

Interpretation of the connotation of Article 33 of the “Law on the Application of Law to Foreign-Related Civil Relations”: “Validity of Wills” - An empirical study based on 50 judgment documents

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Abstract

Article 33 of the Law on the Application of Law in Foreign-Related Civil Relations stipulates the applicable law for determining the validity of foreign-related wills. This paper conducts a comparative analysis of the conceptual differences in defining “testamentary validity” between domestic and foreign-related legal contexts in China. It finds that, in judicial practice, the requirements for the validity of wills in foreign-related civil law are ambiguously defined and overly broad in scope. Specifically, the concept of “testamentary validity” not only includes general elements such as formal requirements, the testator’s legal capacity, genuine intention and the legality of the will’s content but also extends to matters of testamentary succession, including the revocation, amendment and specific provisions of the will. In addressing certain foreign-related testamentary succession disputes, China faces a lack of legal provisions and has to turn to the Article 33. The root cause lies in the inherent deficiencies of China’s dual succession legal system. To address this issue, I propose two approaches for improvement: firstly, fundamentally restructuring the system into an “inheritance-will” model; and secondly, refining the rules of testamentary succession by introducing specialized provisions for matters not currently regulated by law. These measures aim to ensure the legality, reasonableness and fairness of foreign-related judicial adjudication.

Keywords

Law on the Application of Law to Foreign-Related Civil Relations, validity of wills, foreign-related inheritance, foreign-related litigation.

1. Introduction

Under the background of globalization, foreign-related inheritance has increasingly become one of the hot issues in the field of private international law. Among them, as an important part of foreign-related inheritance, testamentary inheritance not only involves complicated legal application issues, but also directly related to the realization of the decedent’s wishes and the protection of heirs’ rights and interests. Academic circles generally believe that Article 33 provides a basic framework for handling foreign-related wills cases. Wang Yibo pointed out in his academic paper Legal Application of “Required Share” in Foreign-related Inheritance that the “atypical” optional application of this law can’t effectively solve the legal conflict between “required share” and “special share” in foreign-related inheritance. He believes that although this legislative model reflects flexibility to a certain extent, it also reduces the stability and predictability of legal application¹; After empirical analysis of relevant cases, other scholars

¹Wang Yibo. Legal application of “required shares” in foreign-related inheritance [J]. Journal of Gansu University of Political Science and Law, 2022, (02): 145-156.

have found that when Chinese courts solve foreign-related testamentary succession cases, there are some practical problems in the process of law application, such as improper identification of foreign-related factors, lack of the principle of autonomy of will, insufficient reasoning and irregular writing of judgment documents².

However, with the deepening of practice, a prerequisite problem always stands between theory and practice, that is, how should the “validity of wills” stipulated in this clause be interpreted? It seems that the academic circles have not paid too much attention to and discussed this issue. This theoretical gap makes the interpretation of the validity of wills lack a uniform standard in judicial practice, and judges need to determine the applicable law according to their discretion when trying cases, so they are more inclined to apply the *lex fori*, thus violating the principle of the closest connection between national private laws. In addition, the unclear application of the law will also lead to the failure of the testator’s true meaning to be realized, and even make the will invalid due to legal conflicts. This paper will start with the theoretical definition of the validity of wills under the current laws of China, draw lessons from relevant international judicial practice experience, deeply discuss the reasonable scope of the validity of wills, and put forward some suggestions on perfecting the application of foreign-related wills’ succession laws in China.

2. The first chapter is the connotation of “validity of will” in the context of domestic law of our country

Before solving the legal effect of the will involved in the case, we must first clarify the connotation of “will effect” under the current law of our country. According to the Civil Code of the People’s Republic of China and relevant laws and regulations, the validity of a will refers to the legal binding force and realization force of a will, that is, whether a will can have a legal guidance and binding effect on the distribution of property and other affairs of the testator according to his wishes. The succession section of the Civil Code of the People’s Republic of China stipulates the conditions that must be met for a will to take effect, that is, it must meet both the requirements of form and content stipulated by law.

