

**ORALITY IN CIVIL AND FAMILY PROCEDURAL MATTERS IN MEXICO: BRIEF REFLECTIONS ON THE PRINCIPLES GOVERNING IT IN THE NATIONAL CODE**

**A ORALIDADE EM MATÉRIA PROCESSUAL CIVIL E FAMILIAR NO MÉXICO: BREVES REFLEXÕES SOBRE OS PRINCÍPIOS QUE A REGEM NO CÓDIGO NACIONAL**

**LA ORALIDAD EN MATERIA PROCESAL CIVIL Y FAMILIAR EN MÉXICO. BREVES REFLEXIONES SOBRE LOS PRINCIPIOS QUE LA RIGEN EN EL CÓDIGO NACIONAL**



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**ABSTRACT**

In Mexico, over approximately the last 20 years, oral procedures have progressively been developed in the conduct of jurisdictional processes in certain legal areas; in 2023, the National Code of Civil and Family Procedures was enacted, in which one of its main paradigms is the inclusion of orality as a form of expressing procedural acts; in order to provide a representative and panoramic understanding of the general criteria that guide judicial practice in these relevant matters, the aforementioned legal framework establishes 17 legal principles, which this paper seeks to review by relating them to the principles that guided proceedings under previous legislation and that have also been recognized in legal doctrine; the purpose of this document is to present a brief overview of the current principles, identifying their legal content and contrasting them with classical doctrinal and legal principles.

**Keywords:** Procedural Principles. Civil and Family Proceedings. National Code in Mexico.

**RESUMO**

No México, ao longo de aproximadamente os últimos 20 anos, vem sendo desenvolvida a forma oral na condução dos processos jurisdicionais em algumas matérias; em 2023 foi criado o Código Nacional de Procedimentos Cíveis e Familiares, no qual um de seus principais paradigmas é a inclusão da oralidade como forma de exteriorização dos atos processuais; para compreender de maneira representativa e panorâmica os critérios gerais que orientarão a prática dos julgamentos nessas relevantes matérias, o referido ordenamento jurídico estabelece 17 princípios legais, os quais este trabalho se propõe a revisar, relacionando-os com os princípios que orientaram os processos em legislações anteriores e que também foram considerados pela doutrina jurídica; pretende-se, neste documento, realizar um breve levantamento dos princípios atuais, identificando seu conteúdo legal e contrastando-os com

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os princípios clássicos, tanto doutrinários quanto legais.

**Palavras-chave:** Princípios Processuais. Processos Cíveis e Familiares. Código Nacional do México.

## **RESUMEN**

En México desde hace alrededor de 20 años a la fecha, se ha venido desarrollado la forma oral en la sustanciación de los procesos jurisdiccionales en algunas materias. En 2023 fue creado el Código Nacional de procedimientos Cíviles y Familiares, en el cual uno de sus principales paradigmas es el de la inclusión de esta forma de exteriorizar los actos procesales. Para conocer de forma representativa y panorámica los criterios generales que orientaran la práctica de los juicios en estas relevantes materias, se establecen 17 principios legales en citado ordenamiento, de los cuales en este escrito se pretende hacer una revisión, relacionándolos con los principios que han orientado a los procesos en leyes anteriores y que han sido considerados en la doctrina jurídica también. Es la intención en este documento, hacer un breve recuento de los principios actuales, identificando el contenido legal de los mismos, contrastándolos con los principios clásicos tanto doctrinales como legales.

**Palabras clave:** Principios Procesales. Juicios Cíviles y Familiares. Código Nacional en México.

## 1 INTRODUCTION

The oral form to develop the jurisdictional processes preponderantly is the way in which the acts that constitute each trial are externalized, being this mostly spoken and only exceptionally are some written aspects used.

Although the use of the oral form is not something new in the Mexican judicial system, it has been consolidating for some years, and is currently tending to be generalized in trials of all disciplines.

Criminal procedural matters were the ones that attracted the spotlight to orality and its benefits in Mexico, currently reaching civil and family matters that are of great breadth and social significance.

In this document we will recount the principles that legally support orality in civil and family trials in Mexico, identifying some contrasts with certain principles of predominantly written processes.

