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The judicial citation of the civil lawsuit and the principle of gratuity, in the context of the Ecuadorian legislation

La citacion judicial de la demanda civil y el principio de gratuidad, en el contexto de la legislacion ecuatoriana

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ABSTRACT

In the realization of any civil process, expenses must necessarily be incurred with respect to a series of procedures: expert reports, documents, etc. In the case of the national legal system, emphasis has been placed on this through various declarations at the level of several laws, making it clear that access to the judicial system in Ecuador is free of charge. And in the specific case of the judicial summons of the defendant, this is no exception, such a declaration is reiterated. The present work seeks to establish that there is no parallel or contradiction between the principle of free access to the justice system and the serving of the writ of summons in civil proceedings, even if this is paid for by the interested party, until the judge definitively establishes it through the respective sentence.

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RESUMEN

En la realización de todo proceso civil necesariamente se ha de incurrir en gastos, respecto de una serie de diligencias: periciales, documentales etc. En el caso del ordenamiento jurídico nacional se ha hecho énfasis a través de sendas declaraciones a nivel de varias leyes, dejando en claro que el acceso al sistema judicial en el Ecuador, es gratuito. Y en el caso puntual de la citación judicial de la demanda en la persona del demandado, no es una excepción, es reiterada tal declaratoria. El presente trabajo busca establecer que no existe algún paralelo o contradicción entre el principio de gratuidad del acceso al sistema de justicia, con que la realización de la citación judicial de la demanda en el proceso civil, aunque esta sea pagada por la parte interesada, hasta que el juez a través de respectiva sentencia establezca, en definitiva.

Keywords / Palabras clave

principle of gratuity, summons, justice system.

principio de gratuidad, citación de demanda, sistema de justicia.

Introduction

Within the framework of the Ecuadorian civil process (generally following some of the doctrinal tendencies), it is mentioned that everything related to the civil process must be carried out free of charge. Without prejudice to the imminent expenses incurred in its development (lawyers' fees, expert witnesses, etc.), which must be paid by the respective parties. The aforementioned is one of the systems, many times, antagonistic that have been adopted by the legislations, and that has become a matter of controversy due to the way in which the subject is approached. In this paper we will argue that such controversies do not exist, but that they are simple points of view of doctrines, but that finally converge in that in order to keep in force in a very necessary way the so-called principle of gratuity, also seen as a way that people within a society have access to a justice system, without any obstacle, it is a guarantee provided by the State to all members of a society.

It is in this field that the principle of gratuity is immersed in the specific case of the summons of a civil lawsuit in the person of the defendant.

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BRIEF PROCEDURAL BACKGROUND, REFERRING TO THE JUDICIAL CITATION OF THE CIVIL LAWSUIT

Since the time of the written civil procedure, in our legislation, the figure of the judicial citation of the lawsuit in the person of the defendant, has kept a series of formalisms that have not changed even with the enforcement of the so-called General Organic Code of Processes; notwithstanding the characteristic of the current procedural law, which in our point of view, deserved at least an update, given the profound change of said law that it meant, going from a written system, to one where the characteristic is that the civil process is carried out by means of hearings: that is to say, oral proceedings prevail.

Thus, in accordance with the provisions of the General Organic Code of Proceedings, once the claim has been qualified, the judicial citation of the same will be carried out:

"Art. 53.- Citation. Reformed by num. 2 of the First Reformatory Provision of the Code s/n, R.O. 31-2S, 7-VII-2017; and Substituted by Num. 1 of Disp. Ref. 5ta of the Law s/n, R.O. 345-S, 8-XII-2020; and by Art. 72 of the Law s/n, R. O. 245-3S, 7-II-2023) - The summons is the act by which the defendant is made aware of the content of the complaint or of the request for a preparatory proceeding and of the orders issued therein. It will be done in person, by means of physical or electronic ballots, or through the means of communication ordered by the judge".

If a party states that it is aware of a certain petition or order or refers to it in writing or in an act of which there is a record in the proceeding, it shall be considered summoned or notified on the date of filing the writing or on the date of the act attended.

All summons shall be published in full, that is, with its reasons and minutes of summons in the automatic consultation system of the electronic page of the Judiciary Council, through the electronic and technological means available to the Judiciary, which shall state the form of summons or the reasons for which it was not possible to carry out such proceedings.

If the plaintiff has provided the e-mail address of the defendant, the judge will also order that the defendant be notified by e-mail of the extract of the complaint and the initial order, which will be recorded in the system. This does not replace the official summons, except in the cases provided for in this Code.

