



Declaration of Interdiction by a Notary Public of a person with mental and psychological disabilities

Declaratoria de Interdicción por Medio de Notario Público de una persona con discapacidad mental y Psicológica

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ABSTRACT

The result of the degree work prior to obtaining the title of Master in Procedural Law was presented, with the topic: "Declaration of Interdiction by Notary Public of a person with mental and psychological disabilities". The purpose of the same was to carry out a legal analysis of the legal regulations in Ecuador regarding the declaration of interdiction and the appointment of a guardian for persons with intellectual disabilities. This contributed to solve the research problem referred to: How to favor the legal procedure to safeguard the rights of persons with mental and psychological disabilities, through the appointment of a guardian, involving the

participation of a notary public? The research had a qualitative, documentary and explanatory approach.

RESUMEN

Se presentó el resultado del trabajo de titulación previo a la obtención del título de Magister en Derecho Procesal, con el tema: “Declaratoria de Interdicción por Medio de Notario Público de una persona con discapacidad mental y Psicológica”. El propósito de la misma fue realizar un análisis jurídico sobre la normativa legal en el Ecuador en cuanto a la declaratoria de interdicción y el nombramiento de curador para personas con discapacidad intelectual. De esta manera se contribuyó a resolver el problema de investigación referido a: ¿Cómo favorecer en el procedimiento legal de salvaguardar los derechos de las personas con discapacidad mental y psicológica, a través del nombramiento de un curador, involucrando la participación de un notario público?. La investigación tuvo un enfoque cualitativo, de tipo documental y explicativa.

Keywords / Palabras clave

Legal guardian, Interdiction, Mental and Psychological Disability.

Tutor legal, Interdicción, Discapacidad Mental, Psicológica

Introduction

A long time ago, in many societies it was considered that the person who had some kind of disability was an entity whose existence did not deserve to be lived, and rather, it was seen as an economic-social obligation, at family level, which even led to their death, thus infanticide arose in many places.

In this research we will analyse the rights of people with intellectual disabilities, given its own nature, and being a very sensitive subject, which every day has acquired great significance and has a prolific treatment by the Inter-American Commission of Human Rights. Likewise, it has its protection in the rights guaranteed in a series of conventions and treaties, of which Ecuador is a signatory, for all this, it is in the Republic of Ecuador a quite disputed topic.

In the same vein, it can be seen that persons considered intellectually disabled, due to their own development, legal protection, and their own legal capacity, must have a guardian, who make decisions on their behalf and in their representation, as they belong to a group subject to fundamental rights. Among these rights are life, food, freedom, transport and access to social recognition processes, guaranteed in the Constitution of the Republic of Ecuador, in Chapter Three, Rights of persons and groups of priority attention, specifically in Art. 35 (Constitution of the Republic of Ecuador, 2008).

The declaration of interdiction and appointment of a guardian are significant preventive actions. These measures facilitate the performance of necessary legal acts for persons with intellectual disabilities, such as the subscription of contracts for the acquisition of goods and services, among others; hence the importance of the proposal of this article, which suggests an amendment to the Notarial Law in force in Ecuador.

An examination of the current Notarial Law reveals the lack of a clear definition and specific treatment for the processes of declaration of interdiction and appointment of a guardian for persons with disabilities. This level of detail is present in cases of persons deprived of their liberty, as reflected in Article 18, paragraph 25 of the Notarial Act itself, which states the following:

25.- To process the request for the declaration of interdiction to administer the assets of a person declared a convicted person by an enforceable criminal judgement; for this purpose, the enforceable judgement shall be attached. In the act that establishes the interdiction, a guardian shall be appointed. (Ecuador, National Assembly, 2023).

Given the current situation, it is essential that the Ecuadorian legal system, specifically in the Notarial Law, incorporates clear provisions that regulate the rights of persons with disabilities. This includes, in particular, the development of interdiction processes and the appointment of guardians under the authority of a notary public.

In the face of this problem, it is crucial to examine the relationship between the declaration of interdiction and the appointment of a guardian in cases of persons with disabilities, especially intellectual disabilities.

