



# Comparative regulation of early inheritance in Ecuador and Peru: regulations and legal challenges

**Regulación comparada de la herencia anticipada en Ecuador y Perú: normativas y desafíos legales**

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## ABSTRACT

This article analyzes the regulation of anticipated inheritance in Ecuador and Peru, highlighting the regulatory differences and the associated legal challenges. Among the main findings, it is observed that in Peru there is a clear norm that regulates the anticipated inheritance, while in Ecuador this figure lacks a specific treatment, which generates legal uncertainty and possible conflicts. As a solution, it is proposed to reform the Ecuadorian Civil Code to include a clear definition of anticipated inheritance, to establish formal requirements such as public deed and registry registration, and to guarantee rules of collation that reinforce equity. This study concludes that a specific regulation can improve efficiency and transparency in the distribution of estates, laying the groundwork for future research to promote

regulatory harmonization in the region. Therefore, the objective of this article is to compare the regulation and application of anticipated inheritance in Ecuador and Peru, with the purpose of identifying similarities, differences and areas for improvement in the Ecuadorian regulatory system. The methodology used is a comparative analysis of the legal frameworks, focusing on aspects such as legal certainty, patrimonial equity and formality in the procedures.

## RESUMEN

Este artículo analiza la regulación de la herencia anticipada en Ecuador y Perú, destacando las diferencias normativas y los desafíos legales asociados. Entre los principales hallazgos, se observa que en Perú existe una normativa clara que regula el anticipo de herencia, mientras que en Ecuador esta figura carece de un tratamiento específico, lo que genera incertidumbre jurídica y posibles conflictos. Como solución, se propone reformar el Código Civil ecuatoriano para incluir una definición clara de la herencia anticipada, establecer requisitos formales como la escritura pública e inscripción registral, y garantizar reglas de colación que refuercen la equidad. Este estudio concluye que una regulación específica puede mejorar la eficacia y la transparencia en la distribución patrimonial, sentando las bases para futuras investigaciones que promuevan la armonización normativa en la región. Es por ello que, el objetivo de este artículo es comparar la regulación y aplicación de la herencia anticipada en Ecuador y Perú, con el propósito de identificar similitudes, diferencias y áreas de mejora en el sistema normativo ecuatoriano. La metodología empleada es un análisis comparativo de los marcos legales, enfocándose en aspectos como la seguridad jurídica, la equidad patrimonial y la formalidad en los procedimientos.

## Keywords / Palabras clave

Patrimonial equity, early inheritance, legal security.

equidad patrimonial, herencia anticipada, seguridad jurídica

## Introduction

Anticipated inheritance, also known as an advance on the reserved portion of an estate, is a legal concept which, according to Alvarado, is the right that allows a person to dispose of a part of their assets in their

lifetime in favor of their forced heirs, guaranteeing their inheritance rights; in other words, it is a pact of wills between the anticipating and anticipated parties. This mechanism is highly relevant in the legal sphere, as it seeks to balance the interests of the heirs and the owner of the assets, as well as to prevent possible inheritance conflicts. However, its regulation and application vary significantly between countries, which raises the need for a comparative analysis to identify good practices and legal challenges applicable to the Ecuadorian legal system.

In the case of Ecuador and Peru, the legal problem lies in the substantial differences between their regulatory frameworks regarding anticipated inheritance. While in Peru this figure is expressly regulated, in Ecuador there is no specific regulation, and its implementation is carried out through other legal figures, which raises questions about which model is more efficient and equitable in inheritance practice. These discrepancies have a direct impact on the protection of the heirs' rights and on the autonomy of the deceased to dispose of their assets during their lifetime, which highlights the need to evaluate possible legislative reforms in the Ecuadorian case. The relevance of this analysis is based on understanding how the legal particularities of each country affect the application of anticipated inheritance and on promoting critical reflection on the normative aspects that could be optimized in Ecuador. From the perspective of comparative law, this study offers a valuable approach that can serve as a reference for the design of legal reforms that favor greater security and equity in the field of inheritance.

For which it is important to start by defining inheritance; according to Ulchango and Galarraga (2021) “inheritances are the assets and liabilities attributed in kind, left by the deceased at the time of opening the succession, that is, at the time of their death due to a cause of death.” (p 14). This article also aims to address the importance not only of this succession after death, but also of the fact that it can occur during a person's lifetime, which brings several benefits for the person whose assets pass to the heir or person of their choice, thus fulfilling their wish. Therefore, the general objective of this article is to compare the regulation and application of anticipated inheritance in Ecuador and Peru, with the purpose of identifying similarities, differences and areas for improvement in the Ecuadorian regulatory system .

