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INDIGNITY AS A CAUSE FOR EXCLUSION FROM SUCCESSION: ANALYSIS OF LEGAL AND JURISPRUDENTIAL CRITERIA IN BRAZILIAN LAW[1]

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ABSTRACT

The present work aims to analyze the institute of indignity in the Law of Succession, based on articles 1.814 and 1.815 of the Civil Code of 2002, in the light of contemporary doctrine and jurisprudence. The study is justified by the observation that the Brazilian legal system is still based on a normative model inherited from the 1916 codification, which does not adequately contemplate the transformations that occurred in family structures and values. Despite the growing complexity of family relationships, the legal list of causes of exclusion due to indignity remains limited, disregarding seriously harmful conducts, such as affective abandonment and psychological violence. In view of this, it seeks to propose a constitutional rereading of the institute, based on the principles of human dignity and family morality. The methodology used is bibliographic and documentary research, with analysis of the current legislation, specialized doctrine and jurisprudence of the higher courts, especially the STJ. The results point to the need for interpretative expansion of the legal hypotheses of indignity, in order to ensure a fairer and more coherent application with constitutional values.

Keywords: Civil Code. Dignity of the human person. Exclusion of heir. Indignity of succession. Succession Law.

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INTRODUCTION

The institute of indignity is an important legal mechanism for exclusion from the right of succession, which applies to heirs who have committed seriously reprehensible acts against the author of the inheritance. It is a form of civil sanction, which aims to ensure morality in family relationships and protect the legal order and the fundamental values that govern succession.

It is important to highlight that such a measure is eminently punitive, since it aims to remove from the assets of the deceased those who have seriously violated the affective or family bond that united them. In the Brazilian legal system, indignity is affirmed in articles 1,814 and 1,815 of the Civil Code of 2002, being the subject of increasing reflection in the doctrinal and legislative spheres.

It should be noted that the Civil Code, in its article 1,814, establishes the hypotheses in which the heir or legatee may be excluded from the succession due to unworthiness. These cases include the practice of homicide against the author of the inheritance, attempted murder, slander or serious injury against the author of the inheritance, among other acts that violate the dignity and rights of the author of the inheritance.

In view of this, the Civil Code of 2002 inherited from the previous codification, from 1916, the model of indignity of succession. Although the fundamentals remained valid, the legal provisions maintained a list of hypotheses that did not fully follow the complexification of contemporary family relationships, marked by cultural, social and technological transformations.

This work aims, firstly, to present a conceptual analysis of the institute of indignity, highlighting its legal nature, legal hypotheses and ethical-legal implications. Secondly, it is intended to carry out a jurisprudential analysis around the institute of indignity, observing how the Brazilian courts have interpreted its legal hypotheses in the light of concrete situations. Finally, it aims to propose practical alternatives for the resolution of disputes about indignity, considering the challenges faced in contemporary times and the need for regulatory updating.

Although indignity is clearly provided for in the Civil Code, especially in articles 1,814 and 1,815, it is in the practice of concrete cases that the criteria, limits and particularities that guide how this rule is actually applied arise. Thus, it is important to analyze the decisions of the courts in order to understand not only how judges interpret situations in which someone may be excluded from inheritance, but also what values are

behind these decisions, especially when they involve attitudes that hurt moral and affective ties within the family.

Resolving conflicts over the exclusion of heirs due to unworthiness is still a challenge in Family and Succession Law. Brazilian law, especially article 1,814 of the Civil Code, brings a closed list of situations in which someone can be considered unworthy of inheriting. The problem is that this list does not keep up with social changes and ends up leaving out several equally serious situations. Therefore, it is increasingly necessary to rethink this model, seeking fairer forms of application, based on the principles of human dignity, affection and family respect.

The methodology adopted for the elaboration of this work consisted of bibliographic and documentary research, based on doctrinal works, legal provisions and recent jurisprudence on the subject of succession indignity, especially with regard to articles 1,814 and 1,815 of the Civil Code. The critical analysis will be supported by contemporary theoretical contributions that propose a rereading of the institute in the light of the constitutional principles of human dignity, solidarity and justice.

