



The Impact of Constitutional Jurisprudence on Civil Law: An Ecuadorian Perspective

Impacto de la jurisprudencia constitucional en el derecho civil: Una perspectiva ecuatoriana

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ABSTRACT

In Ecuador, constitutional jurisprudence has played an essential role in the transformation of civil law, especially since the enactment of the 2008 Constitution. The research objective is to describe the impact of constitutional jurisprudence on Ecuadorian civil law. The methodological work was developed using a qualitative approach, based on documentary review and analysis, for which 16 scientific articles were selected and analysed. Constitutional jurisprudence has profoundly changed civil law in Ecuador, adapting it to the values and principles of the 2008 Constitution, such as equality, justice and proportionality. This has allowed the legal system to become more inclusive and protective, as well as incorporating unique innovations, such as the recognition of the rights of nature, which have impacted issues such as property and the use of natural resources.

Descriptors: constitutional law; law reform; natural law (Source: UNESCO Thesaurus).

RESUMEN

En Ecuador, la jurisprudencia constitucional ha desempeñado un papel esencial en la transformación del derecho civil, especialmente desde la promulgación de la Constitución de 2008. El objetivo de investigación es describir el impacto de la jurisprudencia constitucional en el derecho civil ecuatoriano. El trabajo metodológico se desarrolló a partir de un enfoque cualitativo, basado en la revisión y análisis documental, para ello se seleccionaron y analizaron 16 artículos científicos. La jurisprudencia constitucional ha cambiado profundamente el derecho civil en Ecuador, adaptándolo a los valores y principios de la Constitución de 2008, como la igualdad, la justicia y la proporcionalidad. Esto ha permitido que el sistema jurídico sea más inclusivo y garantista, además de incorporar innovaciones únicas, como el reconocimiento de los derechos de la naturaleza, que han impactado temas como la propiedad y el uso de recursos naturales.

Descriptor: derecho constitucional; reforma jurídica; derecho natural. (Fuente: Tesoro UNESCO).

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Research articles section



INTRODUCTION

In Ecuador, constitutional jurisprudence has played an essential role in the transformation of civil law, especially since the enactment of the 2008 Constitution. This normative framework, considered an example of the new Latin American constitutionalism, prioritises the protection of fundamental rights, social justice and respect for nature (Sotillo-Antezana, 2015). In this context, civil law, traditionally focused on regulating private and property relations, has had to adapt to constitutional principles and values, generating significant changes in its interpretation and application (López-Hidalgo, 2019).

One of the most outstanding aspects of this transformation is the reinterpretation of civil norms from a constitutional perspective. Thus, figures such as the rescisoria pauliana action and the ineffectiveness of acts transferring ownership have been adapted to ensure fairness and proportionality in their application (Zúñiga-Hurtado & Hurtado-Macías, 2023; Carpio-Frixone & Naranjo-Ponce, 2021). Furthermore, the incorporation of principles such as equality, fairness and proportionality in the civil procedural system has allowed for the resolution of conflicts in a more equitable manner and in line with constitutional values (Cevallos-Sánchez & Litardo-Salazar, 2018). This model has strengthened the protection of fundamental rights in the civil sphere, consolidating a more inclusive and guaranteeing legal system (Véliz-Valencia, 2022).

Another innovative aspect is the recognition of the rights of nature, a unique principle in Ecuadorian constitutionalism. This recognition has had a direct impact on civil law, especially on issues related to the ownership and use of natural resources, forcing the harmonisation of human rights with the rights of nature (Solano-Paucay & Marín, 2024; Lozano-Espinoza, 2024). However, this process has not been without its challenges. The Constitutional Court faces limitations in the selection and review of judgments, which could affect the uniformity in the application of constitutional principles in civil law (Margareth-Dalila et al., 2024; Cabascango-Hidrobo et al., 2024).



