

National Legislation as an Inheritance by Contract Legal Source

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Introduction and materials. In order to fully understand the concept of the research, it is necessary to be familiar with the term and the essence inheritance by contract institution. This definition means a system of alienation contracts and agreements with clause “mortis causa”¹. For the purposes of this thesis, inheritance contract implemented in the law of Austria, Germany and Switzerland will be explored, in the Civil Codes of these countries.

Inheritance contract is implemented in Austrian Civil Code in such formulation: “marriage-articles are called those contacts, which are concluded with a view to a matrimonial union in regard to the property, and their object is especially: the dowry, the jointure, the gift on the morning after the nuptial day, the community of goods, the administration and usufruct of the property, the hereditary succession or the life-long usufruct of the property intended for a case of death and the widow’s settlement”².

In Swiss Civil Code, inheritance contract is fixed in such formulation: “the decedent can obligate himself to another by a contract of inheritance to leave him or a third person his estate or legacy. Such a contract does not deprive him of the free disposition of his property”³.

In German Civil Code, inheritance contract is enshrined in such formulation: “In a contract of inheritance, each of the parties to the contract may make contractual dispositions mortis causa. Dispositions other than appointments of heirs, legacies and testamentary burdens may not be made contractually”⁴.

From the above mentioned, it seems necessary to make a conclusion that the institution of hereditary contract is embodied in the best form in German Civil Code. The subject of the inheritance contract under the Civil Code of Austria includes in itself the subject of marriage contract. Likewise, inheritance by contract institution, implemented in Swiss Civil Code contains open list of alienation contracts. Because of this feature, it is very difficult to qualify inheritance contract as an agreement, which conclude before testator and heir.

The aim. The objective of this work is to research national legislation in relation to the institutions of the inheritance by contract

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

Results. National legislation cannot be characterised as a complete and sufficient source of inheritance by contract institution. National legal acts carry out legal regulation of the institutions of the inheritance by contract in accordance with national traditions. Due to this fact, the institutions of contract implementation inheritance in the legal systems of other countries cannot be done correctly.

Conclusions and proposals.

- 1) Because the national legislation of separate states does not provide proper qualifications and, therefore, proper implementations of the inheritance by contract institutions, it is necessary to subject the law applicable to the inheritance by contract to the legislation of the state in which the statute obligations embodied in the most appropriate formulation.
- 2) It appears that in the case of the conclusion of contracts, relating to the inheritance the contract institution, it is necessary to use the law of Germany, its Civil Code. Formulation of the inheritance contract, as it is enshrined in the German Civil Code, defines an inheritance contract institution fairly accurately and accurately determines the mutual rights and obligations of the testator and the heir.

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 General Civil Code for all German Hereditary provinces of the Austrian Monarchy. With amendments. Enacted in 1811. Paragraph 1217.

³ Swiss Civil Code. Adopted in 10th December, 1907. In force since 1912. Article 494.

⁴ Bürgerliches Gesetzbuch. § 2278 “Zulässige vertragsmäßige Verfügungen” “(1) In einem Erbvertrag kann jeder der Vertragsschließenden vertragsmäßige Verfügungen von Todes wegen treffen.(2) Andere Verfügungen als Erbinsetzungen, Vermächtnisse und Auflagen können vertragsmäßig nicht getroffen werden”. Ausfertigungsdatum: 18.08.1896.