The Civil Code of the People’s Republic of China clearly states that “a will made by a person without or with limited capacity for civil conduct is invalid”³. This is a requirement in history for the testamentary ability of the subject testator who makes a will. Only testators who have full capacity for civil conduct can clearly express their wishes at the legal level, understand the legal consequences of testamentary acts, and have the ability to dispose of property independently can be considered to have complete capacity for testamentary conduct and make effective wills. The testator’s full capacity for civil conduct generally includes two meanings, that is, the age is eligible and the mental state is good. The former means that the testator must be at least 18 years old or at least 16 years old. If he is under 18 years old and takes his own labor income as his main source of income, he also has the conditions for establishing a will. That is to say, in testamentary succession, only adults who have reached the age of 18 and have normal intelligence have the ability to make wills, and their wills may be deemed valid. However, minors have no right to dispose of their own property through wills because they are persons with limited or no capacity for civil conduct, and their property is usually under the management of guardians. In addition, the conscious state of the testator when making a will is also an important basis for judging whether he has full capacity. That is to say, if the will is made

²Qiao Xiongbing, Li Xiaohan. An empirical study on the application of China’s foreign-related testamentary succession laws [J]. *China Annual Journal of Private International Law and Comparative Law*, 2022, 31 (02): 54-74.

³Paragraph 1 of Article 1143 of the Civil Code: A will made by a person with no capacity or a person with limited capacity is invalid.

by the testator after being diagnosed with mental illness and under guardianship, then the law largely judges that the will is invalid.

To determine the validity of a will, we should also consider the external environment of the testator in the process of making the will, that is, whether the testator has been cheated, coerced or misled is the core requirement of judging whether the will is authentic and voluntary, and the law to judge whether the will is effective. In principle, the will should be based on the content of the last will made before the testator's life, so as to ensure the true intention of the decedent. For people with ulterior motives, it is illegal to forge or tamper with their wills, or use deception or threats to make the testator make a will, and their wills have no legal effect⁴.

In addition to the provisions for testators, the determination of the validity of a will, as a unilateral civil legal act, should also follow the general principle of civil legal acts stipulated in Article 143 of the Civil Code of the People's Republic of China, that is, "civil legal acts must not violate the mandatory provisions of laws and administrative regulations, nor violate public order and good customs"⁵. According to Article 1122 of the Civil Code of the People's Republic of China, "inheritance is the personal legal property left by a natural person when he dies"⁶. Therefore, the estate disposed of by will must be property legally owned by the testator personally. This includes, but is not limited to valuable items such as property, deposits, vehicles, jewelry, etc. Therefore, the scope of the testator's disposal of his will is limited to his own property. If the disposal exceeds the scope of personal property, the disposal beyond the scope will be invalid, rather than the whole will. In addition, in order to protect the heirs who are in a weak position in testamentary inheritance and ensure the basic guarantee of their future life, China's current Inheritance Law stipulates the qualifications of beneficiaries who must retain shares. Article 19 points out that "the will should retain the necessary share of property for heirs who lack the ability to work and have no source of income"⁷. This also means that if the testator does not reserve a certain share of property for such heirs when setting up a will, or even cancels their inheritance rights, such a will will have no legal effect, but will only be partially effective at most. The law mandates to deduct part of the property and leave it to those who have no living security, and the remaining property will be distributed according to the will.

In addition, our country's laws also stipulate that the formal requirements of the effective requirements of a will mean that the form of a will must meet the specific requirements stipulated by the law to ensure that the true meaning of the testator is expressed. At present, China's current Inheritance Law has made relevant provisions on five legal forms of wills, including self-written wills, written wills, recorded wills, oral wills and notarized wills. The law may require that the effectiveness of a will include the date of making the will (specifically to a certain day of a certain year, a certain month), the place, the autograph of the testator and other requirements. For other forms of wills except self-written wills, the law also stipulates that two or more witnesses should be present and sign at the designated place when the will is made before it is valid. At present, adhering to the principle of autonomy of the decedent, in order to reduce inheritance disputes and avoid the waste of legal resources, China adopts strict legalism

⁴Cui Yu. Research on the valid requirements of wills for testamentary succession in my country [D]. Kunming University of Science and Technology, 2016.