Consequently, legal pluralism, promoted by the 2008 Constitution, has allowed for the coexistence of diverse normative systems, such as indigenous law and state law. This has enriched legal practice in intercultural contexts, but also poses challenges in the harmonisation of norms (Díaz-Ocampo & Antúnez-Sánchez, 2018; Mila, 2020). On the other hand, training lawyers with a constitutional approach has been key to ensuring a better understanding of the relationship between civil law and constitutional principles (Palacios-Morillo, 2021; Aguilar-Gordón, 2019). Furthermore, the use of technologies, such as digital observatories, has facilitated access to constitutional jurisprudence, improving the monitoring and control of the right to justice (Puedmag-Usiña et al., 2024).

In accordance with the above, the research objective is to describe the impact of constitutional jurisprudence on Ecuadorian civil law.

METHOD

The methodological work was developed using a qualitative approach, based on the review and analysis of documents related to the impact of constitutional jurisprudence on Ecuadorian civil law, for which 16 scientific articles were selected and analysed. The analysis was structured in several stages:

Firstly, a search was conducted for publications addressing the relationship between constitutional jurisprudence and civil law in the Ecuadorian context. The databases consulted included Scielo, Redalyc, using keywords such as "constitutional jurisprudence", "Ecuadorian civil law", "2008 Constitution" and "new Latin American constitutionalism".

In the second stage, the information obtained was systematised. To this end, the main themes and categories of analysis were identified, such as the basis of constitutional jurisprudence, its historical evolution, its impact on civil law, challenges and criticisms, and other relevant aspects such as legal pluralism, legal education and the use of technologies. This systematisation made it possible to organise the data in Table 1.



Subsequently, a critical and interpretative analysis of the data collected was carried out, with the aim of identifying the main transformations that constitutional jurisprudence has generated in Ecuadorian civil law.

ANALYSIS OF THE RESULTS

Constitutional jurisprudence in Ecuador has played an important role in the transformation of civil law, adapting it to the principles and values established in the 2008 Constitution. Table 1 presents a process that has been driven by the new Latin American constitutionalism, which prioritises the protection of fundamental rights, social justice and respect for nature.

Table 1. Constitutional jurisprudence in civil law.

Aspect	Description	References
Basis of constitutional jurisprudence	Constitutional jurisprudence in Ecuador is based on the principles of the new Latin American constitutionalism, which prioritises fundamental rights and constitutional supremacy.	Sotillo-Antezana (2015), López-Hidalgo (2019), Véliz-Valencia (2022).
Historical developments	The evolution of constitutional control in Ecuador has allowed the consolidation of a system that protects fundamental rights and guarantees the application of constitutional principles in civil law.	Zambrano-Moran et al. (2022), Díaz-Ocampo & Antúñez-Sánchez (2018).
Impact on civil law	Constitutional jurisprudence has influenced the interpretation of civil norms, such as the rescission action and the ineffectiveness of acts of transfer of ownership, adapting them to constitutional principles.	Zúñiga-Hurtado & Hurtado-Macías (2023), Carpio-Frixone & Naranjo-Ponce (2021).
Constitutional principles in civil law	The principles of equality, fairness and proportionality have been incorporated into the Ecuadorian civil procedural system, transforming the way civil disputes are resolved.	Cevallos-Sánchez & Litardo-Salazar (2018), López-Hidalgo (2019).
Rights of nature	Constitutional jurisprudence has recognised and protected the rights of nature, which has had an impact on civil law, especially on issues related to ownership and use of natural resources.	Solano-Paucay & Marín (2024), Lozano-Espinoza (2024).
Challenges and criticisms	There is criticism of the limitation of the Constitutional Court in the selection and review of judgments, which could affect the uniformity in the application of constitutional principles in civil law.	Margareth-Dalila et al. (2024), Cabascango-Hidrobo et al. (2024).
Legal pluralism	Ecuador's legal pluralism, promoted by the 2008 Constitution, has allowed for the coexistence of	Díaz-Ocampo & Antúñez-Sánchez (2018), Mila (2020).



	diverse normative systems, which influences the application of civil law in intercultural contexts.	
Legal education	The training of lawyers in Ecuador has been influenced by constitutional principles, which has led to a more holistic approach to the teaching of civil law and its relationship with constitutional jurisprudence.	Palacios-Morillo (2021), Aguilar-Gordón (2019).
Technology and monitoring	The implementation of digital observatories has allowed for better monitoring and control of the right to justice, facilitating access to constitutional jurisprudence and its impact on civil law.	Puedmag-Usiña et al. (2024).