In Ecuador, Article 6 of the Organic Law on Disabilities establishes that a person with a disability is a person who:

Article 6.- Person with disability. - For the purposes of this Law, a person with disability is considered to be any person who, as a consequence of one or more physical, mental, intellectual or sensory impairments, regardless of the cause that originated it, has a permanently restricted biological, psychological and associative capacity to exercise one or more essential activities of daily life, in the proportion established by the Regulations. (Ecuador, Asamblea Nacional, 2019).

Given the importance of what is stated in Article 6 of the aforementioned law, the notary assumes the responsibility of guaranteeing the legal security of those who require these actions. The notary public assumes a fundamental role in the Declaration of Interdiction, as he/she is the competent person in charge of carrying out the legal process in an impartial and transparent manner, converting the appointment of a guardian into an act of public faith.

The notary public acts as a guarantor of the rights and protection of the person with a disability, ensuring that the procedures established by law are complied with. Furthermore, the notary public has the responsibility to assess the mental and psychological capacity of the person in question, based on medical and psychological evidence and reliable testimony. He/she must act with sensitivity and empathy towards the person with a disability, always respecting his/her dignity and autonomy.

All of the above leads to the formulation of the following scientific problem: How to favour the legal procedure of safeguarding the rights of persons with mental and psychological disabilities through the appointment of a guardian, involving the participation of a notary public?

From this perspective, the general objective of the research is: to carry out an exhaustive legal analysis of the internal legal system in Ecuador with regard to the declaration of interdiction and the appointment of a guardian for persons with intellectual disabilities (mental and psychological), with the aim of proposing a new paragraph to Article 18 of the current Notarial Law. Since its inception, the United Nations has played a crucial role in recognising and promoting the rights of persons with disabilities within the international legal framework.

Armed confrontations in the bloody Second World War left a large number of persons with disabilities as a result, and this, therefore, represented a problem for the countries involved, as they represented a burden, such persons, and of course, there was no effective policy on the issue of disability, regulating this issue.

Against this background, the United Nations first specifically addressed the issue of disability in 1950 at the sixth session of the Social Commission. At this session, two reports on physical disabilities were considered and the work of the International Programme for the Welfare of the Blind was reviewed. As a result of these efforts, the Economic and Social Council created a number of specific rehabilitation and treatment programmes for people with physical and visual disabilities (Saulle, 1981).

In the late 1960s, a reorientation in the policies followed until then began to take place. However, despite the growing interest in disability, it was still conceived exclusively as part of the welfare and sometimes social policy of states, with no apparent link to the protection of fundamental rights and freedoms. This explains the absence of any mention of persons with disabilities in the International Covenants on Human Rights of 1966 (Humanium, 1966) and in the Universal Declaration of Human Rights of 1948 (United Nations (UN), 1948).

In the 1970s, people with disabilities began to be recognised as rights holders. In 1971, the General Assembly approved through Resolution No. 2856, the Declaration of the Rights of Mentally Retarded Persons, which was a milestone, being the first international instrument of the United Nations that recognised the rights of persons with intellectual disabilities (Organisation of American States (OAS), 1971).

Likewise, already in 1975, the General Assembly of the UN, approved in the same way, through the Resolution 3447 dated December 9th, 1975, the Declaration of the Rights of the Disabled, which, extended the recognition of the rights guaranteed to all the beings with some disability (United Nations Educational, Scientific and Cultural Organization (UNESCO), 1975). However, both Declarations did not have the character of being binding on States, and therefore lacked the force of compliance.

In the same vein, the UN determined that the year 1981 would be called the "International Year of Disabled Persons", the theme of which would be "full participation", with the aim of:

- assist the disabled in their physical and psychological adaptation to society;
- to promote all national and international efforts to provide the disabled with appropriate assistance, care, training and guidance, to make available to them opportunities for suitable work and to ensure their full integration into society;
- encourage study and research projects aimed at facilitating the practical participation of disabled persons in everyday life;
- educate and inform the public about the right of disabled persons to participate in and contribute to various aspects of economic, social and political life; and
- to promote effective measures for the prevention of disability and for the rehabilitation of disabled persons (United Nations Educational, Scientific and Cultural Organisation (UNESCO), 1981).

Consequently, the United Nations General Assembly at its thirty-seventh session, by Resolution 37/52 of 3 December 1982, adopted the World Programme of Action concerning Disabled Persons, whose purpose is: "to promote effective measures for the prevention of disability, rehabilitation and the realization of the goals of 'full participation' of disabled persons in social life and development and of 'equality'" (United Nations (UN), 1982).

