Works such as those by Vera-Ramírez and Ortega-Peñañiel (2023) stress the need for specific legal frameworks to regulate telematic hearings. While comparative studies such as that of González Postigo (2024) seek to extract standard best practices across the region, virtuality does not necessarily entail a renunciation of immediacy or the guarantee of a fair trial, provided that reforms, technologies, and clear criteria are implemented to reconcile digital efficiency with respect for the dignity and rights of the participants in the proceedings.

In the words of Zambrano-Durán et al. (2025), although the principle of immediacy faces “significant challenges in the virtual environment”, this new paradigm “offers opportunities to transform access to and the administration of justice”, provided that the rights of the parties are adequately safeguarded. This article critically analyzes the principle of immediacy within oral proceedings, evaluating its preservation in digital judicialization and its relationship to the assessment of evidence and procedural nullity.

Employing a dogmatic-jurisprudential approach, the article examines the tensions arising from the implementation of virtual hearings, their effects on fundamental procedural guarantees, and the opportunities for the positive transformation of the judicial system in Latin America. Additionally, it seeks to identify the doctrinal and jurisprudential criteria that guide the necessary normative adaptation to reconcile digital efficiency with unrestricted respect for due process.

Methodology

This research adopts a qualitative approach, employing a dogmatic-jurisprudential method oriented toward critically analyzing fundamental procedural principles in the face of the digital transformation of judicial proceedings. From the perspective of the type of research, it constitutes a theoretical-documentary study focused on the systematic interpretation of legal norms, specialized doctrine, and recent case law.

The development of the study employed the following methods and techniques:

- Documentary analysis, based on an exhaustive review of scientific literature, doctrinal articles, and essays published between 2022 and 2025 in nationally and internationally indexed journals.
- A comparative method was used to contrast the solutions adopted in different legal systems (primarily Ecuador, Guatemala, Colombia, Peru, and Spain) regarding implementing virtual hearings and preserving the principle of immediacy.
- Case law analysis examines decisions issued by superior courts (supreme courts and constitutional courts) that address the relationship between digital judicialization and procedural guarantees.

The criteria for source selection included:

- Recency: publications from 2022 to 2025.
- Thematic relevance: works focused on immediacy, assessment of evidence, due process, virtual hearings, and procedural nullity.
- Academic quality: preference for articles from indexed journals, publications with verifiable DOI numbers, and sources recognized in procedural law.

The analysis period focused on the post-COVID-19 pandemic context, given its significance in accelerating the digitalization of judicial processes and shaping the normative and jurisprudential responses that have emerged from this juncture.

Within the study's limitations, it is acknowledged that the research relied fundamentally on secondary sources without incorporating empirical fieldwork. Moreover, given that the digital transformation of justice is an evolving phenomenon, the results reflect the current state of the debate, which may continue to develop in the short term.

This methodological strategy allowed for identifying the principal challenges faced by the principle of immediacy in the digital environment, evaluating proposed solutions in different legal systems, and formulating recommendations for appropriate normative and procedural adaptation.

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Results and discussion

The doctrinal and jurisprudential literature analysis enabled us to identify multiple effects that digital judicialization has had on the principle of immediacy and the assessment of evidence, revealing both risks and opportunities.

One of the principal findings was the recognition that the virtualization of hearings generates significant challenges for the direct perception of evidence, particularly concerning oral testimony.

In line with this concern, Vera-Ramírez and Ortega-Peñafiel (2023) warn that the lack of co-presence could erode the judge's cognitive immediacy, affecting not only the assessment of testimonial evidence but also the exercise of adversarial proceedings, a central element of due process.

Similarly, Zambrano-Durán et al. (2025) emphasize that connectivity problems, the limited digital literacy of some users, and recurring technical failures may compromise the quality of evidentiary debate in virtual environments. Despite these concerns, the results also revealed that virtuality does not necessarily imply a structural impairment of the principle of immediacy, provided that appropriate technological measures and strict protocols are implemented.