In terms of its structure, the article is organized into four main sections. First, the concept of anticipated inheritance is defined and

the regulatory frameworks of both countries are described. Secondly, the challenges and opportunities posed by this concept in each legal context are examined. This is followed by a comparative analysis that highlights the similarities and differences between the regulations. Finally, the conclusions and recommendations derived from the study are presented. This approach guarantees a comprehensive analysis, aimed at both legal professionals and those interested in inheritance matters.

## Development

Anticipated inheritance is a legal mechanism that allows the deceased, during their lifetime, to make a partial or total allocation of their assets to the legal heirs or to third parties. For Fontanellas, the purpose of this act is to prevent future conflicts between the beneficiaries and to facilitate an orderly distribution of the assets. In Ecuador, this concept is regulated in the Civil Code, which establishes that donations made during a person's lifetime to forced heirs, which should be considered as part of the legitimate portion, guaranteeing equity in the distribution of the estate. According to Loguarro, legal certainty is a fundamental principle of law that seeks to protect the trust of citizens in legal provisions and in acts carried out in accordance with the law in the field of distribution of property. Legal certainty guarantees that the agreements adopted on anticipated inheritance are respected and protected against possible challenges or legal conflicts.

In a normative comparison, it can be seen that while in Peru anticipated inheritance has clear and strict regulation, in Ecuador this figure is not specifically dealt with in legislation. This Ecuadorian normative vacuum generates legal uncertainty, since lifetime donations, although recognized as part of the legitimate portion, lack detailed procedures to guarantee their correct allocation and transparency. This contrasts with Peru, where the legal framework ensures more rigorous control over anticipated transfers.

Comparative regulation also highlights differences in the handling of the formality of the acts. In Ecuador, living donations only require a public deed and acceptance by the beneficiary, while in Peru, in addition to the public deed, registration in official records is required. This additional requirement in Peru reinforces legal certainty by

making it more difficult to challenge the acts and providing a transparent and verifiable record of the transfers made.

From a comparative law perspective, the Peruvian system has advantages in that it guarantees that lifetime gifts are compulsorily integrated into the calculation of the legitimate share. This approach not only reinforces equity between heirs, but also ensures that anticipated assets are accounted for correctly, minimizing legal disputes. In Ecuador, on the other hand, the lack of regulation generates inequalities in the distribution of assets, which can lead to family conflicts.

Another relevant point is the protection of the rights of the heirs entitled to a reserved share. For this reason, it is essential to take into consideration the rights that involve the concept of patrimony, as Morales and Daza (2016) mention, “it involves the following rights: the right to property, patrimonial right or economic right, consequently, the right to things, the right to obligations and hereditary succession (or mortis causa), which constitutes patrimony as a *universitas iuris*” In Peru, the regulations guarantee that all anticipated transfers respect the principle of legitimate inheritance, promoting equity among forced heirs.

In Ecuador, although this principle is implicit in inter vivos donations, the lack of specific regulation hinders its uniform application, leaving room for subjective interpretations and potential abuses. Therefore, for de la Guerra (2017), from a positive point of view, the law should be a vehicle for generating certainty, hence there is a direct relationship between legal certainty and the certainty of the norm. If this is not the case, we would face a scenario of legal uncertainty, which allows us to show that regulatory differences also reflect the level of prevention of legal conflicts.

Peru establishes detailed procedures that seek to prevent disputes through strict formalization and registry control. On the other hand, in Ecuador, the absence of these mechanisms encourages the judicialization of inheritance conflicts, increasing the costs and time associated with their resolution. This contrast highlights the need to adopt elements of the Peruvian model to strengthen the Ecuadorian legal framework.

A comparative analysis reveals that the Peruvian regulatory structure provides greater predictability and confidence for citizens when planning their estate. Mandatory requirements such as registration

protect both the deceased and the heirs, ensuring that agreements are carried out within a legal framework. In Ecuador, the lack of such measures reduces confidence in the system and hinders effective estate planning.

### **Inheritance law in Ecuador and Peru**

Inheritance law in Ecuador and Peru shares common ground due to its origin in the Romano-Germanic legal system, although there are particular differences in how it is regulated. In Ecuador, the Civil Code of the Republic of Ecuador establishes that: “a donation inter vivos is an act by which a person gratuitously and irrevocably transfers a part of their assets to another person, who accepts it” (art. 1402), however, not as an advance on the legal share. As Vintimilla et al. point out, donation in this sense is more broadly present in Ecuadorian legislation and this allows a person to grant their assets to anyone, not exclusively to their heirs, framing it as a contract between two parties.