Also, the General Assembly itself established the so-called United Nations World Decade for Disabled Persons (1983-1992), with the aim of holding an International Conference related to this important issue of disability, but this objective could not be achieved (United Nations (UN), 1982).

Similarly, a series of Declarations followed, such as the 1989 Tallinn Guidelines for the Development of Human Resources in the Field of Disability (United Nations, 1989), the 1991 Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (Organisation of American States (OAS), 1991). In 1992, at the conclusion of the aforementioned Decade, the UN declared that 3 December of each year would be designated as the International Day of Persons with Disabilities (United Nations (UN), 1992).

Then, by means of the Resolution adopted by the General Assembly at its Forty-eighth session on 20 December 1993, the Standard Rules on

the Equalization of Opportunities for Persons with Disabilities were adopted, with the aim of:

(a) Emphasize that all measures in the field of disability presuppose sufficient knowledge and experience of the special conditions and needs of persons with disabilities;

(b) Emphasize that the process by which every aspect of the organization of society is made available to all is a fundamental objective of socio-economic development;

(c) Identify key aspects of social policies in the field of disability, including, where appropriate, the active promotion of economic and technical cooperation;

(d) Provide models for the political decision-making process necessary for the achievement of equality of opportunity, taking into account the existence of a wide range of economic and technical levels, as well as the fact that the process must reflect a thorough understanding of the cultural context in which it takes place and the key role that persons with disabilities play in that process;

(e) Propose the establishment of national mechanisms for close collaboration between States, bodies of the United Nations system, other intergovernmental bodies and organizations of persons with disabilities;

f) Propose an effective mechanism for monitoring the process by which States seek to achieve equality of opportunity for persons with disabilities. (United Nations (UN), 1993).

These Standard Rules are the most relevant international instrument in terms of the international legal regulatory framework on the issue of disability, although they are not binding on the signatory countries.

Despite the efforts made, the main criticism of the work of the United Nations was the lack of a GLOBAL TREATY to promote and protect the rights of persons with disabilities. It was clear that, without such a legally binding document, the exercise, respect and, above all, enforcement of the rights of persons with disabilities would be significantly hampered.

After extensive expert study, the General Assembly adopted the Convention on the Rights of Persons with Disabilities and its Optional

Protocol at its 61st session on 13 December 2006 (United Nations (UN), 2006), which entered into force on 3 May 2008.

This treaty is considered a cornerstone in the recognition of equal rights and opportunities for persons with disabilities.

The main objective of this Convention is to ensure that persons with disabilities fully enjoy all human rights and fundamental freedoms. The content of the Convention covers different aspects of the lives of persons with disabilities, such as equality and non-discrimination, accessibility, inclusion, participation in political and public life, access to justice, health, education and employment, among others.

The Optional Protocol to the Convention was adopted on the same day and allows individuals and groups to submit complaints to the Committee on the Rights of Persons with Disabilities, a body established to monitor the implementation of the Convention. This Protocol also gives the Committee the power to conduct enquiries in specific cases of grave violations of the human rights of persons with disabilities.

The Convention establishes implementation and monitoring mechanisms to ensure compliance. These include the Committee on the Rights of Persons with Disabilities, a body composed of independent experts to review periodic reports submitted by States parties and issue recommendations to improve the situation of persons with disabilities in each country.

In addition, the Convention establishes the obligation of States parties to adopt legislative, administrative and other measures to guarantee the rights recognised in this treaty, as it has the character of being binding on all signatory States.

Persons with specific needs:

In order to begin to analyse the problems arising from this research, it is vitally important to know what is meant by people with disabilities. For this, the definition of the Pan American Health Organization is assumed, when referring to the Convention on the Rights of Persons with Disabilities (CRPD), which, in its article 1, defines persons with disabilities as "those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. (Pan American Health Organization (PAHO), 2024).

Classification of the different types of intellectual disabilities.

Intellectual disability is defined as:

A condition in which an individual experiences significant limitations in intellectual functioning and basic adaptive skills. These limitations affect the ability to learn, understand new information, reason and cope with the daily demands of life independently. (Universidad Internacional de La Rioja (UNIR), 2024).