## 2 BACKGROUND

In the Mexican procedural codes that are about to conclude their validity, the predominant form of conducting jurisdictional proceedings was written, in which, although there were spoken proceedings, the rule was that the proceedings were recorded in writing.

Among other factors, this generated a kind of distancing of the judge, of losing immediacy of the proceedings and in many cases the trials were excessively delayed.

Concern was generated in the legal field to change paradigms and turn towards orality. Although there were processes that were developed orally such as labor processes, it was not the predominant trend.

It began with the legal modifications to institute orality in criminal proceedings, followed by other areas such as commercial and recently with the approval of the National Code, the civil and family disciplines.

Although there are guiding principles of the processes that are applicable to both ways of developing, there are some very specific ones for orality.

### JUSTIFICATION:

As the predominant form of civil and family trials has changed in Mexico, it is necessary to study the principles that will govern them, that will continue to be applied and those that will constitute new paradigms for these trials, which are growing in number, since litigation, especially in family matters, has increased exponentially.

By identifying the guiding principles of orality, and contrasting them with those that existed for the written form, we will be able to understand the differences between them and

the advantages that oral trials can offer, trying to ensure that the processes can fulfill their objective of resolving controversies, imparting justice to those who claim it.

### 3 FUNDAMENTAL CONCEPTS

In jurisdictional processes, due to the way in which the acts that constitute them are predominantly carried out, it can be found that they are predominantly written or mostly oral.

As already mentioned, in Mexico for some years and increasingly, the oral form has been instituted and privileged for trials. To understand more clearly, let's look at some elements that characterize it in this context. According to Gordillo López (2022), orality "implies the performance of the main acts of the process through the living word, regardless of whether its content can be collected in written minutes, recordings or filming".

The publishing house Tirant en su aspect: formación (Tirant formación, 2023) considers that "orality and trial techniques play a crucial role in the presentation of arguments, convincing judges and the search for justice" "Through verbal expression, lawyers present their arguments, the parties involved present their testimonies (sic) and judges make informed decisions"

The author Landa Montaña (Landa, 2024) considers, based on the reasoning of the legislators, that orality in the National Code of Civil and Family Procedures is a pillar in the administration of justice "since through this pillar not only the faster and more effective delivery of justice would be achieved, making it more understandable for the citizen who is not a lawyer..."

It has been considered, both from the doctrinal and legislative perspective, that the oral form in the proceedings fosters better conditions for them to fulfill their function and truly resolve the dispute or controversy that is submitted to their opinion.

With the establishment of the preferably oral form, it is hoped that the processes will be more efficient, that time will be reduced and that the understanding of the decisions and, in general, the search for justice will be closer to the litigants.

The aforementioned author Landa Moreno makes an interesting point that is shared in this document, when he refers to the fact that the effectiveness of the processes and the overcoming of the problems or deficiencies that have arisen throughout history, does not lie exclusively in the form, in this case in orality, but in a set of factors that must be addressed for this important and ambitious, as a necessary objective. He mentions this because he believes that in Mexico, at least in the legislative reasoning, it has been taken for granted that, by establishing the oral form in trials, the inconveniences will be resolved.

Regarding the role of lawyers in this paradigm shift, it is logical to understand that there must be complements in their training, to help them develop and strengthen skills in the area of legal argumentation and oratory

### 3.1 PRINCIPLES THAT GOVERN THE JURISDICTIONAL PROCESS DEVELOPED ORALLY

The adjective matter, the judgments, are governed by a series of principles that guide them in their development. Some are issued by doctrine, by the theory elaborated by experts in the legal area, others are derived specifically from the regulations that regulate them.

In jurisdictional processes, certain maxims or paradigms known as principles are identified that guide and regulate in general the development of trials in order to respect aspects that are essential for the proper performance of the same.

In this paper we will focus on reviewing the guiding principles of oral procedure in civil matters in general and family matters in particular, which are defined in the National Code

For our purposes, we are going to identify the principles that are established in the National Code of Civil and Family Procedures of 2023 and that must enter into force throughout the country of Mexico no later than April 1, 2027, which bring together some classic guidelines with some new ones, according to the new paradigms that regulate these processes.

