The Law of Inheritance of the Russian Federation: Some Characteristic Features

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1. At the time of this writing, the third (and last) part of the new Civil Code of the Russian Federation had not yet been completed. I had before me—as I wrote this article—an English translation of the draft of 29 January 1997.1 Its Section IV contains the law of inheritance. As with many other parts of the Civil Code, this section has its roots in the 1993 Russian Constitution, notably in Article 35, para.4: “The right to inheritance shall be guaranteed.” Such an explicit constitutional protection is rare, the moral justification of the right to inherit being considered in most countries to be a rather weak one. In The Netherlands, Professor Meijers—who laid the foundations for the new Dutch Civil Code—has even written that the law of inheritance is a clear example of a legal institution without any moral justification,2 an opinion that suggests the view that private property after the death of the owner should be returned to the community or, at least, redistributed among its members according to criteria other than merely those of family ties or the will of the deceased. In the text that he had submitted to the Dutch government in 1954, however, there were no vestiges of this radical view. What he had proposed was, in fact, a technically renewed version of the traditional Dutch system.3

There is a parallel here with the Russian draft, which, in many respects, sticks to the Russian tradition expressed, for example, in the Russian Civil Code of 1922 (Arts.416-436), the Russian Civil Code of 1964 (Arts.527-561), and Articles 153-155 of the Principles (Osnovy) of Civil Legislation of the (former) USSR and the Union Republics of 1991. It should be remembered that even the constitutional protection of the right to inheritance is not a result of developments of the 1990s; rather, it goes back to the times of

1 The author was consulted on an earlier version of the draft in 1995.
3 Time and again, this part of the new Dutch Civil Code has met with difficulties, leading to delay. The last of many versions was adopted in May 1998 by the Dutch lower house. But in May 1999, the Dutch senate was only willing to accept this version after the government had promised to reconsider the extreme limitations of the freedom to dispose of one’s inheritance, particularly those in favor of the surviving spouse. A separate law for the entry into force of the new law of inheritance is being prepared. The necessary corrections may be inserted into this law. This means, in practice, a further postponement of some years.

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the former Soviet Union. The same provision is found in Article 10 of the USSR Constitution of 1936, the concept behind it being that in a country of victorious socialism—in which the exploiting classes have been eliminated—inheritance law cannot become a source of exploitation; rather, it should protect the personal ownership of the toilers, increase the productivity of labor, and strengthen the Soviet family, fortifying in this way the relations uniting the citizens of the USSR with socialist society.4 As we shall see, some important elements of the law of inheritance even go back to the times before 1917.

This chapter intends to draw attention to some of the most characteristic features of this tradition and the difficulties that might be expected there from.

2. My first remarks regard the Russian system of access to the inheritance. The heir is obliged to accept the inheritance within a time limit of six months from the date of its opening, which is the day of the death of the individual concerned. Later acceptance is only possible with the consent of all other heirs who have accepted the inheritance or on the basis of an extension of the time limit granted by a court if it recognizes that there were adequate grounds for the delay. Access to the inheritance, moreover, requires a certificate of the right to inherit, issued by a notary at the place of the opening of the inheritance. This certificate is to be issued to the heirs who have accepted the inheritance on their application upon the expiry of six months from the opening of the inheritance. It may be issued prior to the expiry of six months if there is proof that no other heirs exist other than the person(s) who has (have) applied for the certificate. This system evolves from Articles 546, 557, and 558 of the Civil Code of 1964 (going back to Arts. 425 and 435 of the Code of 1922) and has—for all intents and purposes—been maintained in the draft of January 1997. It applies to intestate succession, as well as to succession under a will.

It is interesting to compare this system with the various solutions that exist in Western Europe in this field.5 Roughly speaking, they can be divided into three groups. In all three groups, there seems to be a relation between the admitting of holograph wills and the formalities required for access to the inheritance.

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4 See the passages cited by V. Gsovski, Soviet Civil Law, Vol. I, Ann Arbor 1948, 619-621.

5 For a recent overview of the law of inheritance of Western European countries see D. Hayton, (ed.), European Succession Laws, Bristol 1998.