Consequently, this definition details the different types of intellectual disability that exist, according to the different medical studies carried out:

- 9 - Mild intellectual disability: characterised by challenges in academic learning and social adaptation. People with this type of disability can generally learn basic academic skills, but need additional support to develop social skills and face challenges in areas such as reading, writing and mathematics. It is characterised by people with IQ between 50 and 70, with cognitive delay and a slight impairment of the sensorimotor field. They are able to take part in the education system, receive training and even have professional activity, but their learning takes much longer than that of other people.

Examples of specific difficulties would be:

- Difficulties in reading and writing: they may need specific strategies to improve reading comprehension and express themselves in writing.
- Limited mathematical skills: they require a practical and visual approach to understand mathematical concepts.
- Organisational problems: difficulties in organising tasks and following complex instructions (Universidad Internacional de La Rioja (UNIR), 2024).

Moderate Intellectual Disability: At this level, challenges are more pronounced and individuals may need support with strategies to address special educational needs such as daily living. This level, which is below 50 in IQ, creates a constant need for supervision in both education and work, although, with much therapy, they may have some degree of autonomy. Some specific characteristics include:

- Need for support in daily tasks: assistance with daily activities such as dressing, grooming and food preparation.

- Limited language development: difficulties in expressing and understanding language.
- Limited social skills: problems in establishing meaningful social relationships. (International University of La Rioja (UNIR), 2024).

Severe Intellectual Disability: Involves significant challenges in all areas of development. It is when the IQ is between 20 and 35, making those who suffer from it in need of constant supervision, as it almost always presents with neurological damage. This causes the individual to have reduced skills, little or no reading and numerical comprehension. Here, people usually communicate with holophrases. Legally they are considered unable to make their own decisions.

People with this condition may require constant support and supervision in almost all daily activities, for example:

Need for constant care: complete dependence for daily tasks and personal needs.

- Communication limitations: limited or no language, using non-verbal forms of communication.
- Require structured and supervised environments: need a highly structured environment to function effectively (Universidad Internacional de La Rioja (UNIR), 2024).

Profound intellectual disability: At this level the intellectual disability is extreme, with significant challenges in all areas of development. It is one of the most infrequent, and is the one of the different types of intellectual disability most feared by parents, as those who suffer from it have an IQ capacity of less than 20. This implies permanent care and the survival rate is very low, as it is often accompanied by neurological problems, among others. Their motor skills are limited and their communicative ability is quite low or non-existent.

People with profound intellectual disabilities may have severe difficulties in communication and mobility and require constant and specialised care.

- Total dependence: they need complete assistance for all daily activities.
- Limited or absent communication: extreme difficulties in communicating verbally or not communicating verbally.

- Special medical needs: face additional medical conditions that require constant attention. (Universidad Internacional de La Rioja (UNIR), 2024).

Understanding these levels of intellectual disability is fundamental to adapt support and legal strategies to the individual needs of each person, with the aim of protecting their rights, in the different bodies of law.

Notarial Law and the Protection of the Rights of Persons with Disabilities.

Notarial law plays a key role in the protection of the rights of people with disabilities. As impartial and objective intermediaries, notaries are responsible for ensuring the authenticity, security and legality of all legal transactions. In the case of persons with disabilities, this means ensuring that their rights are respected and adequately protected.

The notary, through his or her function as a notary public, can ensure the legal capacity of persons with disabilities, i.e. their ability to exercise rights and obligations. In this respect, it is essential that the notary carries out a thorough analysis of the capacity of the person with a disability, avoiding stereotypes and prejudices, taking into account all individual circumstances, to ensure that his or her autonomy and free exercise of will is not infringed.

Once the capacity of the person with a disability has been assessed, the notary can take measures to ensure that his or her rights are protected. This can include the appointment of support or legal representatives, the adoption of appropriate safeguards and the recommendation of accessibility and adaptation measures in legal transactions, as is precisely our proposal or practical contribution in this research.

Notarial law has various instruments for guaranteeing the rights of persons with disabilities. One of the most important of these is the granting of powers of attorney, whereby a person with a disability can appoint a representative to act on his or her behalf. These powers of attorney can include the management of legal, financial and personal care matters, but at the moment the Notarial Act essentially does not provide for the particular case in which a petition for a declaration of interdiction can be processed to administer the assets of a person declared mentally incompetent, which is exactly the contribution we want to make to the law on the subject.