Article 7 of the aforementioned law identifies the procedural principles, let us deal with them, one by one, based on the legal concept and then some considerations of the author.

Article 7. The guiding principles of the system of administration of justice in civil and family matters are:

I. Access to justice. Any person has the right to go before the jurisdictional authority to formulate a specific legal claim of a family nature and the requested jurisdictional authority must provide on their requests;

In Mexico, article 17 of the Constitution establishes the system of administration of justice, by establishing the general guidelines for the prohibition of taking justice by each of the governed using violent means, including violent means, defining that it is the courts that are responsible for the administration of justice, in the case of jurisdictional proceedings and that therefore every person will have access to the courts so that justice can be administered.

The legal principle establishes its content specifically for the matters it regulates, in accordance with the provisions of the Magna Carta.

II. Concentration. Efforts shall be made to conduct the greatest number of procedural proceedings in a single hearing or the fewest procedural proceedings;

This principle is not new, nor are judgments conducted predominantly orally. One of the advantages, so to speak, of orality over written form is that it is feasible to shorten the duration of the proceedings, optimizing the proceedings, bringing together in fewer hearings a greater number of proceedings as long as they are of a similar nature and that they can be brought together.

III. Collaboration. The parties will be encouraged to resolve the conflict themselves at any stage of the procedure, therefore, the jurisdictional authorities will facilitate that they are the ones to put an end to the dispute through conciliatory agreements, except in those cases in which there is violent conduct in any of its forms, or where intransigent rights are discussed;

Although self-composition has always been regulated by the codes of civil procedure, this National Code privileges the ways in which the agreement can resolve the dispute, ending the trial early, in order to facilitate solutions. This is a very relevant paradigm since it strengthens self-composition within heterocomposition, establishing the appropriate limits.

We will have to see in the future, the effects that this strengthening generates, we will see if there are favorable conditions for faster and less cumbersome decisions to be made and procedural efficiency to be achieved.

IV. Continuity. The hearings shall be uninterrupted, exceptionally allowing their suspension in the cases established in this National Code;

This principle is very compatible with the principle of concentration, since they are aimed at making hearings more efficient, so that the immediacy between the parties and the judge is not reduced, so that time is optimized and more is achieved in less.

V. Contradiction. The parties have the right to discuss the facts, legal arguments and evidence of their counterpart, in the terms established in this National Code;

A fundamental issue in the development of jurisdictional proceedings is that which deals with this principle, of contradiction or adversarial as it has been known doctrinally for many years, since it refers to the protection of the right to defend oneself of the subjects, to contradict what has been established by the counterparty in a way that guarantees that they will have sufficient opportunity to say and enforce what is convenient to their right.

VI. Procedural Directorate. The management of the process is entrusted only to the jurisdictional authorities in the first or second instance, as the case may be

In civil matters, for a long time there were processes in which the procedural impulse corresponded almost exclusively to the parties, that is, the push, the movement, the progress of the trial, corresponded to the parties, in such a way that if they did not promote, the process could stagnate until it reaches its abnormal conclusion in extreme cases due to the expiration of the instance. It is important to highlight the responsibility that is currently given to the jurisdictional authority, that is, that it is not feasible for the processes to get bogged down, wasting the time of the participants and violating their rights, due to the procedural behavior of the parties, but that there is a state responsibility that is responsible for avoiding these undesired effects that contradict the search for justice.

This conception of the almost exclusive responsibility of the parties has been reversed and now, as section VI says, it will be the court that is responsible for the process moving forward and fulfilling its effects.

This is undoubtedly an important advance in the search for the efficiency of judicial processes, which must be carried out guaranteeing that the rights of individuals are respected and do not become (in general terms) at least a waste of time.

VII. Procedural Equality. From the initial statement of claim and until the execution of the judgment, people will receive the same treatment, opportunities, rights and procedural burdens without any discrimination. With the exceptions expressly established in this National Code, when the dispute involves the rights of children, adolescents and persons in social groups in vulnerable situations;

Equality is a concept that must be respected and presents specific issues in its development.