CONCEPTUAL ANALYSIS OF THE INSTITUTE OF INDIGNITY

The institute of indignity is an important legal mechanism for exclusion from the right of succession, which applies to heirs who have committed seriously reprehensible acts against the author of the inheritance. It is a form of civil sanction, which aims to ensure morality in family relationships and protect the legal order and the fundamental values that govern succession. Its nature is eminently punitive, since it aims to remove from the assets of the deceased anyone who has seriously violated the affective or family bond that united them. In the Brazilian legal system, indignity is affirmed in articles 1,814 and 1,815 of the Civil Code of 2002 (BRASIL, 2002), being the subject of increasing reflection in the doctrinal and legislative spheres.

It should be noted that the Civil Code, in its article 1,814[4], establishes the hypotheses in which the heir or legatee may be excluded from the succession due to unworthiness. These cases include the practice of homicide against the author of the inheritance, attempted murder, slander or serious injury against the author of the inheritance, among other acts that violate the dignity and rights of the author of the inheritance.

[4] "Article 1,814. Heirs or legatees are excluded from the succession: I - who have been authors, co-authors or participants in intentional homicide or attempted homicide against the person whose succession is in question; II - who have slanderously accused in court the author of the inheritance or incurred a crime against his honor, or that of his spouse or partner; III - who, by violence or fraud, inhibited or prevented the author of the inheritance from freely disposing of his assets by an act of last will." (BRAZIL, 2002).

In view of this, the Civil Code of 2002 inherited from the previous codification, from 1916, the model of indignity of succession. Although the fundamentals remained valid, the legal provisions maintained a list of hypotheses that did not fully follow the complexification of contemporary family relations, marked by cultural, social, and technological transformations (Pipol; Torres, 2017). As Oliveira (2017) points out, indignity translates into a forced exclusion of the right to inheritance, imposed on those who, by violent, intentional acts or attacks on the honor or freedom of the testator, have shown themselves unworthy of succession.

From a legislative point of view, article 1,814 of the Civil Code establishes that heirs who have been authors, co-authors or participants in intentional, attempted or consummated homicide against the author of the inheritance or their direct family members are excluded from the succession; those who have falsely accused the author of the inheritance of a crime that may result in a penalty of more than two years in prison; and those who, by violence or fraud, inhibited or prevented the testator from freely disposing of his assets (Brasil, 2002). The action to declare the unworthiness must be filed within four years from the opening of the succession, according to article 1,815 of the same law.

In addition, the majority of the national doctrine recognizes the exhaustive nature of the legal hypotheses of indignity, as it is an exception to the fundamental right to inheritance, provided for in article 5, item XXX, of the Federal Constitution of 1988 (Brasil, 1988). However, Pereira and Colombo (2022) propose a critical and systematic reading of the institute, questioning the rigidity of legal classification in the face of new ethical and moral standards that emerge in society, such as in cases of affective abandonment and domestic violence, which often do not find express provision in civil legislation.

It is noteworthy that indignity has also been addressed from the perspective of the dignity of the human person, especially in the context of family relationships. For Hironaka (2017), dignity represents an intrinsic value of the human condition, and indignity is a direct affront to this value. When dealing with indignity as a cause for excusability of the duty to feed (article 1,708, sole paragraph, of the Civil Code), the author points out that the institute should be understood as a mechanism for the protection of family solidarity and morality in private relationships, not only as a sanction. This understanding reinforces the ethical-protective function of indignity in Family Law.

Still in the doctrinal field, Lima and Sousa (2018) observe that exclusion due to unworthiness does not occur automatically, and it is essential to file a lawsuit by those who have a legitimate interest in the succession. It is, therefore, a sanction of initiative of

the parties, which needs to be judicially declared to produce effects. The judgment that recognizes the unworthiness is retroactive to the date of the opening of the succession, according to the consolidated understanding.

Furthermore, the distinction between indignity and disinheritance is also the object of intense doctrinal analysis. While indignity operates ope legis, that is, by force of law, disinheritance depends on the testator's manifestation of will, and must be expressly provided for in a will and based on the legal hypotheses of articles 1,962 and 1,963 of the Civil Code (Oliveira, 2017). Fiúza and Caetano (2017) point out that both figures share the purpose of punishing reprehensible behaviors practiced against the deceased, but differ in terms of the origin of the inheritance exclusion and the procedure for its application.