The notary has an important responsibility in promoting the inclusion and equality of people with disabilities. In addition to fulfilling his legal functions, the notary has the capacity to influence society and the construction of inclusive environments. The notary can contribute to the fight against discrimination and stigmatisation of persons with disabilities by promoting inclusive practices in his or her daily work. This involves providing equal treatment to all persons, adapting notarial procedures according to individual needs and raising awareness and sensitisation about the rights of persons with disabilities.

It is essential for the notary to keep up-to-date and trained in disability-related aspects in order to be able to provide a quality service that respects human rights. Collaboration with organisations and entities specialised in disability can also be of great help in broadening knowledge and improving the notary's inclusive approach.

The State of Interdiction and Guardianship.

According to the Royal Academy of the Spanish Language (RAE), the term Interdiction is referred to as follows: "Procedure of a civil nature aimed at declaring that a certain person does not have the intellectual or volitional capacities to carry out his or her exercise capacity". (Pan-Hispanic Dictionary of Legal Spanish, 2024).

On the other hand, the Civil Code itself, in Art. 367, refers to guardianships and curatorships, stating the following:

Art. 367: guardianships and curatorships or curatorships, are positions imposed on certain persons, in favour of those who cannot govern themselves, or competently administer their affairs, and who are not under the power of a father or mother, who can give them due protection.

The persons who exercise these positions are called guardians or curators, and generally guardians (Ecuador, Congreso Nacional, 2022).

Interdiction is a legal procedure that aims to protect and safeguard the rights of persons who, due to various circumstances, have lost their capacity to make decisions or exercise their rights autonomously.

Interdiction is a legal status in which a person is declared incapable of exercising the full enjoyment of his or her civil rights on his or her own.

In order for a person to be declared interdicted, it is necessary to follow a procedure established by law.

The first step is the filing of an application by a family member, spouse or a person interested in the protection of the rights of the person in question, which must meet the requirements contained in the COGEP, accompanied by a certificate from a Psychiatrist or neurologist on the state of the alleged interdicted person, issued under oath, among others to prove his or her mental incapacity.

This application must be submitted to a competent judge and contain solid arguments demonstrating the need to declare the person interdicted. In addition to the filing of the application, all parties involved must be notified, an exhaustive medical and psychological evaluation of the person must be carried out, and a hearing must be held in which the mental capacity of the person will be evaluated and the arguments of all interested parties will be heard. Once all the evidence demonstrating the person's incapacity has been gathered and once the only hearing has been held in accordance with the summary procedure (COGEP), the final interdiction is declared and a definitive guardian is appointed (Chimbo, 2020). (Chimbo, 2020)

It is important to highlight that interdiction does not imply a total loss of rights for the person declared interdicted, but rather seeks to protect his or her interests and guarantee that his or her decisions are taken in a responsible manner by his or her guardian or curator.

Although it is a legal mechanism designed to protect the most vulnerable persons, the application of interdiction can present limitations and challenges. These may include the difficulty in accurately and objectively determining the degree of incapacity of a person, conflicts of interest between the parties involved, lack of adequate resources and support for the guardian or conservator, and the potential for abuse or neglect by the appointed guardian or conservator.

It is essential that improvements be made to the interdiction and guardianship system to ensure the effectiveness and protection of the rights of persons declared interdicted.

Types of interdiction:

In this section we share the criteria of Gustavo Antonio Chaves Chimbo (2020), which refers that interdiction can be judicial or legal:

Judicial interdiction: This is the interdiction resulting from a serious habitual intellectual defect. Its name derives from the fact that the intervention of the judge is necessary to pronounce it. It determines an incapacity for protection.

Legal interdiction: This is the interdiction resulting from a prison sentence. Its name derives from the fact that, once the sentence has been imposed, without the need for any other requirement, the offender is interdicted by virtue of law. It determines an incapacity for social defence (p. 18).

The effects of interdiction are as follows:

Among the main effects caused by the sentence of interdiction are:

1. The interdicted person is deprived of the government of his person, he is affected by a full, general and uniform incapacity, consequently, he is subject to guardianship.
2. The guardian must see to it that the interdicted person recovers his or her capacity; for this purpose, the products of the assets must be used.
3. The judge, with knowledge of the case, shall decide whether the incapacitated person is to be cared for at home or elsewhere, but shall not intervene if the curator is the father or mother of the incapacitated person.
4. He is deprived of the exercise of parental authority over his unemancipated minor children. (Chimbo, 2020).