⁵Article 143 of the Civil Code A civil legal act that meets the following conditions is valid: (1) The perpetrator has corresponding capacity for civil conduct; (2) The meaning is true; (3) Do not violate the mandatory provisions of laws and administrative regulations, and do not violate public order and good customs.

⁶Article 1122 of the Civil Code Inheritance is the personal legal property left by a natural person when he dies. Inheritance that cannot be inherited according to the law or its nature cannot be inherited.

⁷Article 19 of the Inheritance Law of the People's Republic of China: A will shall reserve the necessary share of the inheritance for the heir who lacks the ability to work and has no source of income.

for testamentary inheritance. If the will does not meet the requirements stipulated by law in form, it cannot produce corresponding legal effect.

Judging from the current legal provisions, the term “validity of a will” has never appeared in neither the Civil Code of the People’s Republic of China nor relevant laws and regulations. For this word, it can refer to the substantive requirements of the establishment of a will, the binding force of a will, or the substantive validity of a will⁸. It is advisable to introduce practical cases and analyze this.

For example, in the (2024) Beijing 02 Minzhong No. 14623⁹ inheritance dispute case of Shen Mouyi, Shen Mouyi’s father left a will, and the contents of the will Roughly, my support work will continue to be borne by the testatee Shen Mouwu. After a hundred years, all my personal property will be continued by my son Shen Mouwu, excluding the inheritance rights of other children. In the lawsuit, Shen expressed his disapproval of the validity of the will, claiming that the will was written by Shen to coerce his father by means of inducement, instigation, intimidation, etc., which was not his true intention. Moreover, the video showed that Shen was copying the will, and the model of the will was provided by Shen, claiming that he did not have the capacity for civil conduct when copying the will. During the trial, the court summarized the dispute focus of the case as whether the will is valid or not, and examined the formal requirements of the will and the testator’s testamentary capacity respectively. In the case of (2023) Hei 01 Min Zhong No. 15862¹⁰, the court of first instance found that in this case, the testator’s signature on the will was not signed by himself, and only the fingerprint did not meet the legal form requirements for printing the will, so it did not have legal effect. Moreover, the two witnesses did not sign each page of the will and indicate the year, month and day. The recorded video did not record that the witnesses read the contents of the will to the testator before he pressed his fingerprint, so it was difficult to prove that the testator fully knew, understood and confirmed the printed contents of the will before pressing his fingerprint. It was also difficult to prove that the witnesses simultaneously witnessed activities at the scene where the testator made his will and that the contents of the will were the true meaning of the testator. Therefore, the will involved in the case claimed by the plaintiff does not meet the legal formal requirements required by the current law for the printed will to take effect. In this case, around the validity of the will, the court analyzed the formal requirements of the will and the environment in which the testator was located when the will was made. It is worth noting that in the second instance, the court held that the testamentary inheritance in this case was invalid due to the invalidity of the will in this case. From this point of view, in the judicial practice in China, the validity of the will is equivalent to that of the testamentary inheritance to some extent. To sum up, in the context of domestic law, there is no authoritative document that clearly stipulates the validity of wills. However, through judicial practice, the validity of wills in the context of domestic law should be interpreted broadly, and the validity of wills is actually equivalent to the effectiveness of wills. The so-called “validity of wills” actually refers to the “validity” of wills, so all matters related to the validity of wills, such as the testator’s ability to make wills and the formal requirements of wills, should be included in the meaning of “validity of wills”.

⁸Xiang Zaisheng. Comparative study of the applicable laws of foreign-related inheritance laws across the Taiwan Straits [J]. Taiwan Studies Collection, 2012, (05): 56-63.