In turn, this procedural activity will provoke the intervention of the defendant, who, among other rights -mainly- will answer the lawsuit: The answer to the lawsuit shall be submitted in writing and shall

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comply, as applicable, with the formal requirements provided for the complaint (Art. 151 of the COGEP)".
In this area, the judicial summons is the procedural figure that allows guaranteeing the right to effective judicial protection, in principle, of whoever has been sued; for the same reason that its materialization must be given taking all the legal safeguards; that is to say, complying with a series of formalities. Failure to comply with them may result in the respective procedural nullity.
The series of formal requirements that the Law has imposed to carry out the judicial summons of the lawsuit has as a prelude, not only the participation of the defendant in the civil process, but also that the latter exercises his right to defense and all that it technically implies (Art. 76, N. 7, letters a, b, c, h, of the Constitution of the Republic). Complementarily, he will be able to exercise his legitimate right to contradict the plaintiff.
Art. 76.- In all proceedings in which rights and obligations of any order are determined, theright to due process shall be ensured, which shall include the following basic guarantees:
7.The right of persons to a defense shall include the following guarantees:
a) No one may be deprived of the right to a defense at any stage or level of the proceedings.
b) To have adequate time and means for the preparation of their defense.
c) To be heard in a timely manner and under equal conditions.
h) To present orally or in writing the reasons or arguments with which they believe they are assisted and to reply to the arguments of the other parties; to present evidence and to contradict that which is presented against them.
In order to ensure the aforementioned procedural rights, following doctrinal guidelines, our Civil Procedural Law incorporates the different ways of summoning the claim: the traditional way, in person; by means of ballots; through the media (Arts. 55, 56 of the COGEP).

THE PRINCIPLE OF GRATUITY IN THE SCOPE OF ECUADORIAN CIVIL JUSTICE

In the judicial field, legislations worldwide, accept theories, points of view or certain doctrines that may be in accordance with their social realities.
In that sense, one of the recurrent orientations is that it is a right of every citizen, when he needs to go to the judicial body for a situation of conflict of rights with a similar one; he must resort to someone not only impartial (guaranteed by the State), but also with a path free of

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obstacles in order to resolve such conflict. And this is precisely where one of the contributory factors arises, that the citizen does not have to pay for such achievement.
In this sense, one of the tributaries is related to the principle of free access to justice.
Precisely (this principle, called gratuity), can be approached in different ways, since a civil process always entails a series of expenses, which someone of the intervening parties must pay; it cannot be concluded that access to the courts of justice in general, is paid, or seen otherwise, is violating the aforementioned principle.
In the case of the Ecuadorian judicial system, the Plenary of the Judiciary Council, through resolution 061-2020, has held that:
Article 3.- Free of charge of summons. - Access to the administration of justice is free of charge and is a basic and fundamental public service of the State, therefore, the citations will be free, people should report any type of charge made for this concept.
On the other hand, in Comparative Legislation we find expenses or payments that must necessarily be incurred in the course of a civil proceeding; and it is the interested procedural party who must pay these consequent expenses; such as, for example, those incurred in personal notifications (or others), which must be made for the first time in the person of the defendant. In such cases, we would not be in the presence of a paid judicial system or that the principle of judicial gratuitousness is not observed: Chilean Code of Civil Procedure.
Art. 25 (26). "Every litigant is obliged to pay to the officers of the administration of justice the fees that the judicial tariffs indicate for the services rendered in the process.
Each party shall pay the fees corresponding to the proceedings he has requested, and all parties shall pay in equal installments those of the common proceedings, without prejudice to the reimbursement that may be due when by law or by resolution of the courts it corresponds to other persons to make the payment".
Art. 26 (27). The fees for each diligence shall be paid as soon as the same is evacuated; but the lack of payment shall in no case hinder the progress of the trial".
From what has been stated above, it can be established that there is no single point of view on the matter; rather, what is specific is that there are different orientations that each legislation has accepted by conditioning it to its social realities, which in no way is equivalent to concluding that for these reasons justice is altered in any of the cases, the infallible principle of gratuity.
In the field of Ecuadorian legislation, when the law has reiterated the gratuity of certain procedural activities, precisely in the civil field, it

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has rather wanted to reinforce the manifestation of government policy, which is that no procedure that does not carry a kind of payment for its realization, duly regulated, can have any fee arbitrarily imposed by the respective official.

