



## INELIGIBILITY IN THE OPPOSITION OF THE INVENTORY TRIAL DUE TO THE ABSENCE OF GROUNDS FOR ABANDONMENT

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### ABSTRACT

*The legal problem analyzed is found in the Ecuadorian Civil Code, specifically in Article 1010, where the lack of sufficient grounds to provide adequate protection to vulnerable persons, such as the elderly, who due to their deteriorating health cannot access a legal means to ensure them a dignified protection by those who will inherit their assets in the future, is observed. The absence of the cause of abandonment in the concept of indignity creates a situation of vulnerability for those who will receive the assets in the succession. For this reason, it is of vital importance to add abandonment as a specific ground of unworthiness, which would imply a civil penalty that disqualifies a person from succeeding a particular deceased, based on harmful actions committed by the potential heir against the deceased and his close relatives, which would ethically prevent a future succession.*

**Key words:** Civil Code, seniors, inheritance.

### INTRODUCTION

Among the important antecedents of the subject, are related to projects and research works based on the indignity in the succession and its causes, one of the related scientific articles is by the author Gerard Rincón, who performs a comparative analysis in relation to the law of inheritance against the legislations of Latin America against the causes of the legitimate cause of disinheritance and the legal effects of indignity. (2018)

The author Vanessa Soto, conducts a legal investigation based on abandonment in a state of insanity in the face of indignity in Ecuador and how it has incurred in the cause (2019), Explains what disinheritance is as a testamentary disposition, the grounds for its occurrence, the effects and requirements, in addition to the revocation in the revision of the norm, the author states what it is as a legal institution, also specifies, when it occurs and in what cases it would be applicable. Defining indignity in front of the originator.

With the above, the investigation of this topic is taken into consideration in relation to the protection of the rights of people who are in a state of defenselessness and cannot by their own means make any type of change in the destination of their property, such as older adults who suffer from any type of disability, chronic, terminal illness or because of their advanced age cannot access any type of legal means.

Whenever the object of study resorts to carrying out a legal analysis of the integral protection of the deceased, who suffers from abandonment by his future heirs, there being a legal vacuum in the legal norm, since there is no cause, subsequent to the succession due to death, the heirs carry out through the voluntary procedure the inventory of assets, without having taken into consideration the abandonment of the deceased.

Older adults are citizens who are 65 years of age or older. According to the 2010 census in Ecuador this population group was 940,905 which represented 6.6% of the total population. (CONADIS, 2022)



The aging process differs according to social, educational, cultural and economic conditions. Among the elderly, some are retired and receive pensions that allow them to live with dignity, others still work and have their own income, in some cases collaborate with the care of granddaughters, grandchildren or other relatives, others have their own businesses or resume studies to update academic or technological knowledge.

There are specific cases in which older adults, although they have decent incomes that provide welfare conditions, are mistreated or abandoned by their families or give up living with them due to lack of recognition. According to their testimonies, they point to loneliness, acceptance, affection and lack of income as their main problems.

In accordance with art. Article 36 of the Constitution of the Republic of Ecuador states:(2021 - Actualización )

Art. Article 36.- Older persons shall receive priority and specialized attention in the public and private spheres, especially in the fields of social and economic inclusion, and protection against violence. Older adults will be considered those who have reached the age of sixty-five.

Persons aged sixty-five and over, according to the Constitution, are a priority focus group. Accordingly, they must receive specialized quality care. They have several benefits, including exemption or refund of income tax, payment of reduced rates at public shows, transportation and preferential access to various health services. Some have social security, a small percentage have private security while others access the non-contributory retirement pension.

Unworthiness to succeed consists in the exclusion of a person from the succession because his acts are considered reprehensible. Indignity establishes that those who commit acts of particular gravity lose the right to inherit, regardless of whether it is a reserved share, intestate succession or testamentary. (Gonzales, 2021)

The indignity established in the Ecuadorian Civil Code establishes:

Art. Article 1010.- The following are unworthy to succeed the deceased as heirs or legatees, and shall not be entitled to maintenance:

1. Whoever has committed the crime of homicide in the person of the deceased, or has intervened in this crime by work or advice, or let it perish being able to save it.
2. A person who committed a serious attack on the life, honour or property of the person whose succession is concerned, or of his spouse, or of any of his ascendants or descendants, provided that such attack is proved by an enforceable judgment.
3. A consanguineous person within the fourth degree inclusive, who, in the state of insanity or helplessness of the person whose succession is concerned, did not help him and could do so.
4. A person who by force or malice obtained from the testator any testamentary disposition, or prevented him from testifying.
5. The one who has intentionally stopped or concealed the will; presuming fraud by the mere fact of detention or concealment. (Código Civil Ecuatoriano, 2018)

We must also point out that article 1010 of the Civil Code contemplates the possibility that the injured party can forgive the causes included in the previous article. This provides that the causes of unworthiness cease to have effect if the testator knew them at the time of making a will, or if, having known them later, he sends them in a public document, which implies that tacit or testamentary forgiveness is accepted and express forgiveness is admitted whenever the remission is instrumentalized in a public document.

The unworthiness to succeed affects both the testated and the intestate succession and is based on the fact that the deceased would have excluded the unworthy from the succession, if he had knowledge of the fact constituting the dignity. Moreover, the grounds of unworthiness are determined by the legislature and cannot be amplified by the testator or by the judges by means of an interpretation, and do not require, in order to take effect, their express manifestation in the will.

It is important to guarantee the protection of the rights of older persons, the Constitution of the Republic of Ecuador, establishes as priority attention groups by the State, in such a way that they are allowed social inclusion, thus allowing the full exercise of their rights and equality of conditions with other people and without being subject to any discrimination, Either because of hatred, pity,



or exploitation, but on the contrary this type of people require special care, which provides emotional and physical stability to such an extent that well-being can be improved.

However, this care depends a lot on the human values of the people with whom they were trained and the awareness they have towards the elderly, it should be borne in mind that within many families it is considered a burden, on the contrary, we must generate that state of well-being to such an extent that they can be accompanied that provides a safe environment to maintain their quality of life and dignity in the community. his death due to the causes of vulnerability.

The right to personal integrity is that fundamental and absolute human right that has its origin in the respect due to life and its healthy development. It is the right to the protection of the person, in all its extension, both in its physical and mental aspect. Human beings have the right to maintain and preserve their physical, mental and moral integrity. Physical integrity implies the preservation of all parts and tissues of the body, which leads to the state of health of people. (Guzman, 2020)

Psychic integrity is the preservation of all motor, emotional, and intellectual abilities. Moral integrity refers to the right of every human being to develop his life in accordance with his convictions. The recognition of this right implies that no one may be physically injured or attacked, nor be the victim of mental or moral damage that prevents him from maintaining his psychological stability. The right to life is the first fundamental right of the human being, all other rights are exercised from this being a prerequisite. (Guzman, 2020)

The State shall adopt the necessary measures to prevent, eliminate, and punish all forms of violence, especially that exercised against women, children and adolescents, older persons, persons with disabilities, and against any person in a situation of disadvantage or vulnerability; The same measures will be taken against violence, slavery and sexual exploitation.

The constitutional regulations guarantee us personal, physical, mental and sexual integrity and thus people have not been violated, especially priority groups, to develop their lives in accordance with their convictions, nor to be victims of damage, mistreatment, and do not take care of the integrity of people.

In the investigation it is necessary to indicate that the inventory is that procedure that is carried out to specify the number of active and passive assets in order to individualize them and establish their existence at the time of the death of a person, so that in the later they can be valued, since on these assets the heirs and legatees succeed the deceased owner.

The inventory with the passage of time has been adopted by civil law, already in various legal institutions, as well as to exercise certain positions of guardianship or curatorship. According to our civil procedural legislation the inventory can be classified for better understanding into simple inventory and solemn inventory. (Pizarro, 2021)

The simple inventory is defined as: "A simple list or written enumeration of the goods and debts made by the interested parties, and must be recorded in the minutes that the signature of all the interested parties is raised" (Falconi, 2021)

While the solemn inventory: "It is the one that is practiced by judicial order, by a public official, with legal solemnities." When talking about simple inventory it could be said that it is the one that is made in supermarkets to account for existing merchandise, here it is used as a means of control and security. (Falconi, 2021)

On the other hand, the solemn inventory requires several formalities established in Article 341 of the COGEP which states:

"Any person who has or presumes to have a right to the goods to be inventoried shall request the judge to draw up an inventory. For this purpose, the judge will appoint the expert to proceed with its training and appraisal in the presence of the interested parties.