⁹Jing 02 Minzhong No. 14623

¹⁰Black 01 Minzhong No. 15862

3. Cognition of “Will Effectiveness” in Foreign-related Inheritance Cases

3.1. The General Connotation of “Will Effectiveness” in Foreign-related Inheritance Disputes

On China Judgment Documents Network, using Article 33 of the Law on the Application of Laws on Foreign-related Civil Relations as the keyword to search for judgment documents of civil cases, a total of 50 judgments were retrieved. Further descriptive statistics of these 50 judgments show that in terms of determining the validity of wills, the vast majority of cases (46 cases) follow the judgment idea that “the validity of wills is equal to the validity of wills”, and the court mainly examines the form and substantive requirements of wills. Specifically, the examination rate of formal elements reaches 100%. In other words, once a dispute over the validity of the will is involved, the legality of the form of the will is examined during the examination, regardless of the appeal of the parties or the specific circumstances of the case. 25 cases (accounting for 54.3%) conducted substantive examination of the legality of the contents of wills; Four cases (accounting for 8.7%) paid special attention to the testator’s capacity for civil conduct. In order to elaborate on the above viewpoints in depth, the following analysis is combined with specific cases.

For example, in the case of (2020) Jing 01 Min Zhong No. 3361¹¹, the appellant claimed that a will that can only prove that it is signed as the decedent cannot be recognized as a true and valid will, and that the testator was old at the time of making the will, and suffered from mental illness, so he did not have the ability to make a will. Because the parties involve foreign citizens, this case is a foreign-related civil inheritance dispute. In the first instance, the court conducted a trial around the core dispute of whether the testator’s will is effective because he has or does not have the ability to make a will, and examined the form and content of the testator’s self-written will. In the formal examination process, in view of the large difference in the time span between the samples submitted for inspection and the inspection materials, after obtaining the consent of the appellant, the court entrusted the judicial appraisal institute to conduct a special appraisal of only the “myself” part and signature of the inspection materials, so this legal procedure is reasonable; At the same time, the court found that the signature time on the registration materials of the decedent’s real estate transfer was earlier than the time when the will was made, and held that the appellant’s claim that the testator’s capacity was limited did not have factual basis. Therefore, the court found that the will involved met the corresponding formal and substantive requirements and had legal effect. In the (2018) Yue 03 Min Zhong No.20876¹² foreign-related will dispute case, the appellant was a resident of the Hong Kong Special Administrative Region, and the decedent made a written will before his death, which was witnessed and signed by the Jiangbian Community Neighborhood Committee. The court of first instance held that the will was witnessed and confirmed by the collective economic organization and had high credibility, so it was determined that the will was true and valid. However, the appellant claimed that the form of the will did not conform to the law, so he filed an appeal. In the second instance, the court strictly examined the formal requirements of the will involved, and held that the witnesses stipulated in the inheritance law did not include community neighborhood committees, companies and other subjects, and the will was printed, with only one witness, and the seal was stamped on the second page, instead of the first page containing the main text of the will, which could not guarantee the consistency between the content of the will and the witness content, and it was difficult to prove that the content of the will was the true expression of the testator. Therefore, for the above reasons, the court of

¹¹(2020) Jing 01 Min Zhong No. 3361

¹²(2018) Yue 03 Min Zhong No. 20876

second instance changed the will to be invalid, and the estate was distributed according to the legal inheritance order. It is worth noting that the court affirmed the original intention of the neighborhood committee to assist in the making of wills, and at the same time put forward constructive opinions: it is suggested that when the neighborhood committee assists in the making of wills in the future, people with relevant professional legal knowledge should be introduced to standardize the procedures and forms of wills, so as to avoid such disputes.

In the judicial practice of foreign-related estate disputes, when it is determined that the applicable law is based on the relevant provisions of Article 33 of the Law on the Application of Laws on Foreign-related Civil Relations, the examination will focus on the “problems of the will itself” such as the way of will and the testator’s ability to make a will, which means that these aspects are regarded as the connotation of the word “validity of the will” mentioned in Article 33 of the Law on the Application of Laws on Foreign-related Civil Relations.

It can be said that in the general foreign-related context, the concept of “testamentary validity” is basically the same as the connotation reflected in the context of the word “testamentary validity” in the context of civil disputes within the pure jurisdiction, that is, the so-called “testamentary validity” essentially refers to the determination of the legal validity of the will. That is to say, in foreign-related civil inheritance cases, the same review principle as that of domestic courts is usually followed in judicial rulings, that is, the review is conducted from two dimensions: formal requirements and substantive requirements: in terms of formal requirements, it focuses on whether the will meets the legal formal requirements; In terms of substantive requirements, it mainly examines the legality of the contents of the will, the testator’s ability to make a will and the authenticity of the expression of will, so as to comprehensively judge the legal effect of the will.

