

International Conventions as Inheritance by Contract Legal Source

Edvard Pilipson

Rīga Stradiņš University, Doctoral Studies in Law, Latvia

Introduction and materials. At the beginning it seems necessary to explain the term and the essence inheritance by contract institution. With this definition a system of alienation contracts and agreements with clause “mortis causa”¹ is defined. The main and principal feature of contracts and agreements, mentioned above is the obligation statute (or, sometimes, law of obligation)² and testamentary statute’s³ combination and imposition in their structure.

According to the statements of law theory, each legal institution should have double legal regulations – national legislation and international conventions or treaties. This statement completely attributed to the inheritance by contract institution.

At present, in Private International Law there are four main conventions, related to the sphere of international inheritance⁴ Convention on the conflict of Laws relating to the form of testamentary disposition (concluded 5th October, 1961, entry into force 5th January, 1964), Convention Concerning the International Administration of the Estates of deceased persons (concluded 2 October, 1973, entry into force 1st July, 1993), Convention on the Law applicable to succession to the estates of deceased persons (concluded August 1st, 1989, not yet in force), Convention on the Law applicable to Trusts and on their recognition (concluded 1st July, 1985, entry into force 1st January, 1992).

Based on the terminology of conventions mentioned above, they are not regulating legal relations, arising from the inheritance by contract institutions. This is a significant gap in the inheritance by contract institutions legal regulation.

The aim. The objective of this study is to research international conventions mentioned above in relation to the institutions of the inheritance by contract.

Methods. In dissertation the analytical method and legal act interpretation were used.

Results. 1) International conventions, which currently regulate the sphere of inheritance under Private International Law, do not regulate inheritance by contract institutions. 2) Subject areas of these conventions are inheritance by Law and inheritance by Testament institutions.

Conclusions and proposals. For quality and proper legal regulation of institutions of the inheritance by contract, it is necessary to enact and entry into force an international act (convention), which would be enshrined inheritance by contract institution legal definition and its doctrinal interpretation.

¹ In Latin, “in contemplation of approaching death”. A phrase sometimes used in reference to a deathbed gift, or a gift causa mortis, since the giving of the gift is made in expectation of approaching death. A gift causa mortis is distinguishable from a gift inter vivos, which is a gift made during the donor’s (the giver’s) lifetime. Source: <http://legal-dictionary.thefreedictionary.com/Causa+Mortis>. Reviewed: 7th January, 2013. Time: 12:00

² The law of obligations is one of the component private law elements of the civil system of law. It includes contract law, delict law, quasi-contract law, and quasi-delict law. The law of obligations seeks to organize and regulate the voluntary and semi-voluntary legal relations available between moral and natural persons with respect to obligations under contracts, both innominate and nominate. Source: <http://encyclopedia.thefreedictionary.com/Law+of+obligations>. Reviewed: 8th January, 2013. Time: 13:00

³ Complex of questions of inheritance, requiring conflict (sometimes, collision) regulation. И.В. Гетьман-Павлова. Международное частное право: Учебник. – М.: Изд. «ЭКМО», 2005. – 752 с. С. 362

⁴ Hague Conference on Private International Law. Source: http://www.hcch.net/index_en.php?act=text.display&tid=10#family. Reviewed: 8th January, 2013. Time: 13:30