

THE LAW OF SUCCESSIONS IN THE ECUADORIAN CIVIL CODE SUCCESSION BY CAUSE OF DEATH

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Abstract

The successions are found in the Third Book of the Ecuadorian Civil Code Art. 993 the same, assets, rights and obligations on the patrimony that the deceased possesses and transmits to the heir after his death, in this sense the certain lack of diligence within the Ecuadorian regulations regarding the updating of the regulations in the case of succession by foreign individuals, who own assets outside our Ecuadorian land, and their heirs intend to inherit, for this reason we must plan a deep analysis so that our Code Ecuadorian Civil is reformed so that the rights to inherit are not violated. It should be emphasized that the succession due to death can be given by means of a will or intestate, but nevertheless it attracts a conflict even if we have a will, a conflict is created if there is no understanding between the heirs when respecting the last will of the testator, as well as at the time of Intestate inheritance.

Keywords: Succession; Civil Code; tested; obligations, will, deceased, heir

INTRODUCTION

This essay aims to make known that one of the ways in which goods, pending legal obligations, properties and any type of material items are passed in the name of a specific subject is through succession, when a subject dies and has offspring, we are talking about a hereditary succession in which through a legal process the direct descendants of this person will have before the law sanctioned by the supreme norm that is the Constitution of the Republic of Ecuador, they will receive their rights to inheritance, it should be emphasized that not only the assets are transferred to the person, all legal responsibility falls on her to become the legal replacement of the deceased, even debts must be canceled by the hereditary successor.

The justice system of Ecuador does not have mechanisms that allow to verify in a completely immediate way the kinship of the people, to verify that if they are direct heirs and therefore must be part of the distribution of assets within the will, for this reason many times the processes are stopped at the time of distribution according to the will that a citizen had in life, The succession is completely legal, even the law is the one that protects that all the heirs want to participate or not to be an active part of this important process is gathered so that they are an active part of this important process since it interferes with the passage of legal responsibilities. (Aguirre, 2020)

For Ortiz (2019), in our country the biggest drawback regarding succession occurs because most people do not have as a priority in their old age to establish a will that is a notarized document that demonstrates the will of the person in a clear way, because in this way a jurist could have all the necessary evidence to be able to distribute the assets of the subject according to how his will was, It is quite common that among society it is assumed that it is enough to have the document written, but the reality is quite the opposite, the person who will write his document must be advised by a legal professional who will guide his will so that the distribution of assets is sensible and above all that it is handled in parameters that correspond to the reality of the assets he owns with respect to the heirs, This especially so that the will made is before the valid legal review, because otherwise,

if it is not within the legality it will be considered as a null document losing all its validity, and the assets could be frozen until a fair resolution is given, in this case the provision of the law would be complied with, However, the one that is considered most familiar is the testamentary form.

SUCCESSIONS ACCORDING TO SOME AUTHORS

Article 997 of the *Treaty* provides: "Succession to a person's property is opened at the time of his death, at his last domicile (...). Succession is governed by the law of the domicile that is opened"; That is, at the moment in which the deceased dies, the opening of the hereditary succession occurs, and the immediate consequence is the denunciation, this implies that the assignees are called to succeed the deceased, who have the following options: simply accept the inheritance, or accept with benefit of inventory, that is, differentiating assets and liabilities; or they may repudiate that right. (Ecuadorian Civil Code Art. 997, 2015)

Guillermo Bossano gives the following concept: "It is a way of acquiring the domain of the universality of the goods, rights and transferable obligations of a deceased person, or of a quota of them, in a broader sense, to succeed a person is to take his place and collect his rights in any title" (BOSSANO, 2015 updated, p. 25)

Guillermo Borda, that "the transmission of goods mortis causa is inseparable from private property. The patrimony that a person manages to model, at his death must pass to those who were most intimately linked to him. " Succession by reason of death is a way of acquiring the universality of the goods, rights and obligations of a deceased person or a share of them or one or more species or certain body or one or more indeterminate individuals of a given gender. (BORDA, 1959, p. 11)

DEFINITIONS OF SUCCESSIONS

According to Guillermo Cabanellas he defines: "The right of succession is constituted by the patrimonial right that a person has over the assets of another by the fact of the death of the latter, and by virtue of legal title, testamentary appeal or both". (CABANELLAS, 2015, p. 146)

DEFINITION OF HEIR AND LEGATEE

Simón Carrejo gives us the following definition: "Once the deceased dies, there must be either by legal provision, or testamentary disposition a person who occupies the position, this person who receives the assets of the deceased receives the name of heir, acquirer, successor, successor "(CARREJO, 1968, updated 2015 p. 46)

The Civil Code in its Art. 996 refers to: "Inheritance, Legacy, Heir, Legatee; Universal title assignments are called inheritances, and singular title assignments are called legacies. The assignee of the estate is called the heir, and the assignee of legacy, legatee. The legatee is the person to whom a legacy is left by will. The successor in his singular capacity; that is, in one or more specific things or rights, unlike the heir who succeeds the deceased on a universal basis and in all or part of his patrimony". (Civil Code, 2006) To acquire the quality of heir it is necessary that the deceased exists since at his death he needs a person to occupy his position and these in turn can be: Forced heirs: which are those who necessarily have to be included in the inheritance. And; Voluntary heirs: are those who are not always included in the inheritance, since it is the power of the testator, to make them his heirs