3.2. The Special Connotation of “Will Effectiveness” in Foreign-related Inheritance Disputes

However, the empirical research data shows that a certain proportion of 50 judgment samples (4 cases, accounting for 8% of the research objects) have different understandings of the semantics of the word “validity of wills”. That is to say, although some courts invoke Article 33 of the Law on the Application of Foreign-related Civil Relations as the applicable law to solve the disputes about the validity of wills in their trials, their review scope has broken through the traditional framework of the basic requirements of the validity of wills.

For example, the case of (2020) Yue 04 Min Zhong No.2059¹³ is a dispute involving the succession of wills in Australia. Since the decedent’s will and his habitual residence at the time of death were mainland China, the court applied mainland laws as the applicable law to confirm whether the will is effective. In this case, four wills were made in different periods before the testator’s life. Because of the different contents involved in property distribution, the two parties disputed whether they had legal effect. During the trial, the court of first instance found the facts: the self-written will in 2013 was the last will before the testamentary life. According to Article 20 of the Inheritance Law, “If there are several wills, the contents of which conflict, the last will shall prevail.”¹⁴ The court examined the formal requirements of the will and found it legal and valid; However, what deserves our attention is that the court of second instance not only paid attention to the legality of the form of the will involved, but also further expanded the scope of review. The judgment records, “From the content point of view, the self-written will of August 25, 2013 is consistent with the contents of the decedent Wang Xuemei’s self-written will

¹³(2020) Yue 04 Min Zhong No.2059

¹⁴Article 20, Chapter 1, Inheritance Law of the People’s Republic of China: If there are several wills, and the contents are in conflict, the final will shall prevail.

of February 1998 and the decedent Feng Zhaowen's notarized will of November 6, 1995, and the process of obtaining the self-written will mentioned by Feng Guoqing does not violate the common sense of life." Therefore, we can conclude that the court not only examined the formal requirements of "the establishment of the will", but also examined whether the process of obtaining the will by the appellant violated the common sense of life.

In addition, in the case of (2014) Hangxi Min Chu Zi No.282¹⁵, the plaintiff Cheng Mouding was a foreign citizen, and the habitual residence of the testator and the location of movable and immovable property at the time of his death were all Chinese mainland. Therefore, the court applied mainland laws to adjust the dispute over the validity of the will. Han Wenmei, the decedent, left a "mother's message" that can be regarded as a self-written will before his death. During the trial, the court conducted a comprehensive inspection of the will involved in the case, and found that it was the true intention of the decedent and had legal effect. The defendant Cheng Mouwu claimed that the will was invalid according to the relevant provisions of the laws of Taiwan Province, China. However, because the mainland laws should be applied to this case, his defense was an error in the application of the applicable law, and the court did not support it. At the same time, however, the court also examined other contents of the will: "According to the contents of the will, 'House in Alude Zijin Community' and '21 buildings in Xinxing Community', combined with all the real estate information of Han Wenmei, it can be determined that the house in Zijin Community is Room 302 in Zijin Community, which is inherited by the plaintiff Cheng Mouyi; Building 21 of Xinxing Community is Room 302 of Xinxing Community, which is inherited by the plaintiff Cheng Moubing. As for the house in Room 301 of Fifteen Homestead, because it has not been registered by the housing management department, the ownership is still unclear, and it cannot be determined as Han Wenmei's heritage, so it will not be dealt with in this case. "According to the judgment documents of this case, the court made a specific explanation of the expression 'House in Alude Zijin Community' in the will, verified the ownership of the real estate house involved in the case according to Article 33, and analyzed the contents of property distribution in the will. Therefore, in addition to the effective requirements of the will, the court also reviewed the specific contents of the will and expanded the scope of application of the law in judicial practice.