On the other hand, in Peru, the Civil Code of Peru also recognizes the figure of anticipated inheritance which states: “donations or other gifts that, for whatever reason, have been received from the deceased by his or her forced heirs, shall be considered as an advance on the inheritance for the purpose of collation, unless waived by the deceased”. (art. 831) According to this instrument, it allows the deceased to transfer assets to their heirs during their lifetime, but it requires a strict formality to guarantee its validity and the protection of the rights of the other legal heirs. Both countries promote the principle of free will as long as it does not violate legal provisions.

A comparative analysis of Ecuadorian and Peruvian legislation demonstrates the relevance of legal provisions to protect the patrimonial rights of heirs. Through anticipated inheritance, both systems seek to prevent legal disputes, guarantee legal certainty and respect the rights of legal heirs. And above all, to guarantee the right of individuals to decide how, as Arsham points out, “people should be free of pressure or coercion, and be able to make their own decisions, identifying the consequences that derive from them and their implications” (p. 104); for this reason it is essential that the regulations be adapted to the new needs of citizens. The following table summarizes the relationship between current regulations and the protection of property rights in both countries:

**Table 1.** *Comparison between donation and anticipated inheritance, Ecuador-Peru.*

<b>Aspecto</b>	<b>Ecuador</b>	<b>Perú</b>
<b>Figura legal</b>	La donación es la figura utilizada para anticipar bienes.	El anticipo de herencia está regulado como figura específica.
<b>Regulación</b>	Se regula bajo el Código Civil ecuatoriano, sin normativa específica.	El Código Civil peruano incluye artículos claros sobre el anticipo de legítima.
<b>Libertad de decisión a los causantes</b>	Permite al donante garantizar derechos de sus herederos.	Protege la porción obligatoria de los herederos legitimarios.
<b>Formalidad</b>	Requiere escritura pública y aceptación del beneficiario.	Exige escritura pública e inscripción en registros oficiales.
<b>Seguridad jurídica</b>	Garantizada por una regulación general, aunque limitada en especificidad.	Requiere cumplir requisitos estrictos que fortalecen la protección de derechos patrimoniales.

Created by Moncayo 2025 Note: The table compares the regulation and legal characteristics of donation in Ecuador and anticipated inheritance in Peru. Source: Civil Code of Ecuador and Civil Code of Peru.

The table highlights the fundamental differences between the legal concepts of donation in Ecuador and anticipated inheritance in Peru, particularly in their capacity to guarantee the protection of property rights; in Ecuador, the concept of donation offers the deceased a certain degree of flexibility in the disposal of their assets, but lacks a specific regulatory framework to govern its integration into the legitimate portion, which can generate inequalities between heirs.

In contrast, Peru addresses anticipated inheritance in a more structured way, ensuring that lifetime gifts are considered in the

calculation of the reserved share, which reinforces equity among forced heirs; in terms of formality, although both countries require a public deed, Peru adds an additional level of security through registration, this procedure not only brings transparency to the process, but also makes it more difficult to challenge the acts, thus strengthening legal certainty for all parties involved.

The comparison shows that while Ecuador prioritizes the freedom of the deceased, Peru focuses on equity and legal certainty, this suggests that the Peruvian system offers better protection of property rights by limiting possible abuses and ensuring that the distribution of property is more transparent and fair, which could be replicated by the Ecuadorian legal system as it would provide security for both the testator and potential heirs because we would have a specific procedure to follow.

### **Principles of inheritance law in Ecuador and Peru.**

The principles of inheritance law in Ecuador and Peru share a common basis derived from the Romano-Germanic legal system, focusing on guaranteeing the protection of the heirs entitled by law and respect for the autonomy of the testator. It is therefore important to analyze some of the principles on which inheritance law is based in both countries. One of the principles is that of the universality of succession, a fundamental pillar of inheritance law in Ecuador and Peru, since, as Echeverría y otro (2011) states, “The inheritance estate is a single one and includes all assets, rights and debts” (p. 29) In other words, the heirs cannot take possession of the assets alone but must also assume the obligations that the deceased had or has, which are important in the event that the deceased wishes to transfer his or her assets in advance, as he or she can also transfer his or her obligations.