METHOD

The purpose of this research is to know the main guidelines and characteristics that encompass the succession processes within the Ecuadorian Civil Code, as a general analysis of the provisions of the law, for which a qualitative approach was used, since they want to know characteristics that encompass the subject to be treated, followed by a context that meets the established requirements, considering in this sense, only Ecuador as a study site, since it is its laws and regulations, which will be considered for the elaboration of subsequent conclusions, with a non-experimental design because no type of intervention or change will be made on the information obtained from formal and reliable sources, A RESEARCH PROCESS WILL BE DEVELOPED WITHIN TIMELY AND PERTINENT REFERENCES THAT ALLOW ASSIGNING AND DETAILING THE CHARACTERISTICS REGARDING THE DIFFERENT PROCESSES AT THE TIME OF MAKING EFFECT OF THE SUCCESSION IN ITS DIFFERENT EXPRESSIONS.

RESULTS

The succession is described as that set of assets, obligations and rights that are transferable to an individual with a characteristic of heir or legatee after the death of the holder thereof, In this sense, and in consideration of the norms and rules described in Ecuadorian legislation it is considered that succession is that process, through which the domain is acquired or in its place the absolute ownership of the goods, obligations and rights, expressed in assets and liabilities, of a person who has died by means of universal or regular title. (Orellana and Bravo, 2018)

In that sense, the Civil Code of Ecuador (2017), is that ordered set that collects all the laws and regulations that affect goods, individuals, obligations, properties and contracts in the country, in terms of succession the articles described below encompass in a general way the processes and characteristics they have within the nation.

Art. 997.- The succession in the property of a person opens at the time of his death.

Art. Article 999 If the heir whose rights to succession are not time-barred, dies before having accepted or repudiated the inheritance, he transmits to his heirs the right to accept or repudiate said inheritance, even if he dies without knowing that it has been deferred to him.

Art. Article 1024.- Representation is a legal fiction in which it is assumed that a person has the place and therefore the degree of kinship and the hereditary rights that his or her father or mother would have, if he or she did not want or could not succeed.

Art. Article 1027.- The ascendant whose inheritance has been repudiated may be represented.

It can also represent the incapable, the unworthy, the disinherited, and the one who repudiated the inheritance of the deceased.

It should be considered that within the Ecuadorian civil code there are various expressions and processes through which a succession is carried out in this regard, the following cases are determined as follows:

Tested Succession

It refers to the situation through which it has been possible for a valid and prior will to have been made by the deceased, in this sense the individual in question has determined clearly and in use of all his faculties the disposition in which his assets will be distributed embodying his absolute will in the document with respect to the process after his death. (Aulla, 2019)

It should be noted that this document must be under the precise guidelines expressed in the Law and specifically stipulated within the Ecuadorian Civil Code, keeping in mind certain requirements according to the type of will in question.

Board 1. Type of wills.

Type of will	Requirement
Open	Granted before a notary and accompanied by 3 to 5 witnesses.
Personnel	Awarded by a single person
With legitimate children	Comply with the rules established in the Civil Code.


Source: Own elaboration according to Aulla, 2019.

Intestate Succession

These cases arise when the deceased or deceased, did not make a document where he establishes his will prior to his death, in this case it is necessary to also check if it is the case that the will has been invalid, it should also be considered that this process is the most common since there is no culture of foresight in society in the country. Given the case, the assets must be distributed following the stipulations of the law regarding the rules of succession, below, the succession orders through which these processes must be handled are described.

Board 2. Order of succession.

Order of succession	Rule
First	Children
Second	Parents, spouse or cohabitant.



Third	Siblings
Room	Nephews and State.

Source: Own elaboration according to Garcés, 2019.

Effective Possession

When talking about a process that involves an effective possession, it should be considered that this is expressed as the moment in which those involved proceed to make the total and express acceptance of the inheritance that has been granted to them, which must be carried out through a public deed in order to what is required by law. The main characteristic of this type of succession is that it maintains a proindiviso tint, which refers to the fact that the assets of the deceased are granted universally, that is, both in assets and liabilities.

