



Alternative obligations under the perspective of the ecuadorian civil code

Las obligaciones alternativas bajo la perspectiva del código civil ecuatoriano

Edgar Paúl Zúñiga-Hurtado
edgarpzh@gmail.com

Universidad Estatal de Milagro, Milagro, Guayas Ecuador
<https://orcid.org/0000-0002-2620-6993>

Narcisa-de-Jesús Hurtado-Macías
damadelajusticia@hotmail.com

Red de Investigación Koinonía. Milagro, Guayas Ecuador
<https://orcid.org/0000-0001-9870-787X>

ABSTRACT

The aim of the research is to analyse alternative obligations from the perspective of the Ecuadorian Civil Code. By means of a descriptive research approach with a bibliographic design. Alternative obligations represent a modality of performance in which the debtor is entitled to choose between several benefits to fulfil his obligation. These obligations are regulated in the Ecuadorian Civil Code and present specific characteristics such as the plurality of benefits and the creditor's powers. There are different classifications of alternative obligations, such as simple, optional and conjunctive, each with its particularities regarding performance and non-performance. As to the manner of performance, the obligor may perform by his choice, the obligee's choice or by agreement between the parties. On the other hand, non-performance of the alternative obligations may occur due to the obligor's lack of choice, due to supervening impossibility or due to the obligor's fault.

Descriptors: legislation; natural law; law enforcement. (Source: UNESCO Thesaurus).

RESUMEN

La investigación tiene por objetivo analizar las obligaciones alternativas bajo la perspectiva del código civil ecuatoriano. Mediante un enfoque de investigación descriptiva con un diseño bibliográfico. Las obligaciones alternativas representan una modalidad de cumplimiento en la cual el deudor está facultado para elegir entre varias prestaciones para cumplir con su obligación. Estas obligaciones se regulan en el Código Civil Ecuatoriano y presentan características específicas como la pluralidad de prestaciones y las facultades del acreedor. Existen distintas clasificaciones de las obligaciones alternativas, tales como las simples, facultativas y conjuntivas, cada una con sus particularidades en cuanto al cumplimiento y al incumplimiento. En cuanto a la forma de cumplir, el deudor puede hacerlo mediante su elección, la elección del acreedor o por acuerdo entre las partes. Por otro lado, el incumplimiento de las obligaciones alternativas puede ocurrir por falta de elección del deudor, por imposibilidad sobrevenida o por culpa del deudor.

Descriptores: legislación; derecho natural; aplicación de la ley. (Fuente: Tesoro UNESCO).

Received: 24/02/2024. Revised: 28/02/2024. Approved: 27/03/2024. Published: 01/04/2024.

Research articles section



INTRODUCTION

In this section, the definition and characteristics of alternative obligations will be dealt with comprehensively. These obligations are distinguished by the fact that the obligor is obliged to perform an obligation, but has several options available to carry it out. During the analysis, the fundamental elements that make up these obligations will be examined in depth, highlighting in particular their highly flexible nature and their capacity to adapt to the particular circumstances of each case. In addition, all the characteristics and qualities of these alternative obligations will be thoroughly examined, providing a complete and exhaustive vision of their operation and applicability in the legal sphere.

To this end, the criteria and elements that determine the existence and validity of these obligations will be analysed in detail, as well as the legal consequences that derive from their compliance or non-compliance. In short, this detailed analysis of alternative obligations will offer a comprehensive and solid understanding of this important area of law, providing readers with the necessary tools to adequately face any situation involving this type of obligations. In addition, the historical and evolutionary aspects of alternative obligations will be addressed, analysing their origin and development over time. The different legal systems in which these obligations are recognised will be examined, highlighting the peculiarities of each one. It will also study how alternative obligations are handled in the international sphere, paying attention to the treaties and conventions that regulate this subject.

This analysis will allow us to understand the evolution and changes that these obligations have undergone throughout history, as well as their value and relevance in the global context. Furthermore, the effects and consequences of alternative obligations on legal relations will be discussed in depth. The impact of the debtor's choice of a particular option and how it affects the rights and obligations of the parties involved will be examined. It will also analyse the legal mechanisms available to resolve disputes and controversies related to these obligations, considering aspects such as the interpretation of contracts, competent jurisdiction and alternative dispute resolution methods. This analysis will provide a more comprehensive understanding of the implications and repercussions of alternative obligations in the legal sphere.

In terms of case law, an exhaustive analysis will be made of the judgments and court decisions that have dealt with cases related to alternative obligations. The arguments presented by the parties and how the courts have interpreted and applied the current legislation will be evaluated, considering different legal systems and legal contexts. This will provide a practical and concrete insight into how such situations are dealt with and resolved in practice, as well as the evolution of judicial interpretation in relation to alternative obligations. In addition, the economic and commercial implications of alternative obligations will be explored.