Likewise, the principle of the autonomy of the testator's will applies, which allows the person to dispose of their assets during their lifetime and to determine to a certain extent the destination of their inheritance, either in the case of Ecuador through a will or donation or in the case of Peru through anticipated inheritance. As de la Guerra (2017) states, “to do so within the framework of what is permissible according to the rules of current civil law; likewise, death could come to the deceased prior to the express manifestation of his will, in which case the fate of his estate is already generally determined by law” (p.39) In other words, this principle is not absolute, as it must respect the legitimate rights of forced heirs and comply with the formalities

established by law for its validity. In this sense, the Peruvian legal system has clearer provisions regarding the formalization of wills and the limits of the testator's will, while in Ecuador the regulation of these provisions is more general and can generate conflicts in the interpretation of inheritance.

Finally, the principle of equality among heirs establishes that successors of the same degree are entitled to receive equal shares of the inheritance, unless otherwise provided by law or by the will. As Narváez and Andrade (2023) mention, “the limitations seek to promote distributive justice and foster greater equality of opportunity” (p. 44). This principle seeks to avoid discrimination and ensure an equitable distribution of the deceased's estate. However, in both countries, this principle is applied with certain exceptions. In the case of Peru, it is more flexible and allows for a certain degree of inequality, as long as it is in accordance with the wishes of the deceased. However, in Ecuador the lack of a specific regulation on anticipated inheritance can generate imbalances in the application of this principle. At the same time, this principle allows us to understand that if there is a case of anticipated inheritance and the other heirs agree, this would generate a lock so that in the future it is no longer possible to make a claim for such anticipated inheritance.

The comparison highlights how a specific regulatory framework, such as that of Peru, can prevent inequities and promote a balance between the wishes of the deceased and the rights of the heirs. In Ecuador, the lack of regulation leaves room for possible abuses, which affects the estate planning of citizens. The importance of comparative law lies in its capacity to identify good practices that can be adopted in other contexts. The success of the Peruvian system demonstrates that the strict formalization and integration of donations into the inheritance framework are essential elements to guarantee a fair distribution and prevent conflicts.

The adoption of legislative reforms in Ecuador regarding anticipated inheritance would not only strengthen the protection of assets, but would also align the legal system with international standards, promoting greater confidence in institutions. These reforms should prioritize transparency, the protection of heirs and foresight in inheritance proceedings, establishing a comprehensive framework that favors equity and legal certainty over time.

## Discussion

A comparative analysis of inheritance laws in Ecuador and Peru reveals significant differences in the regulation of anticipated inheritance, reflecting both similarities in their legal origin and differences in their practical implementation. In the Peruvian case, the concept is robustly regulated by Article 831 of the Peruvian Civil Code, which requires formalization by public deed and registration. There is also a state body, the National Superintendency of Public Registries, which is responsible for overseeing this type of legal act.

This legal framework not only ensures transparency and legal certainty, but also reduces opportunities for dispute between heirs; in contrast, the Ecuadorian system deals with anticipated inheritance indirectly through the regulations on donations, which causes uncertainty in the procedures, risks of inequity in the distribution of the estate and restricted protection for forced heirs.

Ecuadorian regulations suffer from significant inconsistencies that hinder the effective application of anticipated inheritance, which underlines the need for a specific legal framework; although article 1402 of the Civil Code recognizes donations as legal acts, it does not establish clear mechanisms to protect the rights of forced heirs nor does it specify how such donations should be accounted for in the calculation of the legitimate portion.

In contrast, the Peruvian system explicitly integrates donations into the calculation of the legal share, ensuring an equitable distribution of assets and avoiding subsequent conflicts; these regulatory differences highlight how a structured approach can prevent property disputes and strengthen legal certainty in the field of inheritance.

The lack of specific regulations in Ecuador causes legal loopholes that impact both the transparency and the safeguarding of property rights; among the main loopholes detected are the lack of clear processes to formalize acts of anticipated inheritance and the lack of controls to prevent the manipulation of donations to circumvent the legitimate portion. These deficiencies not only weaken confidence in the legal system, but also put families in protracted conflicts, especially in contexts where the estate includes assets of high economic or symbolic value.

In Peru, the regulation of anticipated inheritance is based on a preventive approach, where the strict formalization of legal acts acts

as a barrier against challenge and fraud. this system not only protects the forced heirs, but also facilitates the estate planning of the deceased, who can dispose of their assets with the certainty that their decisions will be respected , in Ecuador the informality of the processes generates a scenario conducive to the judicialization of conflicts, which increases the costs and time associated with dispute resolution.