In this regard, Vaz (2015) makes a relevant contribution to the reflection on the legal nature of indignity and the need for a possible legislative change. The author argues that the current legislation is insufficient to deal with the various forms of indignity practiced within the family, especially in the face of a society marked by selfishness, the absence of solidarity and the increase in serious family conflicts, such as abandonment, mistreatment and domestic violence. The proposal is that the legislator automatically recognizes certain gravely reprehensible acts as causes of unworthiness, regardless of the victim's initiative or testamentary disposition.

In this sense, the exclusion of succession due to indignity must be understood not only as a punitive instrument, but also as a means of preserving ethics in family relations, which requires a reinterpretation of the institute in the light of the constitutional principles of the dignity of the human person (art. 1, III), social solidarity (art. 3, I) and the right to inheritance itself (art. 5, XXX) (Pereira; Colombo, 2022).

However, there is still resistance to the relaxation of the legal list of causes of indignity, arguing that the principle of legal certainty requires predictability and objectivity in the rules that limit fundamental rights. The challenge, therefore, is to balance the protection of the dignity of the human person with respect for strict legality in the event of loss of the right of succession (Pereira; Colombo, 2022).

Moving on to the practical field, the declaration of unworthiness has relevant legal effects in the field of succession, as it prevents the unworthy heir from receiving the assets left by the deceased. Even if the heir meets all the legal conditions to succeed, his conduct considered morally reprehensible, according to the legal criteria of article 1,814 of the Civil Code, makes him unworthy, but he needs a judicial sentence that removes him from the hereditary patrimony (Brasil, 2002). This declaration has a negative constitutive nature,

since it extinguishes the right of succession retroactively, producing ex tunc effects, as recognized by a large part of the doctrine (Lima; Sousa, 2018).

In addition, the judgment that recognizes the unworthiness does not affect the right of representation of the descendants of the unworthy heir, as expressly provided for in paragraph 1 of article 1,815 of the Civil Code. This provision ensures that the successors of the unworthy person are not penalized for the conduct of the ascendant, preserving the line of succession of the assets of the inheritance (Oliveira, 2017). This measure aims to preserve the principle of family continuity and avoid losses to secondary heirs who did not participate in the unlawful conduct.

Another relevant aspect concerns the possibility of rehabilitation of the unworthy heir. Paragraph 2 of article 1,815 of the Civil Code provides that the testator may, expressly, by means of a will or codicil, pardon the unworthy person, restoring his right to succession. This pardon is irrevocable and must be clear and unequivocal, as it represents the waiver of the deceased to the right to exclude the heir for unworthiness. It is a prerogative of the testator, whose manifestation of will must prevail over private autonomy (Gagliano; Filho, 2017 apud Lima; Sousa, 2018).

The procedural route for the recognition of unworthiness requires active legitimacy of any interested party in the succession, as indicated in the caput of article 1,815 of the Civil Code. Thus, not only competing heirs, but also legatees, creditors of the estate and even the Public Prosecutor's Office, in situations of public interest, may file an action for exclusion, provided that it is within the legal period of four years from the opening of the succession. There is also the understanding that indignity cannot be decreed ex officio by the judge, requiring provocation from the interested party (Pereira; Colombo, 2022).

In doctrinal terms, indignity has a hybrid nature, being understood sometimes as a civil sanction, sometimes as a protective institute of the family order. Hironaka (2017) proposes a reading according to which indignity should be understood in the light of family solidarity and the protection of the dignity of the human person. According to the author, exclusion due to indignity not only punishes acts of violence or dishonor, but also protects the moral and affective core of the family, acting as an instrument of intra-family justice. This perspective allows us to associate indignity not only with the patrimonial aspect of inheritance, but with a deeper ethical content.

Under this bias, a functional rereading of the institute is proposed, beyond its exclusively sanctioning character. The civil-constitutional doctrine, especially in the work of authors such as Perlingieri (2008 apud Pereira; Colombo, 2022), argues that the Law of Succession must be interpreted in accordance with constitutional principles, such as the

dignity of the human person (art. 1, III), the right to inheritance (art. 5, XXX) and the principle of social solidarity (art. 3, I). This implies understanding that the exclusion of succession can also assume a protective function, removing from the line of succession those who would represent a threat to the moral or physical integrity of the author of the inheritance.