It will analyse how these obligations can influence business decision making and how they are handled in commercial contracts, considering aspects such as contractual risk, efficient allocation of resources and negotiation strategies. The risks and benefits associated with such obligations will be examined, as well as the strategies used by firms to minimise these risks. This will provide an understanding of the importance and relevance of alternative obligations in the economic and commercial environment.

Based on the above, the research aims to analyse alternative obligations from the perspective of the Ecuadorian Civil Code.

METHOD

In order to address the issue of alternative obligations in the Ecuadorian Civil Code, a descriptive research approach with a bibliographic design has been chosen. This method is based on the exhaustive analysis of primary and secondary sources relevant to the Ecuadorian legal sphere, such as the Civil Code itself, relevant jurisprudence, legal treatises, academic articles and other specialised publications.

The research process has been developed in three interrelated phases:



In the first phase, an exhaustive and systematic search for relevant information on Alternative Obligations in the context of the Ecuadorian Civil Code was carried out. Thirteen reliable and updated sources were selected that addressed both theoretical and practical aspects of this topic.

In the second phase, a detailed and rigorous analysis of the different concepts, principles and regulations related to alternative obligations was carried out. This analysis was carried out from an analytical-synthetic perspective, which made it possible to break down the information into key elements, identify patterns and relationships, and synthesise the findings in a coherent and comprehensible manner.

In the third part, the results obtained from the analysis were interpreted and the corresponding section of the scientific article was drafted. Academic writing tools were used to structure the information in a clear, coherent and argumentative way, in order to present the findings in an accessible and convincing way for the demanding audience to whom the article is addressed.

This analytical-synthetic method has allowed for an in-depth study of alternative obligations within the framework of the Ecuadorian Civil Code, providing a solid basis for the understanding and critical analysis of this important legal institution.

RESULTS

Based on the material scrutinised, the results of the research are presented:

Legal framework in the Ecuadorian civil code

The legal framework of the Ecuadorian Civil Code establishes the specific bases and regulations governing alternative obligations in the country. This section will examine in detail the numerous relevant articles of the code that define and regulate this type of obligations, highlighting their importance in the Ecuadorian legal landscape. In addition, it will address the most common alternative obligations in Ecuadorian law, providing concrete examples and analysing their application in various legal scenarios. It will also underline the relevance of rigorously complying with these rules to ensure absolute legal certainty in contractual relations, as alternative obligations play a vital role in the preservation of fairness and compliance with the agreements established between the parties (Martínez-Almeida, 2023).

As a consequence of their broad transcendence and their close relationship with the exercise of citizens' rights and duties, it is essential to fully understand the normative and jurisprudential framework surrounding alternative obligations in Ecuador. In this way, individuals and entities will be able to act responsibly, avoid conflicts and contribute to the strengthening of the legal environment in the country. In this sense, reforms and modifications have been introduced that have contributed to the updating and modernisation of the rules governing alternative obligations (Jácome-Aguirre et al. 2023).

These modifications have been the result of a process of analysis and deliberation carried out by legal experts, who have taken into account the demands and perspectives of the legal community and society in general. It is also relevant to highlight that alternative obligations represent a flexible legal tool that allows the parties involved in a contract to establish different options for fulfilling their commitments. This means that, in case of non-compliance with one of the options, the other option can be executed to guarantee the fulfilment of the obligation (González-Pesántes, 2017). This feature of alternative obligations provides the parties with greater security and flexibility in the management of their contractual obligations (López-Díaz, 2020).

On the other hand, it is essential to mention that alternative obligations are not infinite, but must be limited and clearly and precisely defined in the corresponding contract. This implies that the parties must establish which options are available for the performance of the obligation and how their performance should be assessed. These aspects should be considered and drafted in a detailed and precise manner in the contract, in order to avoid ambiguities, conflicts and possible divergent interpretations in the future. Additionally, it is necessary to remember that the



performance of alternative obligations must be carried out in good faith, that is, in an honest and loyal manner (Hinestrosa, 2019).

This implies that the parties must act diligently and responsibly to comply with the provisions of the contract, avoiding any act or procedure that could unfairly prejudice the counterparty. Good faith is considered a fundamental principle in the field of alternative obligations and its application contributes to maintaining a climate of trust and mutual respect between the parties (Schopf-Olea, 2018). In conclusion, alternative obligations occupy a relevant and very important place in the Ecuadorian legal and juridical framework. Their regulation and proper implementation are essential to ensure legal certainty, fairness and compliance with the agreements established between the parties (Zúñiga-Hurtado & Hurtado-Macías, 2023).

