On the question of the place and role of the inheritance contract as a novelty of Russian legislation in the system of agricultural land turnover

Anna Kiseleva1* and Ekaterina Fetisova1

1Don State Technical University, Gagarin Sq., 1, Rostov-on-Don, 344010, Russia

Abstract. This paper presents the results of a systematic analysis of the design of inheritance by contract, which is quite new for Russian legislation and its place in the system of agricultural land turnover. This novel was introduced in 2019 and, of course, received some critical assessment from both legal scholars and law enforcement officials. The paper raises a number of issues related to some unequal characteristics of the rights and obligations of the testator and the heir, possible difficulties in applying within the framework of inheritance of agricultural land. In fact, the parties to the inheritance agreement, based on the right regulation of their status, have unequal opportunities to protect their interests, the testator is endowed with greater will and freedom when making and implementing this transaction. Nevertheless, the formation of new norms in legislation, especially in the civil law sphere, has a direct significant impact on the sustainable development of the agro-industrial complex in particular and, in general, on the self-determination of Russian statehood and its integration into the world system. The author analyzes the results of the legal regulation of this institution in foreign legislation, as well as examines historical experience. A study of the inheritance system in other states, as well as a comparative legal analysis of the legislations of various countries, has been conducted. In the course of the study, the author comes to the conclusion that there is a need for more detailed regulation and legislative regulation of this institution, working out clear criteria for distinguishing an inheritance contract from inheritance by will, as well as eliminating practical difficulties for using it in the agro-industrial complex, including when inheriting agricultural land.

1 Introduction

The Russian legal system is currently overcoming a rather difficult stage of its transformation, taking into account existing external and internal problems, which ultimately affects almost all institutions and branches of law. At the moment, we are witnessing a significantly accelerated process of changing legislation in order to adapt it to the modern

* Corresponding author: kiseleva17@bk.ru

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way of public relations. There are new types of responsibility, updated regulations for various processes affecting both public and private legal relations.

This is an essential part of the process of updating Russian statehood and its implementation of cultural and legal codes into the domestic legal system. As the most important structural element of the legal culture of modern Russia, this sphere combines at its core both legal consciousness, and mechanisms of legal thinking, and the legal activity of the Russian population, in accordance with the contexts of the existing legal mentality, under the influence of internal factors [1].

In the context of considering the problem of contractual regulation of the modern integration process, a task is set related to the development of a mechanism for the formation of model regulation as a special tool for the formation and development of integration associations in the conditions of the modern changing world order [2].

These processes and changes have also affected such a conservative part of civil law as inheritance. After the adoption of Federal Law No. 217-FZ of July 19, 2018, a legislative novelty regulating relations arising from the conclusion of an inheritance agreement was approved.

Turning to the history of the emergence of this institution, it should be noted that various legal systems reproduced inheritance by contract with significant deviations from each other.

For the first time, the beginnings of the institution of inheritance by contract began to form in Roman private law: Roman legal practice made extensive use of the possibility of the father of the family inheriting the share of his sons' property in a contractual manner.

However, as a full-fledged institution of inheritance law, the inheritance contract was first formed in the German state with the adoption of the German Civil Code of 1896, after which it became widespread. Thus, from paragraphs 1 and 2 of § 1941 of the German Civil Code, the following definition for an inheritance contract follows: this is a mutual agreement under which a person can appoint another person (who is or is not the other party to the contract) as the heir to all or part of his property or as the beneficiary when establishing a legate [3].

Elements of this institution were also later adopted by European states (Switzerland, Austria, Poland). In the UK and the USA, there is a different standard for the enforcement of an inheritance contract.

The inheritance contract in German law refers to the number of property transactions, in addition, it is also called a "transaction between the living in case of death." German law provides an opportunity to recognize an inheritance agreement as invalid, to renounce it, to challenge it before opening an inheritance, etc. In fact, this agreement under German law is not an exception to the general regulation of contractual obligations.

A completely different position was taken by the legislator of England – an inheritance contract can be concluded between spouses and determine the order of inheritance from each other or by a third party, i.e. the so-called "mutual will". Accordingly, when considering disputes on this issue, the court has always proceeded from the need to apply general rules on probate. This procedure is somewhat similar to the Russian regulation of the joint will of spouses. In the process of applying this institution in the UK, its perception has also been somewhat transformed.