Materials and Methods

The research had a qualitative, documentary-type approach which, according to Bernal, Cesar (2010) "consists of an analysis of written information on a given topic, with the purpose of establishing relationships, differences, stages, positions or current state of knowledge regarding the subject under study" (p. 111). (p. 111). In this case, an analysis is made of Article 18 of the Notarial Act in force and its numerals. It is also of an explanatory type since this type of research "seeks that the conclusions lead to the formulation or contrast of laws or scientific principles" (p. 115), inasmuch as once the analysis of the

article of reference and the current numerals has been carried out, the inclusion of a new numeral is proposed which gives notaries the power to declare an intellectually disabled person interdicted and at the same time appoint a guardian in the same legal act.

Theoretical methods such as analysis and synthesis, inductive-deductive and historical-logical methods were used to guide the research process on the declaration of interdiction by a notary public for mentally and psychologically disabled persons. In addition, the method of legal systematisation is used in the design of the proposed new paragraph of Article 18 of the current Notarial Act, which enables its structure and functioning to be conceived. Document analysis was used as a research technique, which is a "technique based on bibliographic files whose purpose is to analyse printed material" (Bernal, 2010, p. 194), in this research the fundamental documentation was based on the legal law in force in Ecuador. Similarly, interviews were conducted with notaries and lawyers whose contributions were essential for the analysis of the proposal for the new section of the current law under analysis in this research.

The study population consisted of three notaries and three lawyers from the city of Guayaquil, Ecuador, who were interviewed with 10 questions in order to analyse the process of applying Article 18 of the current Notarial Law under investigation.

Results

This analysis corroborates how legal practice in Ecuador affects persons with intellectual disabilities and highlights the opinion of specialists on the possibility of granting new powers to notaries to solve this problem.

When inquiring about the Current Regulations, which constituted question 1, the interviewees agree that the Ecuadorian legal system, although it guarantees the protection of the rights of persons with disabilities, especially intellectual disabilities, highlights the need to help lighten the process.

In relation to question 2 regarding the efficiency of the legal procedures, most of the interviewees also agree that the current procedures for declaring interdiction are complicated and lengthy, which overloads the courts and makes it difficult to quickly access the necessary legal protection. They suggest that these functions could be taken over by notaries for greater efficiency.

At the same time, question 3 was asked about the Declaration of Survival, where again the majority are of the opinion that the purpose of the declaration of survival by notaries is to verify the existence of the person. They point out that this process, although regulated, does not directly address disability, which does not represent a significant loophole in the law.

Also, asked about the importance of the Declaration of Interdiction (Question 4), all respondents stated that the declaration of interdiction is seen as crucial to protect persons with intellectual disabilities by facilitating the appointment of a guardian. Respondents believe that allowing notaries to make such declarations would significantly improve the process and the well-being of these persons.

Another aspect on which the interview revolved was the Criteria for Determining Disability (Question 5), where the following were predominant in their responses: certifications from the Ministry of Public Health, CONADIS and specialised medical expertise.

Due to the relevance of the topic, the analogy with the Representation of Persons Deprived of Liberty was asked (Question 6), where a possible parallelism between the legal representation of persons deprived of liberty and those with intellectual disabilities was appreciated, suggesting that notaries could play a similar role in both cases.

On the basis of what is represented in the research, administrative facilities were surveyed (Question 7), with the majority finding that the incorporation of the power to declare interdiction to notaries would simplify and speed up procedures, reducing the burden on the judicial system and facilitating access to rights and benefits for users.

At the same time, questions were asked about the New Powers (Question 8) where they emphasised the importance of granting notaries the power to declare interdiction and appoint curators, considering that this would speed up voluntary jurisdiction processes.

In addition, they questioned the requirements for the Declaration of Interdiction (Question 9), where they listed essential requirements such as the certification of survival, certifications from the Ministry of Health and CONADIS, medical expertise, and testimonies of suitable witnesses.

Finally, a question was asked about preferences in the Appointment of Curator (Question 10) at this point the majority suggested that the curator should preferably be the spouse or a close relative to guarantee the rights of the represented person, although the possibility of appointing a person with legal training is also considered if the context requires it.