It is essential to fully understand the bases and regulations that govern them, as well as to act responsibly and in good faith in their compliance. In this way, the country's legal environment can be strengthened and consolidated, promoting justice and respect for citizens' rights and duties. Only by doing so will it be possible to achieve a sound legal system that benefits society as a whole and promotes confidence and economic development. All citizens must be aware of the importance of these obligations and take appropriate measures to fulfil them effectively. This is the only way to ensure a favourable legal environment and a fair and equitable society.

Characteristics of alternative obligations

Alternative obligations are characterised by the fact that they offer the possibility of fulfilling an obligation through the performance of two or more different obligations. These performances may be of a different nature or have different degrees of performance, which broadens the options available to the obligor. In addition, these obligations allow the obligor to have a choice between the different performances, which gives the obligor greater flexibility to perform its obligation according to its individual needs or preferences. On the other hand, the obligee also has certain powers in relation to alternative obligations. For example, the obligee has the ability to demand performance of one of the benefits offered by the obligor.

In some cases, the obligee can even demand performance of all performances in certain specific circumstances. This additional power gives the obligee greater control over how the obligation is performed and gives the obligee the possibility to select the performance that best suits its own needs or preferences, alternative obligations have advantages for both the obligor and the obligee. The obligor can adapt the performance of his obligation according to his personal circumstances, while the obligee has the possibility to select the performance that best suits him. These characteristics make alternative obligations an option to consider in certain contracts and transactions, as they allow for greater flexibility and customisation in the performance of obligations (Rojas-Ulloa, 2022).

Moreover, by providing the option to choose between different performances, they encourage negotiation and mutual agreement, thus strengthening the relationship between both parties. Alternative obligations can also promote economic efficiency by allowing parties to adjust to changing circumstances and take advantage of opportunities that might not be possible with rigid, one-size-fits-all obligations. Finally, such obligations can be particularly useful in cases where the needs and preferences of both parties are varied and do not fit into a single type of performance. In summary, alternative obligations offer a flexible and adaptive framework for the performance of obligations, which can be beneficial for both the obligor and the obligee in various contexts and situations (Porfírio-de-Sá-Lima, 2023) (Mera-Gómez & Jaramillo-León, 2022); based on the above, the characteristics of alternative obligations are summarised:

Plurality of benefits: One of the characteristics of alternative obligations is the existence of a plurality of performances, i.e. the obligor is obliged to perform two or more different actions in order to fulfil its obligation. These performances may be of a different nature, for example, to deliver a sum of money or to perform a certain work. The plurality of performances provides the obligor with options for performing its obligation, which may result in greater flexibility and adaptability to changing circumstances. However, it is important to note that the obligor is only obliged to perform one performance, not all (Rosales, 2019).



Choice on the part of the obligor: In alternative obligations, the obligor has the power to choose which of the performances it will make in order to fulfil its obligation. This choice is subject to certain conditions and limits established in the contract or in the law. The obligor must exercise its choice in good faith and within the prescribed time limits. However, it is important to mention that if the obligor does not make the choice within the stipulated time limit, he will be deemed to have chosen the performance that is least burdensome for him. The possibility of choice on the part of the obligor provides flexibility and makes it possible to adapt the performance of the obligation to its particular needs and circumstances (Goldenberg-Serrano, 2019).

Creditor's powers: The creditor in alternative obligations has certain powers in relation to the debtor's performance of the obligation. The obligee may demand performance of one of the performances offered by the obligor, provided that this choice is permitted by contract or by law. In addition, in certain cases, the obligee may be entitled to require performance of all the obligations. However, this power is subject to certain conditions and limitations laid down in the contract or by law. The exercise of these powers by the obligee aims to ensure the performance of the obligation and to protect its interests (Barcia-Lehmann & Rivera-Restrepo, 2019).

CONCLUSION

Alternative obligations represent a modality of performance in which the obligor is entitled to choose between several performances to fulfil its obligation. These obligations are regulated in the Ecuadorian Civil Code and present specific characteristics such as the plurality of benefits and the creditor's powers. There are different classifications of alternative obligations, such as simple, optional and conjunctive, each one with its particularities regarding performance and non-performance. As to the manner of performance, the obligor may perform by his choice, the obligee's choice or by agreement between the parties. On the other hand, non-performance of the alternative obligations may occur due to the obligor's lack of choice, due to supervening impossibility or due to the obligor's fault. Finally, these obligations are extinguished when one of the performances is fulfilled, when it is impossible to fulfil all the performances or by termination of the contract. Alternative obligations are a relevant topic in the legal field and it is important to understand their implications for the proper performance of contractual obligations.