Currently, the UK courts are increasingly reproducing the conclusion that "mutual will" should be covered not only by general legislative provisions on probate, but also by requirements relating to the regulation of contractual relations, including procedural issues of protection of the parties to such a contract.

The model of inheritance agreement adopted in Switzerland is quite interesting from the point of view of scientific consideration. Here, the inheritance contract acts as a symbiosis between the usual contractual relationship and the will. According to the legislation of this state, an inheritance agreement is a civil agreement by which one person will appoint a counterparty or another person as an heir or approve a testamentary refusal. In fact, this
agreement can not only determine the legal status of the heir, but also settle the issues of renunciation of inheritance.

Relatively recently, the possibility of inheritance by contract appeared in French law. Previously, the French legislator did not recognize the legality of transactions with inheritance "for the future." In 2016, under the influence of EU Directive No. 650/2012, French civil law underwent significant changes: French legislators (Article 722 of the Civil Code of France) allowed the conclusion of inheritance contracts in cases provided for in the law, and the legislator is still silent about which cases these are. This clause ensured the preservation of traditional methods of disposing of property in the event of the testator's death, but at the same time allowed the recognition of inheritance agreements concluded in the countries of the European Union [4].

Analyzing the French experience, it is possible to confirm the opinion that not only our state did not perceive inheritance by contract as a necessary element of inheritance legislation for a long time.

The issues described by the author are of both scientific and applied interest, at this stage, legal scholars are puzzled by the possibility of introducing this type of inheritance into practice, discussing both the existing shortcomings in legislative formulations and the difficulties arising from this in law enforcement. The problems of introducing new legal institutions are often directly related to the transformation of the legal consciousness of the population, the development of the right culture of both the whole society and individual individuals. Russian law enforcement officials have always been reluctant to accept legislative innovations due to the fact that they have no experience of application in our legal environment. As for inheritance law, its conservatism can be very clearly traced here. Based on the analysis of judicial practice, inheritance disputes arise much more often among "legitimate" heirs when they do not manage to inherit within a six-month period or dispute the shares or priority due to them. Inheritance by will, although it has already passed a long way of practical application, is still much less often used by the population of our country to resolve issues about the fate of their property after death. This is due to the low level of legal awareness of people, and insufficient knowledge of legislation, and, finally, the Russian or, more correctly, the post-Soviet mentality of Russian citizens, who for a long time were brought up in the consciousness that everything should be common, and private property is a "vice of capitalism". Therefore, it is not surprising that the law enforcement practice of inheritance by contract, despite the more than three-year existence of this norm in the Civil Code of the Russian Federation, is so insignificant that we can talk about its actual absence.

Within the framework of this work, the author aims to determine, through studying the opinions of theorists and practitioners, methods and directions that will allow adapting a new legal structure to the law enforcement field of legal relations related to inheritance under a contract and allow it to have a positive impact on the sustainable socio-economic development of the state, including in the agricultural sector of the economy [5-7].

2 Materials and Methods

The totality of the methodology of comparative legal and historical research applied by the author, combined with the general methodology of scientific knowledge, allows the author to formulate theoretical and practical conclusions on the full use of the legal form of inheritance agreement already existing in the Russian state, as well as to form a list of specific proposals that will allow the introduction of an inheritance agreement into the law enforcement field as a convenient practice for the ordinary population to determine the fate of property after death, and also formulate clearer elements of the legal status of the heir and the testator within the framework of the contractual relations existing between them.
3 Results of the Research

Based on Article 1140.1 of the Civil Code of the Russian Federation, the testator has the right to conclude an agreement with any of the persons who may be called upon to inherit, that is, defined in Article 1116 of the Civil Code of the Russian Federation, the terms of which determine the circle of heirs and the procedure for transferring rights to the testator's property after his death to the parties to the contract who survived the testator or to the surviving third parties who may be called upon to inherit (inheritance agreement). The inheritance agreement may also contain a condition on the executor and impose on the persons participating in the inheritance agreement, who may be called upon to inherit, the obligation to perform any actions of a property or non-property nature that do not contradict the law, including to execute testamentary waivers or testamentary deposits [8].