As Article 7, section VII, of the National Code clearly identifies, equality means that persons shall receive the same procedural treatment. However, in the section itself it is recognized that there will be exceptions when it comes to matters also established in the law.

Since ancient times, together with the difficulty of defining a value such as justice exactly, it has also been recognized that it is equally relevant to identify the differences between the members of the various human groups in order to give equal treatment to equals and unequal treatment to unequals, since it would be unfair to pretend to ignore the existing asymmetries for the sake of unrestricted equality.

In the thesis of the first chamber of the Supreme Court of Justice of the Nation 1ª/J55/2006, Ninth Epoch, with digital registration 174247, very relevant reasoning is established with respect to equality: "The principle of equality must be understood as the constitutional requirement to treat the unequal equally and the unequal unequal, hence on some occasions making distinctions will be prohibited, while on others it will be allowed or

even constitutionally required." It is stated in the thesis in question that when the Supreme Court of Justice of the Nation hears a matter in which this type of differentiation is made, such distinction must be based on an objective and reasonable basis, since otherwise it could constitute a discriminatory situation.

The principle of equality established in the National Code provides for exceptions to such similar treatment when the rights of children, adolescents and persons in vulnerable social groups are involved in the dispute, that is, seeking to create the conditions that will make it possible to achieve the balance that will make true equal and fair treatment possible.

VIII. Immediacy. Direct, personal and non-delegable contact of the jurisdictional authority with the parties and the evidence, except for the exceptions provided for in this National Code;

It is also a procedural paradigm that is also known as procedural immediacy, that is, the proximity of the judge to what is developed in the different stages of the procedure, gives rise to everything being known through the senses of the judge and not in a mediate, distant, perhaps incomplete way, as can happen in preponderantly written processes.

IX. Best interests of the child. Observance that must be given in order to ensure that the rights of children or adolescents prevail over the other rights that may be at stake in the litigation;

Although, as we have already mentioned, principles that guide and regulate the jurisdictional process are not of recent existence, the incorporation of maxims such as the best interests of the child as another procedural principle is a significant advance in achieving respect for the different rights of litigants.

The fact that it is in matters as sensitive as family matters that the need to guide actions and resolutions by this principle has been defined and included is an achievement of particular relevance for litigants, as well as for the entire national rule of law.

X. Procedural impulse. The parties have the power to request the necessary measures to prevent the suspension of the proceedings, regardless of the principle of procedural direction that corresponds to the jurisdictional authority;

An interesting combination of principles is made in the National Code. When commenting on section VI of Article 7, we mentioned that with the establishment of the Procedural Directorate, efforts are made to prevent the processes from ending up abandoned by the litigants until the expiration time arrives. However, the fact of assigning to the State, to

the jurisdictional body, the responsibility for the conduct and completion of the process, would seem to render null and void, eliminating the so-called procedural impulse of the parties, that is, what for a long time was known as that progress would be according to the impulse of the parties. Now, by combining the procedural conduct with the participation that the parties may have consisting of a kind of requirement to the authority, of a call to attention if it is visualized that the necessary measures are not being taken to avoid the paralysis of the process, it is very interesting, since all efforts are aimed at ensuring that the trials do not end up abandoned and on the contrary advance to their due conclusion. either by the exercise of heterocomposition or by some recognized means of self-composition.

XI. Procedural fairness. Those who participate in the process shall adjust their conduct to the dignity of justice, to the respect they owe to each other, to probity and good faith;

The jurisdictional process is an institution of good faith, where all the participating subjects must conduct themselves truthfully, honestly, without trying to make the judicial authority or the other subjects fall or keep in error.

This principle is preserved in the National Code, since for some time it has been recognized as a fundamental maxim in all jurisdictional processes, the need to conduct oneself truthfully.

Perhaps this is one of the most attacked principles in reality, since it has become a common practice for the subjects in a process, whatever type of participation, to carry out dishonest activities, use forged documents, offer statements that are not in line with reality, offer or receive gifts in order to compromise in practices that lack legality. however, those behaviors that violate this principle should never be tolerated, much less carried out.