FINANCING

Non-monetary

CONFLICT OF INTEREST

There is no conflict of interest with persons or institutions involved in the research.

ACKNOWLEDGEMENTS

To the jurists involved in the civil code.

REFERENCES

- Barcia-Lehmann, Rodrigo, & Rivera-Restrepo, José Maximiliano. (2019). El derecho de opción del acreedor ante el incumplimiento contractual en el Derecho de remedios europeo [The option of the creditor before the breach of contract in the European Remedies law]. *Ius et Praxis*, 25(3), 19-68. <https://dx.doi.org/10.4067/S0718-00122019000300019>
- Goldenberg-Serrano, Juan Luis. (2019). ¿Existe un deber del deudor de conocer e informar su situación de insolvencia al tiempo de contratar? [Is there a duty of the debtor to know and inform its insolvency at the time of contracting?]. *Revista de derecho (Valdivia)*, 32(2), 101-121. <https://dx.doi.org/10.4067/S0718-09502019000200101>
- González-Pesántes, E. (2017). Las obligaciones civiles y sus fuentes [Civil obligations and their sources]. *Sur Academia: Revista Académica-Investigativa De La Facultad Jurídica, Social Y Administrativa*, 4(7).



- Hinestrosa, Fernando. (2019). Notas sobre la responsabilidad por incumplimiento de las obligaciones [Notes on liability for breach of obligations]. *Revista de Derecho Privado*, (36), 5-25. <https://doi.org/10.18601/01234366.n36.0>
- Jácome-Aguirre, G., Pérez Rosales, D., & Arguello Almeida, A. (2023). ¿Por qué el Código Civil ecuatoriano equipara la culpa grave y el dolo? Análisis jurídico sobre la culpabilidad, su aplicación y finalidad [Why does the Ecuadorian Civil Code equate gross negligence and malice? Legal analysis on culpability, its application and purpose]. *USFQ Law Review*, 10(2). <https://doi.org/10.18272/ulr.v10i2.3000>
- López-Díaz, Patricia. (2020). Obligaciones y responsabilidad civil [Obligations and civil liability]. *Revista chilena de derecho privado*, (34), 275-301. <https://dx.doi.org/10.4067/S0718-80722020000100275>
- Martínez-Almeida, Álvaro. (2023). Sobre la naturaleza de la indivisibilidad de una obligación: ¿realmente es posible dividir una prestación? [On the nature of the indivisibility of an obligation: is it really possible to divide a performance?]. *USFQ Law Review*, 10(2). <https://doi.org/10.18272/ulr.v10i2.3033>
- Mera-Gómez, M. J., & Jaramillo-León, A. A. (2022). Encubrimiento de la Capacidad Económica del Alimentante en Perjuicio de los Niños, Niñas y Adolescentes [Concealment of the economic capacity of the breadwinner to the detriment of children and adolescents]. *Revista Imaginario Social*, 5(2).
- Porfirio-de-Sá-Lima, Éfren P. (2023). El consentimiento informado y la tutela de la autodeterminación del paciente en el derecho civil brasileño [Informed consent and the protection of patient self-determination in Brazilian civil law]. *Revista De La Facultad De Derecho De México*, 73(287), 203–222. <https://doi.org/10.22201/fder.24488933e.2023.287.86581>
- Rojas-Ulloa, Milushka Felicitas. (2022). La negociación como solución alternativa frente al cumplimiento contractual en los tiempos de distanciamiento social [Negotiation as an alternative solution to contract breach in times of social distancing]. *Derecho global. Estudios sobre derecho y justicia*, 7(20), 181-205. <https://doi.org/10.32870/dgedj.v7i20.472>
- Rosales, C. M. (2019). La gratuidad de los derechos prestacionales como derechos humanos: una propuesta para su ponderación y otorgamiento [The gratuity of positive rights as human rights: a proposal for its ponderation and concession]. *Revista De Investigações Constitucionais*, 6(2), 349–373. <https://doi.org/10.5380/rinc.v6i2.58988>
- Schopf-Olea, Adrián. (2018). La buena fe contractual como norma jurídica [Contractual good faith as a rule of law]. *Revista chilena de derecho privado*, (31), 109-153. <https://dx.doi.org/10.4067/S0718-80722018000200109>
- Zúñiga-Hurtado, Edgar Paúl, & Hurtado-Macías, Narcisa-de-Jesús. (2023). La acción rescisoria pauliana desde el código civil ecuatoriano [The paulian rescisory action from the Ecuadorian civil code]. *Iustitia Socialis. Revista Arbitrada de Ciencias Jurídicas y Criminalísticas*, 8(14), 17-28. <https://doi.org/10.35381/racji.v8i14.2414>