If we analyze the motives for introducing this norm into the system of hereditary relations, we can conclude that the legislator is trying to introduce new methods for strengthening property relations in this environment, which in fact are the basis for sustainable socio-economic development of the state.

Despite the legislator's attempt to formulate the requirements for the inheritance agreement in sufficient detail, there is no definition of its concept in the law. In addition, this article is in Chapter 62 of the Civil Code of the Russian Federation, which regulates inheritance by will, accordingly, the procedure for this type of inheritance is almost fully extended to contractual inheritance.

In my opinion, such a norm determines the conclusion that the Russian legislator reproduced the symbiosis of the positions of the rulemakers of Germany, England and France, and derived his own design of contractual relations during inheritance.

Let us analyze what this norm offers us: such a contract can be concluded not just with any person, but only with persons who can call for inheritance. That is, it is possible to conclude an inheritance agreement with individuals and legal entities, and even with public legal entities. These provisions actually duplicate the rules on inheritance by will. The legislator also repeated in this article the legal provisions concerning the mandatory share in the inheritance (even if such heirs appear after the conclusion of the inheritance agreement), the joint will of spouses and unworthy heirs. This determines the essential similarity of the inheritance agreement with the will [9].

It should be emphasized that the legal provisions on the will fully apply to the inheritance agreement, unless its terms provide for other rules.

The tangible difference with a will is that it is not a one-sided transaction, for its conclusion it requires the will of at least two parties, or even more, depending on the terms of the contract. Also, the heir under the contract has the opportunity in advance, before the opening of the inheritance, to realize which inheritance he will receive and what responsibilities will be assigned to him when accepting it or before its opening.

You also need to understand that a will is still a one-sided transaction, the results of its commission, including rights and obligations, will arise only from the moment the inheritance is opened. As for the procedure of inheritance on the basis of a contract, the opportunity to inherit property or property rights will also arise after the death of the party to the contract – the testator, and contractual obligations for the second party or the heir may arise both from the moment of opening the inheritance and before it occurs.

This means that the heir has a less secure position under the contract than the testator. The latter, at the conclusion of the contract, exercises his rights in full, imposes on the other party duties performed until the moment of death, and, at the same time, may at any time unilaterally refuse to perform the contract with compensation for damages to the future heir.

The law approved an imperative norm, based on which the party to the contract – the testator, even after concluding the contract under study, has the right to dispose of the subject
of the contract in any way (that is, his property) and make any transactions with him, including alienation and transfer of rights to other persons not bound by this contract, despite the fact that such an order will leave the contractual heir without inheritance.

In this situation, the algorithm of actions of the disinherited heir becomes incomprehensible to practitioners. If the law clearly provided for the possibility of compensation for damages by unilateral refusal of the contract, then how to resolve this issue in the absence of unilateral refusal and simultaneous loss of the inheritance as a result of the disposal of the testator?

In order to eliminate contradictions in the practical sphere, in my opinion, it would be quite expedient to bring the institution of inheritance under the contract into a separate chapter of the code, clarifying the provisions that when concluding and implementing this contract, legal provisions may be applied that also regulate contracts of lifelong rent and or lifelong maintenance with dependents, in the part in which they are they will not contradict the essence of the inheritance agreement.

This will strengthen the contractual basis of the inheritance transaction and will significantly distance it from inheritance by will, which will ultimately contribute to the wider application of this construction in practice and allow it to play a significant role in the system of sustainable development of public relations, which are based on the rule of law based on the rule of property, especially in the agro-industrial complex [10, 11].

Within the framework of the original Russian statehood, in accordance with the ideas and principles of the constitutional development of Russian society, all peoples, nations and social groups that make up a single historical community – the Russian people, have ample opportunities to realize their civil and socio-legal activity, and if there is the necessary level of legal culture, to interact at various levels. [12].

Let us turn to the construction of the inheritance contract already formulated by law. The obligations defined by the contract in question are also regulated as obligations under the agreement in the usual sense, the rules on the "limits of performance" of testamentary assignment and testamentary refusal do not apply to them.

An inheritance agreement may be concluded by the parties, including in the form of a conditional transaction. That is, the parties may make the occurrence of the consequences specified in the contract dependent on certain circumstances (including those that were unknown at the time of its conclusion).