Inventory Benefit

In this case what is appropriate is that the beneficiary will respond for the total of the liabilities that have been inherited in accordance with the amount of the assets, a process that is carried out before a family judge, in the event that this process is not carried out could have an impact on the beneficiary coming to respond with their assets to the debts or liabilities of the cause. (Cepeda, 2017)

It should be emphasized that the action of succeeding obligations or assets to heirs within the family goes back years from the beginning of the laws, this type of succession caused by the death of the owner either testada or intestate as previously described is formed as a legal institution through which it seeks to objectively guarantee the patrimony, where both assets and liabilities are considered, that is, assets and obligations in which the deceased may have incurred will pass to the heir in a universal or singular way as the case may be. (Garcia, 2017)

In this sense, it should be noted that the family as a fundamental pillar of society, enters within the main organisms around the issue of inheritance not only in Ecuador but worldwide, the family is understood as the connotation that has a kinship of consanguinity with an individual naturally, Those that are linked by the ties of procreation and birth, the trunk that makes up this structure is made up of two direct lines, straight and collateral, which are described as descendants of each other, in the case of the first and for the case of the second that is mentioned is considered those who belong to a common trunk. (Lopez, 2018)

The fundamental basis of succession in Ecuadorian law is given around the generality that is presented throughout world history, in this sense it has been possible to limit, what was mentioned by Ponce and Aguirre (2020), where it states the following:

The succession by cause of death that regulates our Law, has its roots in Spanish law, and this in turn in Roman law and Germanic law, these affirm that when a person dies, his successors have the right to receive their goods and assume their obligations, being prior to any regulation in positive law; However, this thought is not uniform in doctrinal matters, since it is also maintained that the succession by cause of death, exists by the express provisions of the law, a totally positivist vision of this institution, the same that acquires even more strength with the influence of Marxist ideas, which attacked the Inheritance Law, considering that private property is contrary to the interests of society and its development (Ponce and Aguirre, 2020 cited by Vásquez 2019, p. 3)

Before the death of a person the State as a regulatory body, through its instruments in this case, the Civil Code issues the connotations to enforce the rights of individuals, it should be noted that whatever their situation around the stubborn actions must make full use of the provisions of the law, to give a full compliance with what is stipulated, in it, since the pertinent requirements and procedure must be followed.

Ecuador considers within the inheritance rights, and the Civil Code the goods, obligations and properties that a foreign citizen has acquired within the national territory, the obstacles that arise around this mainly, is in the lack of a clear regulation that allows a truthful and timely execution, since it does not fully comply with what is imposed within the unitary system. that is governed at the global level for these cases, since the position that align these processes are around the problems of personal regulation that are exercised and are not in accordance with the regiments of the



different countries, in this sense, it has been determined that there is a certain lack of state intervention in terms of updating laws that allow finding solutions to problems in a timely manner and grant rules of a similar nature, which allow a clear execution at the time of a succession, being the case, since this has been linked to a solution around international agreements. (Orellana and Bravo, 2018)

DISCUSSION

The Ecuadorian Civil Code, allows the clear execution of inheritance law in all its instances within the nation, as it also encompasses the assets and obligations that foreign citizens may have acquired within the country, this allows a close relationship to be established between those involved at the time of claiming an inheritance as such, which are, The family, the deceased and the patrimony as such, however, the lack of control by the Ecuadorian instances has caused that all these processes are not clear as such, it comes to have potholes and an optimal and efficient solution cannot be found at a certain time.

Ecuador has often been characterized by legal executions as far as legal executions are concerned, becoming outdated, since it has been maintained in certain instances without any change despite the needs that have arisen, since principles of conventionality and hierarchy have been adopted in the search for norms and laws that allow an execution in accordance with the requirements within the territory. The main problem lies in the regiments that the country maintains in terms of unity and universality since the rules that are issued and carried out for the control of successions are governed by the criteria of territoriality and personality.

Everything that concerns successions, whether the case in which the deceased has died under will or intestate, or has to comply with the different cases that arise, continues to be linked to a rather complex legal framework, which has been seen to intervene intrinsically within the personal and patrimonial aspects, since solutions are handled that seek to find an integral tool within the global sphere that the laws have in Ecuador.

Many of the laws try to solve problems that do not become of substance, such is the case of inheritance law, there are laws that allow attention to problems of jurisdiction or development of competence, however, it is not clearly determined the applications that should be given when facing a succession as such, The rules leave potholes to be solved with the interpretation that is granted to them as the case may be.

CONCLUSIONS

The justice system of the Republic of Ecuador has extremely clear provisions regarding the distribution of assets in the case of a succession, especially when the person who has died has not left any document that reveals to his relatives what his last will is, in this case the State will take charge of the distribution, Quite the opposite of what happens with testamentary succession.

In the event that several controversies occur between the hereditary by the way in which the distribution is being carried out, the judge or judge in charge must analyze the situation to make as a result the decision that attracts the fairest possible distribution, this type of cases requires an exhaustive analysis since in these there is no generality, Each will develop in different contexts.

In the event that one of the subjects who was counted as heir also dies, the assets or responsibilities that were going to be attributed to him will pass into the hands of the heirs of the latter. In this way all the succession will remain within those to whom the inheritance belongs by legislation.

The Ecuadorian justice system is handled in an unequivocal way regarding cases of unpublished successions, although the person has not left a will, an appeal will be made to each relative who is close, as everyone knows, the children are the closest so they would be the only ones who can have the power to exclude other close relatives.

The entire process of succession even within the legality can be very stormy and attract several complications, so it is advisable that each heir yields to divide the estate into equal parts so that each party is in agreement, and expedite the process of rights to assets to each heir.

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