In this context, several authors have come to defend the extension of the hypotheses of indignity beyond those provided for in article 1,814 of the Civil Code. Cases such as affective abandonment, domestic violence, negligence in providing maintenance or mistreatment of ascendants began to be studied as possible grounds for the recognition of the exclusion of the heir, even if not expressly provided for by law (Vaz, 2015; Hironaka, 2017). These proposals aim to adapt the institute to contemporary social reality, where moral and affective violence can be as serious as physical violence.

However, this proposal to extend the causes of indignity faces doctrinal and jurisprudential resistance, especially because it confronts the principle of strict legality. This is because indignity is a civil sanction that restricts a fundamental right and, therefore, does not admit of extensive interpretation, except for a legislative modification that expressly incorporates new grounds for exclusion. This is one of the most sensitive points of the debate, in which the protection of the dignity of the deceased is opposed, on the one hand, and, on the other, the need for legal certainty and normative predictability (Oliveira, 2017).

Another issue debated is the differentiation between indignity and disinheritance in terms of legislative technique and purpose. As Vaz (2015) points out, indignity has a legal origin and requires a judicial process after the death of the deceased, while disinheritance arises from the will of the testator, expressed in a will. There are authors who defend the possibility of automating indignity in cases of extreme gravity, such as intentional homicide of the author of the inheritance, eliminating the need for legal action, as occurs in some foreign legislation. The proposal aims to ensure greater effectiveness of the institute and ensure that family morality prevails over excessive formalisms.

Thus, it is highlighted that the institute of indignity in Family Law is an expression of a double movement: on the one hand, it represents the response of the legal system to the breach of ethics and morals in succession relations; on the other hand, it manifests the need to adapt the Law to the social transformations that redefine the contours of dignity, affectivity and family solidarity.

JURISPRUDENTIAL ANALYSIS AROUND THE INSTITUTE OF INDIGNITY

Although indignity is clearly provided for in the Civil Code, especially in articles 1,814 and 1,815, it is in the practice of concrete cases that the criteria, limits and particularities that guide how this rule is actually applied arise. Thus, it is important to analyze the decisions of the courts in order to understand not only how judges interpret situations in which someone may be excluded from inheritance, but also what values are behind these decisions, especially when they involve attitudes that hurt moral and affective ties within the family.

This chapter aims precisely to examine, in a critical way, how jurisprudence has treated indignity, highlighting the main arguments used by the Superior Court of Justice and other Courts, on this topic, in order to have a greater depth of the subject under debate.

That said, the analysis of the judgment handed down by the Third Panel of the Superior Court of Justice (STJ), in Special Appeal No. 2.023.098/DF, judged on March 7, 2023, reveals fundamental aspects of the legal regime of indignity in the Law of Succession, especially when it is based on the allegation of offense to the honor of the author of the inheritance, pursuant to article 1,814, item II, second figure, of the Civil Code of 2002. See:

> CIVIL LAW. CIVIL PROCEDURAL LAW. SUCCESSION LAW. DECLARATORY ACTION FOR RECOGNITION OF UNWORTHINESS. AUTONOMOUS ISSUES DECIDED IN THE JUDGMENT. PARTIAL CHALLENGE. POSSIBILITY. INAPPLICABILITY OF PRECEDENT 283/STF . INDIGNITY DUE TO OFFENSE TO THE HONOR OF THE AUTHOR OF THE INHERITANCE. PRIOR CONVICTION IN THE CRIMINAL COURT. INDISPENSABILITY. EXPRESS LEGAL PROVISION (ART. 1.814, II, 2ND FIGURE, OF THE CC/2002). FAMILY CONTEXT IN WHICH DISAGREEMENTS AND POSSIBLE OFFENSES MAY BE UTTERED. NEED, HOWEVER, FOR THE OFFENSE TO BE SERIOUS TO THE POINT OF STIMULATING PRIVATE CRIMINAL ACTION BY THE OFFENDED PARTY AND CONVICTION AND CONVICTION DECISION BY THE CRIMINAL COURT. FINALISTIC OR TELEOLOGICAL INTERPRETATION INAPPLICABLE IN THE HYPOTHESIS.
> (STJ - REsp: 2023098 DF 2022/0270996-3, Judgment Date: 03/07/2023, T3 - THIRD PANEL, Publication Date: DJe 03/10/2023).