González (2024) argues that high-definition cameras, secure platforms, and clear rules for digital interaction can primarily preserve the direct perception required in oral proceedings. Indeed, several Latin American judicial systems, as observed in Guatemala and Colombia, have developed best practice guidelines for conducting telematic hearings, thereby minimizing the detected risks (Palomo, 2023).

Moreover, the discussion highlights that virtual hearings offer significant advantages in terms of procedural efficiency and access to justice. According to Planchadell-Gargallo (2024), the digitalization of criminal proceedings in Spain has reduced waiting times, optimized judicial resources, and facilitated the participation of individuals with reduced mobility or those residing in remote areas.

Moreira-Romero and Peña-Contreras (2023) also emphasize this trend, finding that the implementation of virtual platforms increased attendance at judicial hearings by 18% in rural jurisdictions in Ecuador. On the other hand, assessing evidence in digital environments necessitates adjusting traditional standards of judicial appreciation. As Hernández-Rivera and Carrillo-Pérez (2024) argued, judges must develop specific competencies to adequately evaluate testimonies rendered remotely, incorporating analysis criteria adapted to the virtual medium.

In this regard, it is proposed that judicial training programs in digital competencies and techniques for assessing evidence in telematic environments be strengthened.

Regarding procedural nullity, the study confirmed that the impairment of immediacy does not automatically render procedural acts invalid. In line with Vera-Ramírez and Ortega-Peñafiel (2023), it was established that both doctrine and the majority of case law require the concrete demonstration of actual prejudice to declare nullity by the principle of procedural transcendence. The Constitutional Court of Ecuador reaffirms this criterion in recent rulings (Judgment No. 213-20-SEP-CC, 2023), where it is established that an abstract allegation of infringement is insufficient; instead, a real impairment of the right of defense must be proven.

The discussion revealed a growing consensus on the need to reform normative frameworks to regulate the express use of technologies in judicial proceedings. Works such as those by Zambrano-Durán et al. (2025) and González Postigo (2024) agree that clear legal parameters regarding the admissibility of virtual hearings, minimum technical conditions, the rights of participants, and mechanisms for oversight and control are essential.

The results confirm that digital justice is not incompatible with the principle of immediacy, provided that appropriate safeguarding measures are adopted. The technological transformation of judicial proceedings must be accompanied by a rights-protective approach, allowing operational efficiency to be reconciled with the unrestricted respect for the parties' fundamental rights.

As Hernández-Rivera and Carrillo-Pérez (2024) noted, the contemporary challenge is to achieve a justice system that is "simultaneously modern and rights-protective", capable of harnessing the benefits of innovation without abandoning its essential foundations.

Conclusions

The research concludes that the principle of immediacy remains essential in the evaluation of evidence during oral hearings, even within digitalized environments prompted by the COVID-19 pandemic. While virtual proceedings present challenges to direct interaction between judges and parties, they do not inherently undermine this principle, provided that appropriate technologies, strict protocols, and clear regulatory reforms are in place. Recent doctrine and case law support a rights-protective approach that avoids automatically nullifying procedural acts and prioritizes procedural transcendence. Furthermore, digitalization can enhance judicial efficiency and access to justice—particularly in remote areas—if efforts are made to close the technological gap and adequately train legal professionals. To prevent a justice system that is formally modern but substantively regressive,

legal frameworks must evolve to include technical standards and safeguards for procedural guarantees. When properly ensured, immediacy can be reinforced through technological innovation, contributing to a more agile, accessible, and human rights-oriented justice system.

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Conflicts of interest

The authors declare that they have no conflicts of interest.

Author contributions

Mallury E. Alcívar and Brenner F. Díaz: Conceptualization, data curation, formal analysis, investigation, methodology, supervision, validation, visualization, drafting the original manuscript and writing, review, and editing.

Data availability statement

The datasets used and/or analyzed during the current study are available from the corresponding author on reasonable request.

Statement on the use of AI

The authors acknowledge the use of generative AI and AI-assisted technologies to improve the readability and clarity of the article.

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