XII. Open litis. In family matters, the litis is not limited to the claim and the response, or, as the case may be, to the counterclaim and the answer to it, but the jurisdictional authority must make merit of the constitutive, modifying or extinguishing facts, produced during the substantiation of the process and duly proven, even if they have not been invoked in a timely manner as new facts;

In the development of contentious trials, a procedural moment is always identified at some stage, where the litis is defined, that is, the scope of the controversy. Knowing exactly what the litis consists of, the conflict, what is alleged, the judge takes this as a basis and conducts the process, based on the premise of the determination of the litis. The National Code opens up a different possibility with the inclusion of this principle, which will mean that the litis can be modified or supplemented by the jurisdictional authority, even if the parties have not asserted these concepts.

It is important to emphasize that this principle is included exclusively for family matters, in order to achieve greater protection of rights and defenses in that area that regulates situations that are so sensitive and impactful to the lives of the participants.

XIII. Orality. The process shall be conducted in oral hearings, except for the exceptions provided for in this National Code and those which, in duly founded and reasoned cases, the jurisdictional authority considers;

As already mentioned in the first pages of this document, the way in which the constituent acts of the trials are externalized, they can preferably be oral or written. In Mexico, for years the trend towards the predominance of orality has been identified, due to the advantages that it can represent in speed, proximity, immediacy, efficiency, among other factors, that the processes, the hearings that make them up are carried out in this way.

XIV. Gender perspective. It is a scientific, analytical, and political view of women and men. It aims to eliminate the causes of gender oppression such as inequality, injustice and the hierarchization of people based on gender. Promotes substantive gender equality through the equity, advancement and well-being of women; contributes to building a society where women and men have equal value, equal rights and opportunities to access economic resources and political and social representation in decision-making spheres;

Just as the inclusion of the best interests of the child is a good thing, considering this principle of the gender perspective as necessary to observe and apply is highly relevant in order to ensure that the resolutions in the matters regulated by the National Code are more in line with reality and therefore more efficient in resolving the conflicts that have arisen for their resolution. It should result in the inclusion of a principle such as this, which is taken into account for judicial decisions, factors that were not necessarily considered previously.

XV. Preclusion. Failure to exercise procedural rights at the corresponding stage extinguishes the opportunity to exercise them at the subsequent stage;

The extinguishing figure of preclusion is one of the most recognized in the procedural field. They preclude procedural rights or powers by the combination between the inactivity or non-exercise of said powers and the passage of time. But the preclusion not only contemplates the extinction due to inactivity, but also terminates a procedural right when it has already been exercised and this is unrepeatable, generating that for this purpose the procedural power is also extinguished, not because it is not exercised, on the contrary, because it is consummated.

The principle established in this section XV refers only to the option of not exercising procedural powers in a timely manner, not identifying the other aspect of the figure of preclusion.

XVI. Privacy. In family matters, access to hearings is reserved for the parties and those who must appear in accordance with the law, and

XVII. Advertising. In civil matters, the hearings shall be public, in accordance with the provisions of this National Code, by the Laws on the Protection of Personal Data, Transparency and Access to Public Information, and other applicable laws in their respective areas of competence.

Because of the relationship between these two principles, we will deal with them together. The rule, let's say, is that it has always been considered that hearings must be public, establishing it as a procedural formality in the various adjective normative bodies. Likewise, exceptions to the public nature of hearings have been identified in certain topics and problems.

The National Code makes a very clear declaration, establishing that in family matters access to hearings will be restricted. It should be considered that by virtue of the sensitivity of family issues, the protection of the best interests of the child, among other factors, is that it is defined that in family matters hearings will break the generic principle of publicity.

#### **4 CONCLUSION**

Orality as a way of externalizing procedural acts has gained great presence in national territory in recent years. Although orality has always existed, expanding it to be the predominant form in matters of the most relevant such as the criminal and commercial spheres and now with the creation of the National Code of Civil and Family Procedures, these broad areas will substantiate their processes in a predominantly spoken way, defining a trend that seems to have no retreat in the country.

This procedural development or substantiation will be governed by the principles established in Article 7 of the National Code, of which we can identify some classic, pre-existing ones, such as preclusion, immediacy, continuity, contradiction, among others. Some more that show variants to what has traditionally been understood by them, imprinting different or complementary characteristics to civil and family proceedings, such as procedural impulse, publicity. There is one more category of principles that have no direct precedent in civil legislation as guiding paradigms for the development of trials and that come to establish new bases in these processes, although there was some recognition or mention of them in previous legislation, such as that of open litis for family matters or that of collaboration.