The Third Panel of the STJ was emphatic in establishing that the indignity provided for in article 1,814, II, second figure, requires as a necessary prerequisite the criminal conviction of the heir or legatee, showing that the rule requires a formal configuration of the criminal offense to legitimize the exclusion of succession.

When examining the *ratio decidendi* of the ruling, it is observed that the STJ builds its reasoning on two central pillars. First, the literal and systematic interpretation of the civil rule and, secondly, the consideration of the complexity of family relationships, in which

divergences and even conflicts are inevitable, but not always subject to legal sanction. The requirement of criminal conviction thus works as an objective and necessary filter to avoid arbitrary decisions in the field of Succession Law, which could result from subjective or casuistic evaluations of behaviors considered offensive.

The most sensitive point of the decision refers to the attempt, by appellants in actions of this nature, to use a finalistic interpretation of the rule to remove heirs based on behaviors that, although reprehensible from a moral or emotional point of view, were not the subject of criminal action during the life of the author of the inheritance. The STJ, however, rejects this perspective. The decision highlights that, although the teleological interpretation of article 1,814 is admissible, this does not allow ignoring the literality of its provisions, especially when it comes to a sanction as severe as the exclusion of a legitimate heir from the succession.

In practical terms, the ruling reaffirms the need for stability and legal certainty in succession, by preventing subjective or non-judicialized facts in life from being used as a basis for post-mortem exclusion, without due process. It is in this sense that the Court points out that the lack of initiative of the offended party to file a criminal action while alive, or the absence of a criminal judicial conviction, prevents the civil court from replacing or supplementing this essential step, even if there are indications of behaviors offensive to honor.

In turn, the analysis of Special Appeal No. 1.102.360/RJ, judged by the Third Panel of the Superior Court of Justice (STJ) on February 9, 2010, allows for an in-depth reflection on the limits and requirements of exclusion due to indignity within the scope of Succession Law, as well as on relevant aspects of due process, notably regarding the production of evidence and the early judgment of the dispute. See:

> SPECIAL APPEAL - ACTION FOR EXCLUSION OF INHERITANCE - JUDGMENT - PLEA OF NULLITY - JUDICIAL DECISION RENDERED WHILE THE PROCEDURAL PROCESS WAS SUSPENDED - CIRCUMSTANCE NOT VERIFIED, IN KIND - EARLY JUDGMENT OF THE DISPUTE - REJECTION OF THE PRODUCTION OF TESTIMONIAL EVIDENCE - POSSIBILITY - CURTAILMENT OF THE RIGHT OF DEFENSE NOT CHARACTERIZED - INDIGNITY - FAMILY DISCUSSIONS - EXCLUSION OF THE HEIR - INADMISSIBILITY - ATTORNEY'S FEES - CONVICTION IN A FIXED AMOUNT - MONETARY ADJUSTMENT - INITIAL TERM - DATE OF THE JUDICIAL DECISION THAT FIXED THEM - APPEAL SPECIAL DISMISSED. (Precedent No. 211/STJ). 5.
> Special appeal dismissed (STJ - REsp: 1102360 RJ 2009/0033216-4, Rapporteur: Justice MASSAMI UYEDA, Judgment Date: 02/09/2010, T3 - THIRD PANEL, Publication Date: DJe 07/01/2010).

The core of the action concerned the attempt to exclude an heir for alleged unworthiness, based on family disagreements. The STJ was firm in stating that indignity is

an extreme sanction and can only be applied in the exhaustive cases provided for by law (such as homicide, slander against the author of the inheritance, among others – article 1,814 of the Civil Code).

According to the understanding of the STJ, family discussions or conflicts, no matter how serious they may be, are not enough to justify the exclusion of succession, under penalty of trivializing the institute of indignity. The case also reinforces the strictly legal and exceptional nature of the institute of indignity, by recognizing the inadmissibility of its application in contexts marked by mere family discussions.