In the case of (2017) Ji 03 Min Zai No.28¹⁶, Zhao Nihong, the testator, made a printed will witnessed by Wu Mou, a lawyer of a law firm in Beijing, and dealt with the property under his name, including the distribution of the company's equity. The plaintiff claimed that there were only the personal seals of Wu Mou and another lawyer of the law firm, Li, on the will, lacking autograph, and the plaintiff provided ten photos including the decedent. However, Li failed to identify them. After the case entered the retrial procedure, the defendant submitted a new key evidence, that is, a copy of Li's documentary evidence, the general content of which was that he guaranteed to personally experience the process of making a will. Therefore, on the basis of affirming the basic fact that the testator had good capacity when making a will, the court comprehensively considered the evidence in this case, and finally determined that the will was the true intention of the testator, overturning the judgment of the first and second instances. However, it should be pointed out that in the process of examining the substantive requirements of this case, the court of first instance also examined the specific disposal content of the property stipulated in the will. The judgment stated, "In the first content of the will, Zhao Nihong has disposed of 100% of his equity in Qinhuangdao Yuntong Glass Electromechanical Co., Ltd., and in the second article, he exchanged his shares in the company with other minority

¹⁵(2014) Hangxi Min Chu Zi No.2821

¹⁶(2017) Ji 03 Minzai No. 28

shareholders. There are obvious contradictions between the two contents.” Therefore, in fact, after comparing the contents of the first two wills.

In the case of (2022) E 0107 Min Chu No. 5105¹⁷, the decedent and his wife had three children, Ye Mou 1, Ye Mou 2, and Ye Mou 3. The two elders made three wills with conflicting contents before their death. As Ye’s habitual residence is in the United States, and his parents’ habitual residence is in China when they died or made a will, the court found that the case was a foreign-related civil dispute, and applied Chinese law as the applicable law to resolve the dispute over the validity of the will. First of all, the court examined the contents of the first will jointly made by the decedent’s husband and wife in 2000, and found it to be a will with obligations. On the grounds that Ye Mou Er failed to fulfill the obligations stipulated in the will, the court cancelled his right to accept part of the property with obligations according to Article 1144 of the Civil Code of the People’s Republic of China, and ruled that the will was invalid. However, in fact, the legal consequences of the parties’ failure to perform their obligations should be limited to the loss of the inheritance right of this part of the estate, which does not necessarily lead to the invalidity of the will. Therefore, the author believes that the court confuses “cancellation of specific inheritance rights” with “determination of the validity of the will”, which is flawed in judicial practice. In addition, the court held that “the contents and forms of Wang Yunqing’s personal will on August 12th, 2006 are in line with the requirements of his own will stipulated by law, and are consistent with the contents of his own will made with Sheng Qingshan on that day, so the will is a valid will.” This discussion shows that in addition to confirming that the content and form of the will are in line with the law, the court examined whether the will is consistent with the content of another decedent beyond the scope, and once again paid attention to the revocation and change of the will and the specific content, which is beyond the scope of review stipulated by the law.

As a matter of fact, wills can be divided into two categories: “the problem of the will itself” and “what kind of behavior should be carried out according to the will”. The former usually involves issues related to the form and substantive requirements of the will, such as the form of the will, the capacity of the testator, the legality of the content of the will, etc., and only focuses on the legality and validity of the will itself, but does not involve the specific disposition and inheritance of the estate; The latter solves the factual problem of inheritance. For example, in the previous case, the consistency between the contents of the notarized will and the disputed will, or the problem of how to divide and inherit the contents of the will¹⁸, or even compare the wills of different decedents to check whether the contents are consistent. In the first chapter of this article, we discussed that the “validity of a will” is actually equivalent to the “validity” of a will. Therefore, the court only needs to examine the effective elements including formal and substantive elements during the trial, that is, only the first category of testamentary matters are examined. However, in the actual practice of foreign-related context, the court expanded the scope of application of Article 33 of the Law on the Application of Laws in Foreign-related Civil Relations, and took it as the applicable law to solve the problem that there was no legal basis and was not adjusted by this law. This practice of summarizing many matters related to testamentary inheritance with different natures through only one conflict norm is too general, and it also appears that the legislation is vague, thin and rough, resulting in confusion in practice and application¹⁹.