A world of possibilities opens up for civil and family matters in adjective matters with the entry into force of the National Code of Civil and Family Procedures, we will see its results in some time, hoping that it will be a determining element for the achievement of true procedural effectiveness in respect of the rights of the participants in the processes and the rule of law in Mexico.

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hearings a greater number of proceedings as long as they are of a similar nature and that they can be brought together.

XX. Collaboration. The parties will be encouraged to resolve the conflict themselves at any stage of the procedure, therefore, the jurisdictional authorities will facilitate that they are the ones to put an end to the dispute through conciliatory agreements, except in those cases in which there is violent conduct in any of its forms, or where intransigent rights are discussed;

Although self-composition has always been regulated by the codes of civil procedure, this National Code privileges the ways in which the agreement can resolve the dispute, ending the trial early, in order to facilitate solutions. This is a very relevant paradigm since it strengthens self-composition within heterocomposition, establishing the appropriate limits.

We will have to see in the future, the effects that this strengthening generates, we will see if there are favorable conditions for faster and less cumbersome decisions to be made and procedural efficiency to be achieved.

XXI. Continuity. The hearings shall be uninterrupted, exceptionally allowing their suspension in the cases established in this National Code;

This principle is very compatible with the principle of concentration, since they are aimed at making hearings more efficient, so that the immediacy between the parties and the judge is not reduced, so that time is optimized and more is achieved in less.

XXII. Contradiction. The parties have the right to discuss the facts, legal arguments and evidence of their counterpart, in the terms established in this National Code;

A fundamental issue in the development of jurisdictional proceedings is that which deals with this principle, of contradiction or adversarial as it has been known doctrinally for many years, since it refers to the protection of the right to defend oneself of the subjects, to contradict what has been established by the counterparty in a way that guarantees that they will have sufficient opportunity to say and enforce what is convenient to their right.

XXIII. Procedural Directorate. The management of the process is entrusted only to the jurisdictional authorities in the first or second instance, as the case may be

In civil matters, for a long time there were processes in which the procedural impulse corresponded almost exclusively to the parties, that is, the push, the movement, the progress of the trial, corresponded to the parties, in such a way that if they did not promote, the process could stagnate until it reaches its abnormal conclusion in extreme cases due to the expiration of the instance. It is important to highlight the responsibility that is currently given to the

jurisdictional authority, that is, that it is not feasible for the processes to get bogged down, wasting the time of the participants and violating their rights, due to the procedural behavior of the parties, but that there is a state responsibility that is responsible for avoiding these undesired effects that contradict the search for justice.

This conception of the almost exclusive responsibility of the parties has been reversed and now, as section VI says, it will be the court that is responsible for the process moving forward and fulfilling its effects.

This is undoubtedly an important advance in the search for the efficiency of judicial processes, which must be carried out guaranteeing that the rights of individuals are respected and do not become (in general terms) at least a waste of time.

XXIV. Procedural Equality. From the initial statement of claim and until the execution of the judgment, people will receive the same treatment, opportunities, rights and procedural burdens without any discrimination. With the exceptions expressly established in this National Code, when the dispute involves the rights of children, adolescents and persons in social groups in vulnerable situations;

Equality is a concept that must be respected and presents specific issues in its development.

As Article 7, section VII, of the National Code clearly identifies, equality means that persons shall receive the same procedural treatment. However, in the section itself it is recognized that there will be exceptions when it comes to matters also established in the law.

Since ancient times, together with the difficulty of defining a value such as justice exactly, it has also been recognized that it is equally relevant to identify the differences between the members of the various human groups in order to give equal treatment to equals and unequal treatment to unequals, since it would be unfair to pretend to ignore the existing asymmetries for the sake of unrestricted equality.