Another case, analyzed by the STJ, through the analysis of Special Appeal 1.943.848/PR, involved the exclusion of a minor heir who, at the age of 17 years and six months, intentionally took the lives of his parents, which raised the question about the possibility of equating the offense to intentional homicide for the purposes of inheritance exclusion. Let us look at the ruling:

> CIVIL LAW. CIVIL PROCEDURAL LAW. SUCCESSION LAW. DECLARATORY ACTION FOR RECOGNITION OF UNWORTHINESS WITH REQUEST FOR EXCLUSION OF HEIR. LIST OF ARTICLE 1,814 OF CC/2002. EXHAUSTIVENESS. CREATION OF HYPOTHESES NOT PROVIDED FOR IN THE LEGAL PROVISION BY ANALOGY OR EXTENSIVE INTERPRETATION. IMPOSSIBILITY. OBLIGATION OF LITERAL INTERPRETATION IN AN EXHAUSTIVE LIST. NONEXISTENCE. COMPATIBILITY OF THE EXHAUSTIVE LIST WITH THE OTHER METHODS OF INTERPRETATION. DIFFERENTIATION BETWEEN THE TEXT OF LAW AND NORM, WHICH IS THE PRODUCT OF THE INTERPRETATIVE ACTIVITY THROUGH WHICH MEANING IS GIVEN TO THE TEXT. LITERAL INTERPRETATION OF ARTICLE 1 .814, I, OF THE CC/2002. HOMICIDE AND OFFENSE ANALOGOUS TO HOMICIDE. TECHNICAL AND LEGAL SENSE IN THE CRIMINAL SPHERE. NON-MANDATORY REPERCUSSION IN THE CIVIL SPHERE. CLAUSE GENERAL. ETHICAL, MORAL AND LEGAL MATRIX. ESSENTIAL CORE. INTENTIONAL, CONSUMMATED OR ATTEMPTED ACT, REGARDLESS OF MOTIVATION. TELEOLOGICAL-FINALISTIC INTERPRETATION OF THE RULE THAT AIMS TO PREVENT AND REPRESS THE ACT OF THE HEIR THAT ATTEMPTS AGAINST THE LIFE OF THE PARENTS. TECHNICAL-LEGAL DIFFERENCE BETWEEN INTENTIONAL HOMICIDE AND AN ACT ANALOGOUS TO INTENTIONAL HOMICIDE. IRRELEVANCE FOR CIVIL PURPOSES. EXCLUSION OF THE MINOR HEIR FOR AN ACT ANALOGOUS TO HOMICIDE COMMITTED AGAINST HIS PARENTS. POSSIBILITY. A RESTRICTION THAT WOULD OFFEND THE VALUES AND PURPOSES OF THE RULE AND EMPTY ITS CONTENT. (STJ - REsp:
> 1943848 PR 2021/0179087-7, Rapporteur.: Justice NANCY ANDRIGHI, Judgment Date: 02/15/2022, T3 - THIRD PANEL, Publication Date: DJe 02/18/2022)

Although the judgment in question is long, it is necessary to assess it, due to the concrete thesis that can be computed, since the decision reinforces that the objective of article 1,814, I, is twofold: on the one hand, it has a preventive nature, as it aims to curb behaviors that are seriously harmful to the lives of ascendants; on the other hand, it has a

punitive function, by preventing the heir benefited by the law of succession from profiting from his own unlawful act.

Therefore, the motivation for the crime – whether or not related to the receipt of the inheritance – becomes irrelevant, and the existence of willful misconduct is sufficient. In addition, the general exclusion clause therefore takes on an ethical and moral content, which goes back to Roman law and finds wide acceptance in modern legal systems. Denying the application of the institute in these cases, under the technical argument that it is not a matter of "homicide", would mean emptying the norm of its essence and allowing the perpetuation of situations absolutely incompatible with the principles of justice, morality and legal certainty.

Thus, the Court concluded that, although the appellant was criminally unimputable, because he was a minor, his intentional and consummate conduct of taking the life of his own parents is indeed covered by the rule of article 1,814, I, of the Civil Code, which fully justifies his exclusion from the inheritance.

PRACTICAL ALTERNATIVES FOR RESOLVING INDI DISPUTES GNITY

Resolving conflicts over the exclusion of heirs due to unworthiness is still a challenge in Family and Succession Law. Brazilian law, especially article 1,814 of the Civil Code, brings a closed list of situations in which someone can be considered unworthy of inheriting. The problem is that this list does not keep up with social changes and ends up leaving out several equally serious situations. Therefore, it is increasingly necessary to rethink this model, seeking fairer forms of application, based on the principles of human dignity, affection and family respect, as defended by Rafaela Barros (2022).