From the studies carried out throughout this research, and from verifying the existence of the scientific problem, it becomes essential to propose a solution to it, through the following new proposal. To this end, it is intended to contribute with a new numeral to Article 18 of the Notarial Law, which gives notaries the power to declare an intellectually disabled person interdicted and at the same time appoint a guardian in the same legal act.

- The proposal would then read as follows:
- Reform Title XXII OF THE CIVIL CODE:
- Articles 480, 481, 482, 484, 486, 487, 488.
- In Article 480, replace judicial interdiction by notarial interdiction.
- In Article 482 replace the expression "The judge" by "The notary".

In Article 484 replace "The judge shall choose" by "The notary shall appoint", and in addition state the following: The parents may not exercise this office without the consent of the other spouse. The children may not exercise this office without the consent of the majority of their siblings. In case of the third order of succession Art. 1053. Siblings may not exercise this office without the consent of the majority of their siblings, for which purpose they shall go to a Mediation Centre, where the person or persons best suited to exercise this office shall be appointed.

In Article 486, replace the expression "after the sentence of interdiction" by "after the act of interdiction".

In Article 487 replace the expression "judicial authorisation" by "notarial authorisation".

In Article 488 replace the expression and with judicial authorisation by and with notarial authorisation.

Amendment of Article 18 of the Notarial Act

Add a new paragraph to the articles: Art.18, paragraph 39

To process the petition for the declaration of interdiction to administer the assets of a person declared mentally incompetent; for this purpose, a medical history and a certificate issued by a psychiatrist from the Institute of Neurosciences or the Social Security Institute shall be attached;

In the act establishing the interdiction, a guardian shall be appointed. The legal guardian has the duty to act in a diligent and responsible manner, making decisions for the welfare and safety of the ward. The responsibilities of the legal guardian include managing the ward's assets and resources, as well as making decisions in medical, legal and financial matters.

The notary public has the responsibility to assess the mental and psychological capacity of the person in question, based on reliable medical and psychological evidence and testimony. The notary public will request medical and psychological evidence to support the declaration of incapacity, as well as testimonies from family members, caregivers or health professionals that can support such a request.

The notary public is also responsible for supervising the management of the legal guardian, ensuring that he/she fulfils his/her duties and makes decisions in the best interests of the ward. The legal guardian must be accountable to the notary public and fulfil the obligations laid down by law.

In addition, the notary public may be consulted in the event of a conflict or dispute between the legal guardian and other relatives or interested parties. The notary public must act with sensitivity and empathy towards the person with disabilities, always respecting their dignity and autonomy.

Conclusions

The epistemic and legal analysis of the current law in Ecuador on the legal procedures of persons with disabilities made it possible to solve the scientific problem that led to the research and to fulfil the General Objective by carrying out an exhaustive legal analysis of the internal legal system in Ecuador, regarding the declaration of interdiction and the appointment of a guardian for persons with intellectual disabilities (mental and psychological), with the purpose of proposing a new numeral to Article 18 of the current Notarial Law.

The proposal of a new numeral to Article 18 of the current Notarial Law may help to streamline the current process, reduce paperwork and thus benefit persons with disabilities.