PAYMENT OF PROCEDURAL COSTS

According to our civil procedural legislation, only those who do not act correctly in the course of the trial shall be sentenced to pay procedural costs:

Art. 284 COGEP:

"The person who litigates in an abusive, malicious, reckless or disloyal manner shall be sentenced to pay to the State and his counterpart, when applicable, the expenses incurred. The judge must qualify this form of litigation and determine its payment in all judgments and interlocutory orders that terminate the process.

The State shall not be ordered to pay costs, but may instead be ordered to pay them by the person exercising his or her defense. ".

In another procedure, it is not proper of particular legislation that, for the materialization of certain activities within the civil process, these must have an economic cost (without prejudice to what happens at the time of the final judgment); these must be assumed by the party that has requested the referred diligence.

Thus, the different procedural laws in the external sphere have chosen to duly regulate the consequent costs, and those who must comply with them in the due process of the particular proceeding.

"The Chilean doctrine has historically understood costs as "trial expenses", generated on the occasion of the trial. In this sense, Stoehrel has defined them as those "expenses that originate during a judicial proceeding and that are a direct consequence of it". In a similar sense, Cortez and Palomo have recently defined the concept of costs as "those economic disbursements that correspond to the party that is judicially defeated and include all the expenses caused or occasioned by the substantiation of the proceeding". Casarino has focused its definition on who must bear the costs in a proceeding, stating that these "are the immediate and direct expenses arising from a judicial proceeding and must be borne by the parties in accordance with the law". Finally, the Supreme Court has rightly understood them as direct expenses of the parties, that is, as "the expenses incurred by the parties in the defense of their rights in court". "

Art. 25 of the Chilean Code of Civil Procedure:

"Every litigant is obliged to pay to the officers of the administration of justice the fees that the judicial tariffs indicate for the services rendered in the process.

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Each party shall pay the fees corresponding to the proceedings he has requested, and all of them in equal installments those of the common proceedings, without prejudice to the reimbursement that may be due when by law or by resolution of the courts it corresponds to other persons to make the payment".
Art. 138 (145).
When one of the parties is ordered to pay the costs of the case, or of any particular incident or proceeding, they shall be assessed in accordance with the following rules.
Art. 139 (146).
"Costs are divided into procedural and personal costs. Procedural costs are those incurred in the formation of the process and which correspond to services estimated in the judicial tariffs. Personal costs are those arising from the fees of the attorneys and other persons who have intervened in the business, and of the public defenders in the case of Article 367 of the Organic Code of Courts. Attorneys' fees shall be regulated in accordance with the tariff set by the respective Provincial Bar Association and, in the absence thereof, by that of the General Council of the Bar Association. The fee that is regulated in accordance with the preceding paragraph shall belong to the party in whose favor the condemnation in costs was decreed; but if the lawyer receives it for any reason, it shall be imputed to the one that has been stipulated or to the one that should correspond to him".

THE PRIVILEGE OF POVERTY

This institution (so recognized for example in comparative legislation), has been determined as the possibility that a person who finds it necessary to appear before the judicial body due to a conflict of interests, to file a lawsuit, or who has been sued, has. As a general rule, any expenses incurred (attorney's fees, expert witnesses, documents, etc.) must be paid to the corresponding parties, until such time as the sentencing judge confirms it or orders otherwise. However, it may be the case that the appellant lacks the economic means to cover such costs. This circumstance, under this figure (privilege of poverty), should not be an obstacle to access the judicial institution, since it must be solved and absorbed in due form, as the doctrine has accepted and the Law has provided, based on this principle:

"The privilege of poverty is a species within the genre that could be called judicial assistance, which is a broader concept.The professor of Procedural Law, Mario Casarino, defines judicial assistance as "the set of legal rules aimed at facilitating the exercise of rights before the courts of justice by poor or low-income persons" (CASARINO

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VITERBO, Mario, Manual de Derecho Procesal. Derecho Procesal Orgánico (Santiago, Editorial Jurídica de Chile, 2006), volume II, p. 187.

The privilege of poverty is treated as a special incident in the Code of Civil Procedure, and in this sense it can be defined as "a procedure contemplated by the procedural codes by virtue of which persons of limited resources can avail themselves free of charge of the defenders of the poor (lawyers, receivers and attorneys on duty) (...)". (ALESSANDRI RODRÍGUEZ, Fernando, Ley Orgánica de Tribunales (Editorial Nascimiento, 1936), p. 428, in GUTIERREZ LOYOLA, Ivan, El privilegio de pobreza nuevas tendencias. Seminario de titulación para optar al grado de Licenciado en Ciencias Jurídicas y Sociales, Universidad de Concepción, 1993, p. 27).