One of the most recent changes was brought about by Law 14,661/2023, which created article 1,815-A in the Civil Code. Now, if the heir is criminally convicted of any of the acts provided for, he is automatically excluded from the inheritance, without needing a specific action for this. Despite representing an advance, this rule also raises doubts about how it will be applied. After all, the situation is not always so simple, and this requires care so that the rights of other heirs and even third parties are respected (Oliveira; Silva, 2023).

In addition to the performance of the Justice, another solution that can help a lot is the use of alternative methods of conflict resolution, such as mediation and conciliation. These paths, already provided for in the Code of Civil Procedure, allow families to solve problems without having to enter into a long and exhausting legal dispute. This is even more important when there are grievances involved, but the act committed by the heir is not so serious as to justify a forced exclusion (Oliveira; Silva, 2023).

It is also essential that the Law follows the transformations of society. As Arnoldo Wald (2024) reminds us, the development of Law depends on the performance of the lawyer and the Justice system to adapt the laws to the needs of the present. In other words, it is not possible to continue treating inheritance only as a patrimonial right. It is necessary to understand that, in many cases, it also represents an affective and ethical recognition of the legacy left by those who died.

An example that illustrates well how the justice system can act is the case of Suzane von Richthofen, who was prevented from inheriting after planning the murder of her parents. The court decision showed that indignity can be applied rigorously and serves as a protection of memory and respect for the victim. Cases like this help to reinforce the importance of using the law fairly, but also carefully, taking into account the particularities of each situation (Caetano, 2024; Pereira, 2022).

Another important point is the need to update the law to include new forms of indignity, such as affective abandonment or psychological violence against the author of the inheritance. The Portuguese legal system, for example, is already discussing changes in this regard, which shows that Brazil also needs to evolve. Professor Gabriela Picanço (2023) points out that Portuguese succession rules are outdated and need to be opened up to the current reality of families – the same goes for Brazil.

In addition, the will can be a good tool to prevent disputes, as it allows the testator to express his will about who should or should not receive his assets. Although this possibility is still limited by the cases provided for by law, it represents a legitimate way to protect your history and your affections. This reinforces the idea that succession is also a matter of freedom and choice, within certain limits.

Finally, it is essential to combine interpretation of the law, action by the Judiciary and legislative change to ensure that cases of indignity are treated more fairly. The Law cannot be tied to old models. He needs to look at the present, at the new forms of family, at affective bonds and at the value of dignity. After all, inheritance is not just heritage – it is also memory, bonding and respect.

If we want a fairer and more up-to-date succession system, we have to move towards a model that understands indignity as an ethical and legal tool. This includes not only punishing those who committed serious acts, but also protecting those who stayed and ensuring that the last wish of those who left is respected with justice and sensitivity.

FINAL CONSIDERATIONS

The institute of indignity is configured as a relevant mechanism of the Law of Succession, intended to remove from the inheritance those who have committed seriously offensive acts against the author of the inheritance. More than an instrument of punishment, indignity carries with it an ethical and symbolic charge, reaffirming that the family bond must be sustained on the pillars of respect, affection and dignity. By excluding the one who broke such ties, the succession legal system acts to protect the memory and values left by the deceased.

The present work aimed to analyze the institute of succession indignity from legal and jurisprudential perspectives, with special attention to social transformations and constitutional principles. It was found that the list provided for in article 1,814 of the Civil Code is restrictive, not covering all reprehensible conducts that may justify the exclusion of succession. The jurisprudence of the Superior Court of Justice has been shown to be mostly guided by a restrictive interpretation, although there are decisions that indicate a hermeneutical openness more compatible with contemporary reality.

As a result of the analysis, a constitutional rereading of the institute is proposed, based on the principles of human dignity, solidarity and family morality. In addition, practical measures are suggested, such as the adoption of alternative methods of conflict resolution, the encouragement of the use of wills and the need for legislative updating to cover new forms of indignity.

It is concluded that the institute of indignity should be understood not only as a sanctioning mechanism, but also as an instrument for the protection of family values and the promotion of justice in the succession sphere. Its improvement requires joint action between doctrine, jurisprudence and the legislator, in order to ensure a fairer and more adequate application to the demands of contemporary society.

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