¹⁷(2022) E 0107 Min Chu No. 5105

¹⁸Tian Xiaomei. Research on the improvement of the applicable rules of my country’s foreign-related testamentary succession laws [D]. Zhongnan University of Economics and Law, 2022

¹⁹Qiao Xiongbing, Li Xiaohan. An empirical study on the application of China’s foreign-related testamentary succession laws [J]. China Annual Journal of Private International Law and Comparative Law, 2022, 31 (02): 54-74.

4. Analysis of the Reasons for the Extended Application of Article 33 in Foreign-related Inheritance Cases and Suggestions on Legislative Improvement

In the context of domestic law, the “validity of a will” generally refers to the requirements for the effectiveness of a will, while in foreign-related civil disputes, the court’s interpretation of “validity of a will” often extends to all issues related to wills. This deviation of concept application in judicial practice can be traced back to the source. The fundamental reason is that there are structural defects in China’s current inheritance legal system, which need to be solved by perfecting legislation.

Among the provisions of the Law on the Application of Foreign-related Civil Relations on inheritance, Article 31 stipulates how to determine the applicable law for legal inheritance, while Article 32 stipulates how to determine the applicable law for making a will, and Article 33 clarifies how to determine the applicable law for the validity of a will. Broadly speaking, Chapter 4 of China’s Law on the Application of Laws on Foreign-related Civil Relations stipulates two main ways of property transfer in China, namely legal inheritance and testamentary inheritance. That is to say, China has adopted a legal dual inheritance system, and the decedent needs to make an exclusive choice between the two ways to dispose of personal property. Article 1123 of the Civil Code of the People’s Republic of China stipulates, “After the inheritance begins, it shall be handled according to the legal inheritance; If there is a will, it shall be handled according to the testamentary inheritance or bequest; If there is a bequest maintenance agreement, it shall be handled according to the agreement”²⁰. There is no doubt about the recognition of testamentary inheritance in China. The fundamental reason lies in the fact that inheritance right is a reasonable extension of ownership. Recognizing the freedom of will means recognizing the freedom of property owners to dispose of property, and recognizing will means respecting the wishes of the decedent. According to the provisions of China’s current Civil Code of the People’s Republic of China, not only testamentary inheritance is recognized, but also its effectiveness takes precedence over legal inheritance²¹. This also means that if the decedent tries to distribute property by legal inheritance, in principle, he will not choose to make a will, because once a will is made and the court decides that the will is valid, it will be distributed according to the contents stipulated in the will. On the contrary, if the decedent chooses to make a will, it means that he wishes to take the form of testamentary inheritance. On the surface, the court quoted Articles 32 and 33 of the Law on the Application of Laws on Foreign-related Civil Relations to focus on the effectiveness of the will, but in fact, whether the will is valid or not directly determines the way of property inheritance. The court seems to be trying whether the will is valid or not, but actually solving the problems related to property inheritance. Therefore, to some extent, the legal act of making a will can be equated with the legal fact of wills inheritance. That is to say, what Chapter IV of the Law on the Application of Law of Foreign-related Civil Relations actually wants to do is to stipulate how to determine the applicable law of legal inheritance and willful inheritance respectively.

In testamentary inheritance, whether the will is effective or not is the core issue, but it is not the only issue that testamentary inheritance cares about. Issues such as the interpretation and content of the will are also problems that must be faced in testamentary inheritance disputes. However, looking at the relevant contents of the Law on the Application of Laws on Foreign-

²⁰Article 1123 of the Civil Code: After the inheritance begins, it shall be handled in accordance with the legal inheritance; If there is a will, it shall be handled according to the testamentary inheritance or bequest; If there is a bequest maintenance agreement, it shall be handled in accordance with the agreement.