Source: Own elaboration.

One of the key points is the foundation of constitutional jurisprudence, which is based on the new Latin American constitutionalism. This model puts fundamental rights and the supremacy of the Constitution at the centre, which means that all laws, including civil laws, must be aligned with these principles. This has allowed civil law to become more inclusive and protective, prioritising equality and human dignity. Therefore, authors such as Sotillo-Antezana (2015) and López-Hidalgo (2019) highlight how this approach has strengthened the protection of individual rights in the civil sphere.

In terms of historical evolution, constitutional control in Ecuador has advanced significantly, consolidating a system that protects fundamental rights. This has allowed civil norms to be interpreted from a fairer perspective and in accordance with constitutional values. However, this process has not been easy. As Zambrano-Moran et al. (2022) point out, there are still challenges in the practical implementation of these guarantees, especially in the uniformity of judicial decisions.

The direct impact on civil law is reflected in the reinterpretation of traditional rules, therefore, figures such as the rescisoria pauliana action or the ineffectiveness of acts transferring ownership, which were previously applied in a strictly technical manner, are now analysed from a constitutional perspective. This means that justice and proportionality are sought to be guaranteed in each case, as explained by Zúñiga-Hurtado & Hurtado-Macías (2023) and Carpio-Frixone & Naranjo-Ponce (2021), this change has made civil law more flexible and adapted to people's needs.



Another important aspect is the incorporation of constitutional principles such as equality, fairness and proportionality into the civil procedural system. This has transformed the way civil disputes are resolved, promoting more equitable decisions aligned with constitutional values. Accordingly, Cevallos-Sánchez & Litardo-Salazar (2018) highlight how these principles have modernised civil law, making it more humane and less technical.

A unique issue in the Ecuadorian context is the recognition of the rights of nature; the 2008 Constitution was the first in the world to grant rights to nature, and this has had a direct impact on civil law. Therefore, issues related to the ownership and use of natural resources must now consider not only the rights of individuals, but also those of nature. This has generated a profound change in how these issues are handled, as explained by Solano-Paucay & Marín (2024) and Lozano-Espinoza (2024).

However, not everything has been positive. There are challenges and criticisms in the application of constitutional jurisprudence. One of the main problems is the limitation of the Constitutional Court to select and review judgments. This can lead to inconsistencies in the application of constitutional principles in civil law, as Margareth-Dalila et al. (2024) and Cabascango-Hidrobo et al. (2024) point out. The Court's capacities need to be strengthened to ensure more consistent and effective decisions.

Legal pluralism has also influenced civil law; in Ecuador, the coexistence of diverse normative systems, such as indigenous law and state law, has enriched legal practice, especially in intercultural contexts. However, this also poses challenges in the harmonisation of norms, as analysed by Díaz-Ocampo & Antúnez-Sánchez (2018) and Mila (2020). This pluralism forces civil law to be more flexible and adapt to different cultural realities.

Finally, legal education and the use of technologies have been key factors in this transformation. Training lawyers with a constitutional approach has enabled legal professionals to better understand the relationship between civil law and constitutional principles. In this regard, Palacios-Morillo (2021) and Aguilar-Gordón



(2019) highlight how this has improved the quality of legal practice in the country. Moreover, tools such as digital observatories have facilitated access to constitutional jurisprudence, allowing for better monitoring and control of the right to justice, as explained by Piedmag-Usiña et al. (2024).

CONCLUSION

Constitutional jurisprudence has profoundly changed civil law in Ecuador, adapting it to the values and principles of the 2008 Constitution, such as equality, justice and proportionality. This has made the legal system more inclusive and protective, as well as incorporating unique innovations, such as the recognition of the rights of nature, which have impacted issues such as property and the use of natural resources. However, there are still important challenges, such as strengthening the work of the Constitutional Court, ensuring that judicial decisions are consistent, and finding ways to harmonise legal pluralism in a country as diverse as Ecuador. Despite these difficulties, tools such as technology and the training of lawyers with a more constitutional vision have been fundamental in driving these changes.

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CONFLICT OF INTEREST

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