Chilean Code of Civil Procedure:

Art. 132 (140). If the cited party does not oppose the granting of the privilege within a third day, the information will be rendered and a decision will be made based on the merits of the information and the other background information that has been submitted or that the court orders to be added.

If there is opposition, the incident will be processed in accordance with the general rules.

The appeal of the sentence that accepts the privilege of poverty will be granted only in the devolutive effect.

Art. 591 and Sgts. Organic Code of the Courts (chile)

Art. 591. The privilege of poverty, except in cases in which it is granted by the sole authority of the law, shall be declared by judicial sentence and must be requested from the court to which it corresponds to hear in sole or first instance the matter in which it is to have effect. Those who obtain it will use simple paper in their applications and proceedings and will have the right to be served free of charge by the officials of the judicial order, and by the lawyers, attorneys and junior officers appointed to provide services to poor litigants. Unless the law expressly orders otherwise, they shall also be exempt from the payment of the fines established for litigants; but if they proceed with notorious malice, the court may impose the corresponding fine, commutable to a day's arrest for one twentieth of a living wage.

The processing of the privilege of poverty shall be governed by the Code of Civil Procedure

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Art. 431 of the Chilean Labor Code.

In labor cases, any action, proceeding or diligence of the trial carried out by officials of the court shall be free of charge for the parties. The person in charge of the administrative management of the court shall be responsible for the strict observance both of this gratuity and of the timely performance of the proceedings.
The parties enjoying the privilege of poverty shall be entitled to free legal defense by the respective Legal Aid Corporations or, failing that, by an attorney on duty, or by the system of free defense provided by law. Likewise, they shall have the right that all proceedings in which auxiliary personnel of the administration of justice must intervene shall be carried out in a timely manner and free of charge. Oral defenses may only be carried out by authorized attorneys.

HOW THE ECUADORIAN LEGISLATION DEVELOPS THE JUDICIAL SUBPOENA OF THE LAWSUIT

According to what has been expressed in the development of this investigation, the Ecuadorian legislation does nothing more than opt for one of the doctrines concerning the mechanisms of development of the judicial subpoena of the civil lawsuit.
In said summons, what is done is nothing more than to align itself with a determined doctrinal position. This is reflected in the respective law:
Art. 53 of the Code General Organic Code of Procedure:
" Summons. Reformed by num. 2 of the First Reformatory Provision of the Code s/n, R.O. 31-2S, 7-VII-2017; and Substituted by Num. 1 of Disp. Ref. 5ta of the Law s/n, R.O. 345-S, 8-XII-2020; and by Art. 72 of the Law s/n, R. O. 245-3S, 7-II-2023) - The summons is the act by which the defendant is made aware of the content of the complaint or of the request for a preparatory proceeding and of the orders issued therein. It will be done in person, by means of physical or electronic ballots, or through the means of communication ordered by the judge".
If a party states that it is aware of a certain petition or order or refers to it in writing or in an act of which there is a record in the proceedings, it shall be considered summoned or notified on the date of presentation of the writing or on the date of the act attended.
All summons shall be published in full, that is, with its reasons and minutes of summons in the automatic consultation system of the electronic page of the Judiciary Council, through the electronic and technological means available to the Judiciary, which shall state the

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form of summons or the reasons for which it was not possible to carry out such proceedings.

If the plaintiff has provided the e-mail address of the defendant, the judge will also order that the defendant be notified by e-mail of the extract of the complaint and the initial order, which will be recorded in the system. This does not replace the official summons, except in the cases provided for in this Code.
For its part, the National Court of Justice, through Resolution no. 07-2018, has held:

"……
That the summons is the procedural act by which the defendant is made aware of the existence and content of the claim or preparatory proceedings and the orders issued in the process, which has the substantial mission of making the defendant know that an action has been proposed against him, in order to bind him to the process and exercise his right to defense, plays a fundamental role in relation to due process, enshrined in Article 76, paragraph 7, letters a), b) c) and h) of the Constitution of the Republic. The lack of citation gives rise to the nullity of the process, since it goes precisely against these constitutional principles, by depriving the person of his right to defense; not allowing him to have the time and adequate means to prepare and exercise his defense;" .
Therefore, such activity is essential for the validity of the process, due to the consequences that its non-fulfillment would entail. Thus, there are countless procedural justifications for which the judicial summons of the lawsuit cannot be absent, which in other legislations and doctrines, is also called notification of the lawsuit.