In the thesis of the first chamber of the Supreme Court of Justice of the Nation 1ª/J55/2006, Ninth Epoch, with digital registration 174247, very relevant reasoning is established with respect to equality: "The principle of equality must be understood as the constitutional requirement to treat the unequal equally and the unequal unequal, hence on some occasions making distinctions will be prohibited, while on others it will be allowed or even constitutionally required." It is stated in the thesis in question that when the Supreme Court of Justice of the Nation hears a matter in which this type of differentiation is made, such distinction must be based on an objective and reasonable basis, since otherwise it could constitute a discriminatory situation.

The principle of equality established in the National Code provides for exceptions to such similar treatment when the rights of children, adolescents and persons in vulnerable social groups are involved in the dispute, that is, seeking to create the conditions that will make it possible to achieve the balance that will make true equal and fair treatment possible.

XXV. Immediacy. Direct, personal and non-delegable contact of the jurisdictional authority with the parties and the evidence, except for the exceptions provided for in this National Code;

It is also a procedural paradigm that is also known as procedural immediacy, that is, the proximity of the judge to what is developed in the different stages of the procedure, gives rise to everything being known through the senses of the judge and not in a mediate, distant, perhaps incomplete way, as can happen in preponderantly written processes.

XXVI. Best interests of the child. Observance that must be given in order to ensure that the rights of children or adolescents prevail over the other rights that may be at stake in the litigation;

Although, as we have already mentioned, principles that guide and regulate the jurisdictional process are not of recent existence, the incorporation of maxims such as the best interests of the child as another procedural principle is a significant advance in achieving respect for the different rights of litigants.

The fact that it is in matters as sensitive as family matters that the need to guide actions and resolutions by this principle has been defined and included is an achievement of particular relevance for litigants, as well as for the entire national rule of law.

XXVII. Procedural impulse. The parties have the power to request the necessary measures to prevent the suspension of the proceedings, regardless of the principle of procedural direction that corresponds to the jurisdictional authority;

An interesting combination of principles is made in the National Code. When commenting on section VI of Article 7, we mentioned that with the establishment of the Procedural Directorate, efforts are made to prevent the processes from ending up abandoned by the litigants until the expiration time arrives. However, the fact of assigning to the State, to the jurisdictional body, the responsibility for the conduct and completion of the process, would seem to render null and void, eliminating the so-called procedural impulse of the parties, that is, what for a long time was known as that progress would be according to the impulse of the parties. Now, by combining the procedural conduct with the participation that the parties may

have consisting of a kind of requirement to the authority, of a call to attention if it is visualized that the necessary measures are not being taken to avoid the paralysis of the process, it is very interesting, since all efforts are aimed at ensuring that the trials do not end up abandoned and on the contrary advance to their due conclusion. either by the exercise of heterocomposition or by some recognized means of self-composition.

XXVIII. Procedural fairness. Those who participate in the process shall adjust their conduct to the dignity of justice, to the respect they owe to each other, to probity and good faith;

The jurisdictional process is an institution of good faith, where all the participating subjects must conduct themselves truthfully, honestly, without trying to make the judicial authority or the other subjects fall or keep in error.

This principle is preserved in the National Code, since for some time it has been recognized as a fundamental maxim in all jurisdictional processes, the need to conduct oneself truthfully.

Perhaps this is one of the most attacked principles in reality, since it has become a common practice for the subjects in a process, whatever type of participation, to carry out dishonest activities, use forged documents, offer statements that are not in line with reality, offer or receive gifts in order to compromise in practices that lack legality. however, those behaviors that violate this principle should never be tolerated, much less carried out.

XXIX. Open litis. In family matters, the litis is not limited to the claim and the response, or, as the case may be, to the counterclaim and the answer to it, but the jurisdictional authority must make merit of the constitutive, modifying or extinguishing facts, produced during the substantiation of the process and duly proven, even if they have not been invoked in a timely manner as new facts;

In the development of contentious trials, a procedural moment is always identified at some stage, where the litis is defined, that is, the scope of the controversy. Knowing exactly what the litis consists of, the conflict, what is alleged, the judge takes this as a basis and conducts the process, based on the premise of the determination of the litis. The National Code opens up a different possibility with the inclusion of this principle, which will mean that the litis can be modified or supplemented by the jurisdictional authority, even if the parties have not asserted these concepts.