References

- Bernal, C. (2010). *Metodología De La Investigación: Administración, Economía, Humanidades y Ciencias Sociales*. Pearson.
- Chimbo, G. A. (2020). *La Declaratoria de Interdicción de Personas con Discapacidad Mental en Sede Notarial*. Guayaquil. <http://repositorio.ucsg.edu.ec/bitstream/3317/14115/1/T-UCSG-POS-DDNR-33.pdf>
- Constitución De La República Del Ecuador. (2008). Resolución Legislativa No. 0, publicada en Registro Oficial Suplemento 653 de 21 de Diciembre del 2015 . https://www.defensa.gob.ec/wp-content/uploads/downloads/2021/02/Constitucion-de-la-Republica-del-Ecuador_act_ene-2021.pdf
- Diccionario panhispánico del español jurídico*. (2024). Interdicción: <https://dpej.rae.es/lema/interdicci%C3%B3n#:~:text=Procedimiento%20de%20car%C3%A1cter%20civil%20orientado,ejecutar%20su%20capacidad%20de%20ejercicio>.
- Ecuador, Asamblea Nacional. (2019). *Ley Orgánica de Discapacidades*. Quito. <https://biblioteca.defensoria.gob.ec/bitstream/37000/3405/1/Ley%20Org%C3%A1nica%20de%20Discapacidades.pdf>
- Ecuador, Asamblea Nacional. (2023). *Ley Notarial*. Quito. <https://www.lexis.com.ec/biblioteca/ley-notarial>
- Ecuador, Congreso Nacional. (2022). *Codificación del Código Civil*. Quito: Comisión de Legislación y Codificación. <https://biblioteca.defensoria.gob.ec/bitstream/37000/3410/1/C%C3%B3digo%20Civil%20%28%209%C3%A1ltima%20reforma%2014-03-2022%29.pdf>
- Humanium*. (16 de diciembre de 1966). Pactos Internacionales de 1966: [https://www.humanium.org/es/pacto-1966/#:~:text=El%2016%20de%20diciembre%20de,Sociales%20y%20Culturales%20\(PIDESC\)](https://www.humanium.org/es/pacto-1966/#:~:text=El%2016%20de%20diciembre%20de,Sociales%20y%20Culturales%20(PIDESC)).
- Naciones Unidas (ONU)*. (10 de Diciembre de 1948). La Declaración Universal de los Derechos Humanos: <https://www.un.org/es/about-us/universal-declaration-of-human-rights>
- Naciones Unidas (ONU)*. (3 de Diciembre de 1982). Programa de Acción Mundial para los Impedidos: <https://www.un.org/esa/socdev/enable/diswps00.htm>

- Naciones Unidas (ONU)*. (3 de diciembre de 1982). Decenios Internacionales (1983–1992): <https://documents.un.org/doc/resolution/gen/nr0/432/93/pdf/nr043293.pdf?token=EVmde3oy0Gi2mLujxO&fe=true>
- Naciones Unidas (ONU)*. (3 de Diciembre de 1992). Día Internacional de las Personas con Discapacidad: <https://www.un.org/es/observances/day-of-persons-with-disabilities>
- Naciones Unidas (ONU)*. (20 de diciembre de 1993). Normas Uniformes sobre la igualdad de oportunidades para las personas con discapacidad: <https://www.un.org/esa/socdev/enable/dissres0.htm>
- Naciones Unidas (ONU)*. (13 de diciembre de 2006). Convención sobre los Derechos de las Personas con Discapacidad y su Protocolo facultativo: <https://www.un.org/disabilities/documents/convention/convoptprot-s.pdf>
- Naciones Unidas*. (8 de diciembre de 1989). Directrices de Tallin para el Desarrollo de los Recursos Humanos en la Esfera de los Impedidos : <https://documents.un.org/doc/resolution/gen/nr0/555/52/img/nr055552.pdf?token=jnsoqIRYLQgPnF1Ej9&fe=true>
- Organización de Estados Americanos (OEA)*. (20 de Diciembre de 1971). Declaración de los Derechos del Retrasado Mental: https://www.oas.org/dil/esp/declaracion_ag-26-2856_1971.pdf
- Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura (UNESCO)*. (9 de Diciembre de 1975). Declaración de los Derechos de los Impedidos : https://unesdoc.unesco.org/ark:/48223/pf0000043670_spa
- Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura (UNESCO)*. (1981). Año Internacional de los Impedidos: https://unesdoc.unesco.org/ark:/48223/pf0000048396_spa
- Organización de los Estados Americanos (OEA)*. (17 de diciembre de 1991). Principios para la Protección de los Enfermos Mentales y el Mejoramiento de la Atención de la Salud Mental : <https://www.cidh.oas.org/privadas/principiosproteccionmental.htm>
- Organización Panamericana de la Salud (OPS)*. (2024). Discapacidad: <https://www.paho.org/es/temas/discapacidad#:~:text=Las%20personas%20con%20discapacidad%20son,de%20condiciones%20con%20los%20dem%C3%A1s.>
- Saulle, M. R. (1981). *The disabled persons and the international organizations*. Roma: International Documentation Ent. <https://unesdoc.unesco.org/ark:/48223/pf0000066533>
- Universidad Internacional de La Rioja (UNIR)*. (25 de Enero de 2024). ¿Qué es la discapacidad intelectual y qué tipos hay?: <https://ecuador.unir.net/actualidad-unir/discapacidad-intelectual/>