THE PRINCIPLE OF GRATUITY IN THE CIVIL PROCEDURAL FIELD

It is considered a fundamental right that every person, regardless of his economic situation, has the same right to resort without any restriction to the judicial system for the solution of any controversy regarding his interests or rights. All this with the exception that there are costs or expenses, in these matters, that must be considered to be incurred by the parties and that are unavoidable its materialization.
Constitution of the Republic:

Art. 75 of the Constitution of the Republic of Ecuador. Every person has the right to free access to justice and to the effective,

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impartial and expeditious protection of his rights and interests, subject to the principles of immediacy and celerity; in no case shall he be left defenseless. Failure to comply with judicial decisions shall be punishable by law.

THE JUDICIAL CITATION OF THE CIVIL LAWSUIT AND THE PRINCIPLE OF GRATUITY, IN THE CONTEXT OF THE ECUADORIAN LEGISLATION.

The summons (Art. 53 of the COGEP), is a fundamental procedural act since it has the substantial mission of letting the defendant know that an action has been proposed against him, in order to bind him to the process and exercise his right to defense, since among its effects is that of "requiring the summoned to appear before the judge to deduce exceptions"; it also has other effects such as constituting the defendant in possession in bad faith, constituting the debtor in default and interrupting the statute of limitations (Article 64 COGEP). Then we must understand that the summons plays a fundamental role in relation to due process, specifically the right to defense, enshrined in article 76, numeral 7, letters a), b) c) and h) of the Constitution of the Republic, inasmuch as: "(a) No one may be deprived of the right to defense at any stage or grade of the proceeding; (b) To have adequate time and means for the preparation of his defense; (c) To be heard in a timely manner and under equal conditions; and, (h) To present orally or in writing the reasons or arguments with which he believes he is assisted and to reply to the arguments of the other parties; to present evidence and to contradict that which is presented against him." .

The lack of citation gives rise to the nullity of the process, since it violates precisely these constitutional principles, by depriving the person of his right to defense; not allowing him to have the time and adequate means to prepare and exercise his defense, through the formulation of exceptions that he could present in opposition to the claim; It prevents him from being heard at the appropriate time to answer the claim and propose exceptions, which is the term granted by the judge in the order of qualification of the claim; and does not allow him to present his reasons and arguments and reply to those formulated by the plaintiff, to present evidence and contradict those presented against him, which constitutes the "right of contradiction", the basis of due process.

As we have argued in the course of this research work, regarding the gratuitousness of the various proceedings to be carried out by the State, or by procedural necessity of the parties, this procedure is nothing more than a doctrinal orientation that the legislator has accepted and incorporated into our legal system.

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However, and in essence, there will always be many diligences to be carried out, mainly by the parties, and they make the civil process not to enjoy the absence of expenses.
In the specific case of the free of charge in the execution of the judicial summons of the lawsuit (principle accepted by the Ecuadorian legislation), it does not influence the consideration that by that fact alone it can be concluded that the judicial process of the proceeding enjoys free justice. Therefore, it does not affect -in turn- the necessary validity of the rights of access to justice that the plaintiff or the defendant have.
It seems that, according to the Ecuadorian legal system, the fact that the summons of the lawsuit is made free of charge, makes -in turn- that the access to the administration of justice is free", even when all other expenses to be made (expert evidence, for example), must be paid by the party requesting such evidence:
"Article 46.- Obliged to pay the fees. - The fees of the qualified experts shall be paid in a compulsory manner under the terms established in these regulations and in the following manner:
1. By the party requesting the expertise and/or attaching the expert report.
2. In criminal matters, by the State Attorney General's Office, by the parties involved in the proceedings, if the expert report has been requested by them.
3. By the Judiciary Council, through the corresponding provincial directorate, when the judge designates the qualified expert ex officio; in the case of judges of the National Court of Justice, through the General Directorate of the Judiciary Council or the National Directorate delegated for such purpose, unless otherwise determined by law.
When the Judiciary Council is the institution that pays the expert fees, these shall be returned to its favor, via legal costs established by the judge of the case, in accordance with the law, except in the case of the exceptions of gratuity under Article 76 paragraph f) of the Constitution of the Republic of Ecuador, and other legal norms that so provide. This same procedure must be complied with when the judge orders the payment of procedural costs in favor of one of the parties, including the amount of the expert's fees paid by it.
Public institutions that must pay fees for expert opinions must abide by the provisions of the Organic Code of Planning and Public Finances.
Once the expert submits his report, the respective authority shall order the payment of the fees by means of an order, in accordance with the law and these regulations.
In the event that the parties requesting the expertise do not comply