In the case of inheritance property, the persons referred to in the law shall be summoned. If there are assets in the inventory that are in the possession of third parties, the judge will order that these be cited. By the fact of the summons, third parties are obliged to provide all facilities to the expert." The judge of the inventory will also be of the partition" (COGEP, 2018)

Clearly this provision establishes the need for a Judge, for the formation, of the inventory, as well as the appraisal and appraisal. It has been determined that the inventory can be given in curatorship



procedures or also to inventory inheritance assets, in this case it is necessary to cite those who have rights over these assets, that is, the successors, known, presumed and unknown.

In the same way, those who have in their possession the goods object of the inventory will be summoned, so that they provide the necessary facilities, so that the movable or immovable property can be enlisted and evaluated.

The trial of partition of inheritance assets must begin with an inventory, in this purpose the last paragraph of the transcribed article indicates that the same judge who knew the inventory must know the partition trial, since the previous to demand the partition of a property, by jurisprudential mandate and as a general rule there must be an inventory of assets.

## METHODS

Methods are the rigorous procedure, formulated in a logical way, that the researcher must follow in the acquisition of knowledge. In the present work carried out, the following research methods were applied, the same ones that helped to establish the problem in a particular and generalized way of those directly affected.

**Inductive - deductive method:** This method is a procedure that manages to infer a certain property or relationship from particular facts in the investigation is applied at the moment of analyzing or performing a cause and effect.

**Analytical-synthetic method:** This method seeks to distinguish the elements of a phenomenon and proceeds to review each of them separately. Physics, chemistry and biology use this method; From the experimentation and analysis of a large number of cases, universal laws are established. It consists of the extraction of the parts of a whole, in order to study and examine them separately, to see, for example, the relationships between them. This method will make it possible to analyse a large percentage of the cases that have been presented in this regard.

**Historical-logical method:** This method has a link with the knowledge in different stages of the objects in chronological succession, to know the evolution and development of the object or phenomenon of investigation it is necessary to reveal its history, the stages of its development and the fundamental historical connections. This method will be used as it will help to know how it has evolved through history.

**Socio-legal method:** This method consisted of applying through the object of the study the social reality to the extent that it notices an incidence in the social behaviors that it seeks to modify, such as the study of the legal instruments necessary to know, elaborate and apply in the object of study, as well as the legal foundation of the present research work.

## RESULTS

Within the framework of this research, the use of the survey has been considered as a fundamental technique to obtain relevant information that allows addressing and verifying the problem raised, as well as identifying possible solutions. The survey is presented as a data collection instrument that facilitates the obtaining of direct information from the study subjects, which is essential to achieve the proposed objectives.

The choice of the survey as a research technique is based on several reasons, first, the survey allows to obtain quantitative and qualitative data, which is beneficial to obtain a broad and accurate view of the problem also provides the possibility of obtaining information from a representative sample of the target population which is important to obtain reliable and generalizable results.

To carry out the survey, a structured questionnaire will be developed that will contain specific and pertinent questions related to the problem investigated. This questionnaire will be applied to a sample selected in a rigorous and representative way guaranteeing the confidentiality of the participants and respect for the ethical principles of the research.

It is important to note that, in addition to the survey, other complementary techniques will be used, such as documentary review and interviews, to obtain a more complete perspective and enrich the results of the research. The triangulation of different sources of information will strengthen the validity and reliability of the findings obtained.



**Population and Sample**

Population.

The population to be researched being a finite population is taken into consideration to a group of 100 legal professionals from the city of Tulcán, Tulcán canton, province of Carchi.

Sample.

To know the sample, it is necessary to apply the following formula to obtain the population instrument interpretation and survey analysis in the present research. For calculation purposes, the following formula shall be applied:

**Board 1.** Formula applicable to the Sample.

FORMULA APPLICABLE TO THE SAMPLE	
n = Sample size	$n = \frac{NZ^2pq}{E^2(N - 1) + Z^2pq}$
N = Population	
Z = Confidence Level	
E = Error accuracy	
p = Positive variability	
q = Negative variability	

It will be considered 99% which would be the 2.58 confidence level, according to the following statistical table:

**Board 2.** Development of the Sample.

Z = 99% confidence level	E= Error accuracy	P= Positive variability	q= Negative variability
2,58	1	0.5	0.5
<b>DEVELOPMENT</b>			
$n = \frac{100(2,58)^2(0.5)(0.5)}{(1)^2(100 - 1) + (2,58)^2(0.5)(0.5)}$ $\frac{100(6,66)(0.5)(0.5)}{(0,1)(100 - 1) + (2,58)^2(0.5)(0.5)}$ $\frac{100(6,66)(0.25)}{0,1(99) + (6,66)(0.25)}$ $\frac{166,5}{99 + 1,665}$ $n = \frac{166,5}{11,565}$ $n = 14,396$ $n = 15 \text{ personas}$			

In the present work we will carry out the investigation of the total population, based on the calculated sample that is 15 legal professionals belonging to the canton Tulcán, province of Carchi.

**ANALYSIS AND INTERPRETATION OF RESULTS.**

**PRESENTATION AND DISCUSSION OF RESULTS.**

Question No. 1.

As a legal professional, do you know the legal concept of indignity and its causes in accordance with the provisions of Art. 1010 of the Ecuadorian Civil Code?



**Graphic 1. Survey question no. 1**



**Board 3. Tabulation question no. 1**

Alternatives	People	Percentage
YES	15	100 %
NO	0	0 %
TOTAL	15	100 %

**Analysis and interpretation of results**

In view of the formulation of this question addressed to legal professionals in free exercise of the Tulcán canton; it can be verified that 100% of the persons surveyed do know the legal concept of indignity and its causes in accordance with the provisions of art. 1010 of the Ecuadorian Civil Code. Question 2.

Do you consider that indignity should contemplate the cause of abandonment as a means of protection for the originator?

**Graphic 2. Survey question no. 2**



**Board 4. Tabulation question no. 2**

Alternatives	People	Percentage
YES	15	100 %
NO	0	0 %
TOTAL	15	100 %

**Analysis and interpretation of results**

In view of the formulation of this question addressed to legal professionals in free exercise of the Tulcán canton; It can be verified that 100% of the people surveyed do consider that indignity should contemplate the cause of abandonment as a means of protection for the originator.

Question 3.



It considers that in the opposition to the inventory trial it is necessary to incorporate the cause of abandonment in cases of indignity, so that the judge takes as background the condition of protection that the deceased lived, before granting the succession of assets to the applicants.

**Graphic 3. Survey question no. 3**



**Board 5. Tab question no. 3**

Alternatives	People	Percentage
YES	15	100 %
NO	0	0 %
TOTAL	15	100 %

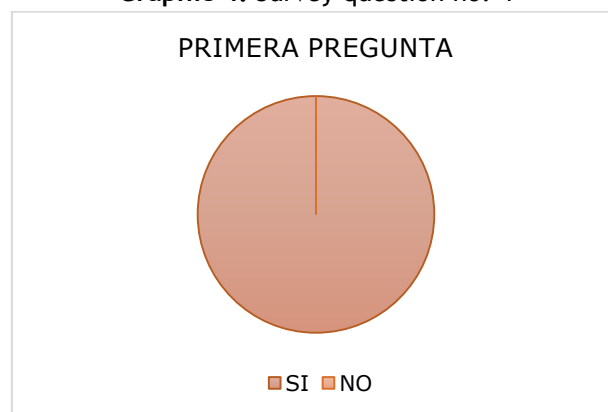
**Analysis and interpretation of results**

In view of the formulation of this question addressed to legal professionals in free exercise of the Tulcán canton; It can be verified that 100% of the people surveyed do consider that in the opposition to the inventory trial it is necessary to incorporate the cause of abandonment in cases of indignity, so that the judge takes as background the condition of protection that the deceased lived, before granting the succession of assets to the applicants.

**Question 4.**

Do you consider it necessary for this structural reform to exist in the Ecuadorian Civil Code and for its impact on the civil procedure system to be applied in the face of opposition to the inventory trial?

**Graphic 4. Survey question no. 4**



**Board 6. Tabulation question no. 4**

Alternatives	People	Percentage
YES	15	100 %
NO	0	0 %
TOTAL	15	100 %

**Analysis and interpretation of results**





Given the formulation of this question addressed to legal professionals in free exercise of the Tulcán canton; 100% of the people surveyed according to their experience in the free professional practice, consider that if it is necessary that there is this structural reform in the Ecuadorian Civil Code and its incidence in the civil procedural system be applied before the opposition of the inventory trial.