Another relevant aspect is the protection of the rights of the legal heirs, in Peru, the regulations guarantee that all anticipated transfers respect the principle of the legitimate portion, promoting equity among the forced heirs; in Ecuador, although this principle is implicit in inter vivos donations, the lack of specific regulation makes its uniform application difficult , leaving room for subjective interpretations and potential abuses, this reflects the need to adopt a more structured approach in the Ecuadorian system.

The regulatory differences also reflect the level of prevention of legal conflicts; Peru establishes detailed procedures that seek to prevent disputes through strict formalization and registry control; in Ecuador, the absence of these mechanisms encourages the judicialization of inheritance conflicts, increasing the costs and time associated with their resolution. This contrast highlights the need to adopt elements of the Peruvian model to strengthen the Ecuadorian legal framework.

A comparative analysis reveals that the Peruvian regulatory structure provides greater predictability and confidence for citizens when planning their estate, the obligatory nature of requirements such as registration protects both the deceased and the heirs, ensuring that agreements are developed within a framework of legality. In Ecuador, the lack of such measures reduces confidence in the system and hinders effective estate planning.

The contrast between the two systems demonstrates the importance of specific regulation for anticipated inheritance. While in Peru the legal framework provides clarity and legal certainty, in Ecuador the informality of the processes negatively affects both equity and transparency in the distribution of assets. The adoption of key elements of the Peruvian regulations could resolve these gaps, promoting a fairer and more efficient model in Ecuador.

Comparative experience suggests that the implementation of reforms inspired by models such as the Peruvian one could transform the Ecuadorian legal panorama, but it is crucial to adapt them to the social particularities of the country. In Ecuador, where land ownership in

rural areas is often fragmented and linked to community traditions, rigid regulation could generate resistance if flexible mechanisms for specific cases are not considered. A balanced approach, combining formality with cultural sensitivity, would ensure that the reforms not only comply with technical standards, but are also accepted and applied in practice.

Another factor to take into account is the role of notaries and registrars in conflict resolution; in Peru, the compulsory nature of registration acts as a filter that ensures the validity of actions, in Ecuador, the absence of this requirement places an excessive burden on heirs to prove the legitimacy of donations; this not only increases litigation, but also perpetuates inequalities, as families with less access to legal resources are at a disadvantage. A reform in Ecuador should strengthen the training of public officials and modernize registration systems.

It is essential to reflect on the balance between the autonomy of the testator and the safeguarding of the heirs; while the Peruvian model favors equity through rigorous regulations, in Ecuador there is a legal tradition that values personal freedom in the management of assets, this freedom should not be used as a means to exclude vulnerable heirs, such as children or the elderly, an intermediate solution could be to allow the authentic testator to be the obligation to notify all forced heirs and to register these actions in a centralized system.

## Conclusions

It is concluded that the regulation of anticipated inheritance presents substantial differences between Ecuador and Peru; while in Peru the regulations are clearly defined in the Civil Code, in Ecuador it is limited to the general provisions on donations, which generates legal uncertainty and potential conflicts; this contrast highlights the importance of having a specific regulatory framework to guarantee equity in the distribution of assets.

It is evident that the lack of regulation in the Ecuadorian legal system with regard to the integration of anticipated inheritance as well as the calculation of the legitimate portion weakens the protection of the rights of forced heirs; on the other hand, the Peruvian model ensures more rigorous control by requiring formalities such as public deeds and registration, thus reinforcing transparency and predictability in patrimonial acts.

It is determined that the implementation of a specific regulation in Ecuador would make it possible to overcome this lack of regulations, guarantee legal certainty, and avoid and overcome possible social problems that affect families due to possible property disputes; in this way the nucleus of society would not be affected; therefore, it is proposed to reform the Ecuadorian Civil Code to include an article that defines anticipated inheritance as the transfer of property to forced heirs during their lifetime, attributable to the legal share; this reform must require formalization by means of a public deed and its registration in the Property Registry.

It is identified that, in relation to the objectives of the study, the strengths and weaknesses of the compared regulatory frameworks have been determined, proposing specific reforms that would improve the effectiveness and equity of the Ecuadorian inheritance system; these reforms focus on guaranteeing the protection of forced heirs and facilitating the estate planning of the deceased.

It is emphasized that this analysis invites future research on the impact of the implementation of specific regulations in Ecuador; deepening the study of regional regulatory systems can provide valuable perspectives for designing a legal framework that reinforces legal certainty and favors a fair and efficient distribution of wealth.

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