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with the payment ordered by the authority within the established term, default interest will be generated. This shall be without prejudice to the coercive fines that the authority may impose to ensure compliance with the obligation." .
Thus, access to the administration of justice is not totally free, but this does not make it inaccessible for individuals who seek solutions to their conflicts of rights before the respective judges.
We insist then on something we have stated; that is, the cost to be incurred in the materialization of the judicial summons is one of the various possibilities established in the doctrine, therefore, accepted by the Ecuadorian legislation, without this circumstance influencing the validity of the principle of gratuitousness.

Materials and Methods

The present research, which comprehensively examines the topic of procedural due diligence in the judicial context, is of a mixed nature, combining qualitative and quantitative methods to provide a comprehensive and detailed analysis. On the qualitative side, both inductive and deductive approaches are employed, allowing for an in-depth and grounded exploration of the issues addressed. Initially, the study focuses on the judicial citation of the civil lawsuit, examining this process in detail to understand its specific implications and procedures. This preliminary analysis lays the groundwork for a more focused examination of the principle of gratuitousness that governs such procedural diligence, exploring how this principle is implemented and interpreted in different judicial contexts.

In addition, these methods have facilitated an in-depth analysis of the different theoretical views adopted by various legislations in relation to the performance of evidentiary procedural diligence requested by the parties involved in a litigation. This analysis focuses on the critical question of who should bear the costs associated with these procedural activities, an issue that has given rise to considerable academic and practical debate. In this context, the research compares and contrasts the different legal approaches, assessing the advantages and disadvantages of each approach and considering the practical implications for the parties involved in the litigation process.

The study also addresses how these legislative interpretations affect fairness and access to justice, considering the impact of costs on the

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parties' ability to present evidence and defend their interests in the judicial process. Through a comparative analysis, the research highlights emerging trends and persistent debates in the legal arena, providing a broad and nuanced view of how evidentiary due process is handled in different legal systems. Ultimately, the study seeks to offer informed recommendations that can guide future legal reforms and improve the efficiency and fairness of the procedural system.

Results

As a result, this research reveals that, according to the criteria of the Ecuadorian legislator, the principle of free access to the justice system translates exclusively into the exemption of payment for the procedural activity related to the summons to the defendant. This approach suggests that, within the Ecuadorian context, gratuity is directly linked to this specific phase of the judicial process, reflecting a restrictive interpretation of the principle in question. However, by expanding the analysis through the study of foreign legislations, it has become evident that the relationship between the principle of gratuity and the payment for the execution of procedural diligences such as the summons is, in fact, nonexistent. This indicates that the two areas should be considered separate and not interdependent. The research compares how different legal systems address these aspects, highlighting that in many jurisdictions, the existence of an economic cost associated with the summons does not contradict the principle of free access to justice. In these legislations, it is observed that free access to justice is understood as a broader concept, which encompasses the elimination of economic barriers to access to the courts, without necessarily implying the absence of costs in all stages or specific procedures of the judicial process. This allows such jurisdictions to maintain a balance between the sustainability of the judicial system and the equitable access of the parties to it.

Consequently, the study concludes that in those legislations where the judicial summons of the lawsuit entails a cost, these can still be considered as respectful and promoters of the principle of free access to the courts of justice. This is because the principle can be implemented in different ways, depending on the legal context and social priorities of each country. Thus, the analysis suggests a re-evaluation of the conventional interpretations of the principle of gratuity, promoting a more flexible and adaptive understanding that can better reflect the needs and realities of each judicial system.

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Conclusions

Undoubtedly, access to the justice system must be free of charge. This is how it has been understood by legal systems worldwide; a principle about which there is no doubt whatsoever.
It has been catalogued as a right of individuals to go before a judge in order to solve conflicts of interest that otherwise could not be solved in the context of a developed society where the law prevails.
This does not hinder the expenses (mainly legal costs), which the parties must incur and that at the end of the process the respective judge will decide which of the parties will cover them definitively.
In this context, everything related to what it implies to carry out the judicial citation of the civil lawsuit in the person of the defendant, is a diligence that in our point of view has no relation or incidence with the principle of free access to the judicial system; since such access will continue to be free, whether or not the respective expenses to the minister of faith who carries out such diligences have to be paid; all this according to what is ordered by the respective Law.

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