The occurrence of consequences determined by the contract (in particular, inheritance of immovable property) may also depend on the fulfillment by the other party to the contract or the heir of the conditions specified in the contract itself: for example, to ensure the maintenance of the heir, his treatment or rest, or to organize a joint pastime, etc.

And at this point it is also possible to trace a certain similarity with the contract of lifelong maintenance with dependency or a lifetime annuity, which once again confirms the need to strengthen the contractual nature of this institution.

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Also in the legal literature, the possibility of inheritance by a third party determined by law is controversial. As follows from clause 6 of Article 1118 of the Civil Code of the Russian Federation, if an inheritance agreement is concluded in which a non-party to the contract is called for inheritance (a third person is named as the heir), then the testator's counterparty cannot be assigned duties performed before the opening of the inheritance. Thus, a contract is concluded that does not create obligations for any of the parties during the life of the testator, and after the death of the testator, the third person named in the contract has the right to receive the inheritance [14]. This situation allows us to conclude that the practical meaning of the inheritance contract is losing its significance.

Of course, the issue of inheritance of agricultural land or a share in a farm is also a controversial point in this sense.

Thus, the Civil Code of the Russian Federation does not contain a direct prohibition on concluding an inheritance agreement with a foreign resident as an acquirer of inheritance. However, referring to special laws, we see a clear and unambiguous prohibition on the ownership of agricultural land by foreign citizens, legal entities with a foreign element. In this situation, the basic principle of freedom of contract loses its practical meaning and significance, since the testator is limited in his preferences and, accordingly, in the ability to freely determine the fate of the lands belonging to him in this category. In my opinion, it would be useful to specify separate exceptions for the use of contractual inheritance in the sphere of agricultural land turnover [15, 16].

As for the inheritance of a share in a farm (including lands of the category described above), here, as defined by law, inheritance is carried out according to general rules, respectively, the rules on the inheritance agreement can be applied. However, as a result of the imperfection and roughness of this construction, a number of difficulties arise in its practical use in this area of legal relations [17].

4 Conclusion

Despite the current socio-political situation, especially in matters of foreign relations of our state, Russia undoubtedly remains part of the global legal system, as evidenced by the constant desire of the domestic legislator to improve the regulatory framework, to adjust it to the newly formed public relations. By so-called practical testing, improving norms, adjusting them to legal reality, creating new and new institutions, even in such an almost unchangeable structure as inheritance, the norm-makers perform an important function to systematize the sustainable development of statehood, the agricultural economy of the country and, including, its agro-industrial sector.

Turning to the reality of the application of the inheritance contract, it is worth emphasizing that, paying tribute to the need to include Russian law in the general world requirements, the Russian legislator is still trying to preserve the identity, the specifics of our development path, taking into account the really developing relations and international practice.
However, any path of formation of a new right-wing institution certainly always collides with practice and reality, therefore, it undergoes significant changes over time, ultimately determining what requires change, development and improvement [18-20].

At this stage, the institution of inheritance by contract has not been formed in the form in which it could be perceived by the population to be used as widely as inheritance by will, especially in the area of agricultural land circulation. Unfortunately, difficulties arise not only for the layman, but also for experienced law enforcement officers. The analysis of judicial and notarial practice shows that the legal object under study in its legislative execution has significant drawbacks that can lead to disputes and a diverse interpretation of the current norms.

In the form in which the inheritance contract is regulated in the Civil Code of the Russian Federation, a set of elements of both inheritance by will and contractual relations between the testator and the heir is provided, which ultimately causes the complexity and problemativeness of its application, as well as puts the parties to these legal relations in an unequal legal position and prevents the implementation of the basic principle of civil law – equality of the parties.

In my opinion, the design used by the legislator requires refinement, making clearer distinctions between the will and the inheritance agreement, separating the inheritance agreement into a separate chapter and applying the rules for extending the norms of other similar agreements (lifetime rent, lifelong maintenance with a dependent, etc.) to contractual legal relations in inheritance law, determining a clearer status of a third person (who inherits according to the inheritance agreement) and the rights of the testator's counterparty before the opening of the inheritance. Such changes should also concern the norms of the Civil Code of the Russian Federation governing hereditary transmission.

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