### DISCUSSION

The investigation of this topic in relation to the protection of the rights of people who are in a state of defenselessness and cannot by their own means make any type of change in the destination of their property, such as older adults who suffer from any type of disability, chronic illness, terminal or because of their advanced age can not access any type of legal means.

Older persons with disabilities are protected by various supranational regulations which generally contain policies of inclusion, accessibility and non-discrimination, the legal capacity of these persons and the legal effects produced by the acts they subscribe, have been specifically considered to deal with the legal capacity of older persons with intellectual disabilities. In order to update the terminology, 58 articles of the Civil Code were reformed, but despite that, it can be observed that there are still offensive terms such as crazy, furious, or the persistence of the term insane. These pejorative terms are the least of the deficiencies of the Ecuadorian legal framework, but they are the starting point to identify a larger problem. (Marín, 2018)

Basically, the most important weakness lies in the absence of clear and concise regulations that allow identifying the exercise capacity of older adults with intellectual or physical disabilities, based on their degree of discernment and reasoning. This results in fundamental rights being denied to them due to personal assumptions without objective and technical foundation.

The civil procedural system of the inventory trial corresponds to the voluntary procedure in accordance with art. 334 of the General Organic Code of Processes, in its numeral 4, where it begins with the application that will contain the same requirements of the demand, presented the or the judge will qualify the application, admitted the corresponding summons will be made. (COGEP, 2018) In accordance with art. 335 of the COGEP, the judge will convene a hearing in a term of not less than ten days nor more than twenty days following the summons, in the hearing that will take place verbally, where the participants will be heard and the pertinent evidence will be practiced.

At the time of opposition, the corresponding procedure will be carried out in summary procedure in accordance with art. 333 of the COGEP, where it will be developed in a single hearing of two phases, the first being of reorganization, fixing the points of debate and conciliation and the second, of evidence and allegations.

In the opposition of inventories, with respect to the summary procedure at the end of the first phase, after the reorganization and the establishment of points of discussion, in accordance with art. Article 169 of the Constitution of the Republic of Ecuador, corresponds to the procedural system as a means of achieving justice, all procedural rules shall be enshrined under the principles of simplification, efficiency, immediacy, speed and procedural economy, making effective the guarantees of due process. (CRE, 2021 - Actualización )

It is important to bear in mind that the corresponding legal processes in the civil procedural system, before entering any type of request or demand by the corresponding procedures, through the principle of procedural economy, speed and immediacy.

Oral litigation in the civil procedural system corresponds to the principle of orality and skill of the lawyer in order to convince the judge within the judicial process, implies a design in the theory of the case that seeks to defend based on good faith and procedural loyalty.

The conceptualization of the legal analysis on the lack of cause of abandonment for older adults in cases of indignity and its incidence in the procedural phase in the opposition of the inventory trial.

The person who reaches the age of 65 is considered an older adult, enters the stage of old age and it is common that, for relatives, they categorize it as a "nuisance", "unproductive" people and constitute "a heavy burden for society". In addition, they are in a vulnerable condition due to disability, catastrophic or terminal illnesses, which prevents them from having a dignified old age.



The protection of the rights of older persons in the Constitution is fundamental, since due to their advanced age they need to have priority attention from the State, in such a way as to guarantee a dignified life, without abandonment, on equal terms with other people and without suffering any type of discrimination. abuse, violence, economic exploitation, cruel or degrading treatment, in such a way that the emotional stability of this vulnerable group can be improved.

### CONCLUSIONS

Through the theoretical foundation contemplated in the research we can conclude that through the background it has been possible to justify through this research that there is a legal affectation for older adults in cases of indignity and its incidence in the procedural phase in the opposition of the inventory trial

Based on the proposed methodology, it was possible to determine the reality through the research methods that were the fundamental contribution to acquire knowledge about the legal regulations in the absence of cause for abandonment in the legal figure of indignity, through the surveys carried out to the legal professionals of the Tulcán canton.

The realization of the legal analysis on the lack of cause of abandonment for older persons in cases of indignity and its incidence in the procedural phase in the opposition of the inventory trial requires the incorporation as a reform to the Ecuadorian Civil Code in its Article 1010.

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