It is important to emphasize that this principle is included exclusively for family matters, in order to achieve greater protection of rights and defenses in that area that regulates situations that are so sensitive and impactful to the lives of the participants.

XXX. Orality. The process shall be conducted in oral hearings, except for the exceptions provided for in this National Code and those which, in duly founded and reasoned cases, the jurisdictional authority considers;

As already mentioned in the first pages of this document, the way in which the constituent acts of the trials are externalized, they can preferably be oral or written. In Mexico, for years the trend towards the predominance of orality has been identified, due to the advantages that it can represent in speed, proximity, immediacy, efficiency, among other factors, that the processes, the hearings that make them up are carried out in this way.

XXXI. Gender perspective. It is a scientific, analytical, and political view of women and men. It aims to eliminate the causes of gender oppression such as inequality, injustice and the hierarchization of people based on gender. Promotes substantive gender equality through the equity, advancement and well-being of women; contributes to building a society where women and men have equal value, equal rights and opportunities to access economic resources and political and social representation in decision-making spheres;

Just as the inclusion of the best interests of the child is a good thing, considering this principle of the gender perspective as necessary to observe and apply is highly relevant in order to ensure that the resolutions in the matters regulated by the National Code are more in line with reality and therefore more efficient in resolving the conflicts that have arisen for their resolution. It should result in the inclusion of a principle such as this, which is taken into account for judicial decisions, factors that were not necessarily considered previously.

XXXII. Preclusion. Failure to exercise procedural rights at the corresponding stage extinguishes the opportunity to exercise them at the subsequent stage;

The extinguishing figure of preclusion is one of the most recognized in the procedural field. They preclude procedural rights or powers by the combination between the inactivity or non-exercise of said powers and the passage of time. But the preclusion not only contemplates the extinction due to inactivity, but also terminates a procedural right when it has already been exercised and this is unrepeatable, generating that for this purpose the procedural power is also extinguished, not because it is not exercised, on the contrary, because it is consummated.

The principle established in this section XV refers only to the option of not exercising procedural powers in a timely manner, not identifying the other aspect of the figure of preclusion.

XXXIII. Privacy. In family matters, access to hearings is reserved for the parties and those who must appear in accordance with the law, and

XXXIV. Advertising. In civil matters, the hearings shall be public, in accordance with the provisions of this National Code, by the Laws on the Protection of Personal Data, Transparency and Access to Public Information, and other applicable laws in their respective areas of competence.

Because of the relationship between these two principles, we will deal with them together. The rule, let's say, is that it has always been considered that hearings must be public, establishing it as a procedural formality in the various adjective normative bodies. Likewise, exceptions to the public nature of hearings have been identified in certain topics and problems.

The National Code makes a very clear declaration, establishing that in family matters access to hearings will be restricted. It should be considered that by virtue of the sensitivity of family issues, the protection of the best interests of the child, among other factors, is that it is defined that in family matters hearings will break the generic principle of publicity.

#### **4 CONCLUSION**

Orality as a way of externalizing procedural acts has gained great presence in national territory in recent years. Although orality has always existed, expanding it to be the predominant form in matters of the most relevant such as the criminal and commercial spheres and now with the creation of the National Code of Civil and Family Procedures, these broad areas will substantiate their processes in a predominantly spoken way, defining a trend that seems to have no retreat in the country.

This procedural development or substantiation will be governed by the principles established in Article 7 of the National Code, of which we can identify some classic, pre-existing ones, such as preclusion, immediacy, continuity, contradiction, among others. Some more that show variants to what has traditionally been understood by them, imprinting different or complementary characteristics to civil and family proceedings, such as procedural impulse, publicity. There is one more category of principles that have no direct precedent in civil legislation as guiding paradigms for the development of trials and that come to establish new bases in these processes, although there was some recognition or mention of them in previous legislation, such as that of open litis for family matters or that of collaboration.

A world of possibilities opens up for civil and family matters in adjective matters with the entry into force of the National Code of Civil and Family Procedures, we will see its results in some time, hoping that it will be a determining element for the achievement of true procedural effectiveness in respect of the rights of the participants in the processes and the rule of law in Mexico.

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