²¹Gao Lu. Research on the legal application of foreign-related testamentary succession [D]. China University of Political Science and Law, 2007.

related Civil Relations, there is no provision for these problems, but it is impossible to solve these problems without any basis. Before the legislation is perfect, it is necessary to explain some provisions of the law to expand its connotation to cover these problems. The legal inheritance stipulated in Article 31, the testamentary method stipulated in Article 32, and Articles 34 and 35 of the Law turn to the inheritance, in which there is little room for interpretation. Therefore, the only choice is to expand the interpretation of the validity of the will in Article 33. The broad understanding of “validity of the will” means that it not only includes the entry into force of the will, but actually includes a series of issues such as interpretation, withdrawal and content change after the entry into force of the will.

In a word, in the actual practice of foreign-related context, wills and inheritance are inseparable, which leads to the fact that when the court hears the validity of wills, it will largely interpret the issues involving wills in an expanded way, and apply Article 33 to solve some other problems beyond the validity of wills, such as the content of wills, the revocation and change of wills and the interpretation of wills, etc. While hearing the validity of wills, it is inevitable to hear the question of which way to inherit the estate. Article 33 of the Law on the Application of Laws on Foreign-related Civil Relations stipulates that it is a fact that the validity of wills is valid. However, due to China’s special dual inheritance system, in practice, all issues related to foreign-related wills may be adjusted by invoking this law, which has gradually evolved into a comprehensive clause to adjust foreign-related wills.

Articles 31 to 33 of China’s Law on the Application of Foreign-related Civil Relations Laws have constructed the basic framework for the application of foreign-related inheritance laws, in which Article 31 adjusts the legal relationship of legal inheritance, while only two conflicting norms, Article 32 “Will Form” and Article 33 “Will Effectiveness”, are set. Therefore, in actual judicial practice, assuming that the case does not involve disputes about the formal requirements of wills and whether wills are effective, but the two parties have differences in the interpretation, revocation or change of wills, or other specific contents of wills.

From the provisions on the application of foreign-related testamentary inheritance laws in other countries, the author finds that most countries adopt the “division system” for the application of foreign-related testamentary inheritance laws, which separately extracts the interpretation and content of wills, and sets up independent legal application rules for these issues. In sharp contrast, China only makes distinctive provisions on “testamentary validity” and “testamentary form”, while other legal issues related to wills are summarized into the concept of “testamentary validity”. Therefore, from the perspective of logical structure, the defects of China’s legislative style will inevitably lead to the omission of matters related to “testamentary succession” in legal provisions, which will lead to the problem that the legislative content is not delayed and the connotation of “testamentary validity” has to be expanded.

The revision and improvement of legislation can not be separated from the discussion and reconstruction of legislative system. Looking at the global legislation, the international mainstream conflict of inheritance law system roughly presents two legislative modes: one is the “inheritance-will” mode, and the other is the “intestate succession-testamentary succession” mode²². China’s current legislation adopts the model of legal inheritance and testamentary inheritance, which is more similar to the latter one in form. However, because China only makes principled provisions on the formal requirements and validity determination of wills, the design of provisions is relatively simple and rough, and it is difficult to cope with the complicated practical needs of foreign-related inheritance. Therefore, it is imperative to

²²Qiao Xiongbing, Li Xiaohan. An empirical study on the application of China’s foreign-related testamentary succession laws [J]. *China Annual Journal of Private International Law and Comparative Law*, 2022, 31 (02): 54-74.

systematically revise and improve the applicable rules of foreign-related wills inheritance in China.

The author believes that the adjustment of the legal norms of foreign-related testament inheritance in China can take two ways: First, we can learn from the “inheritance-will” mode commonly selected by most countries in the world, unify testament inheritance and inheritance, first stipulate the general conflict norms of foreign-related inheritance as a whole, and then set up special clauses for the legal application of the will itself, so that the contents of the will can be adjusted by the applicable law of inheritance, thus realizing the scientific legislative logic and the comprehensive legislative content. Another way of thinking is to continue the provisions of Article 31 of the current law on legal inheritance on the basis of maintaining the separation framework of legal inheritance and testamentary inheritance, and at the same time refine the rules of testamentary inheritance. However, it should be noted that the legislature should first clarify the connotation of “validity of will”, that is, the effective elements including formal elements and substantive elements mentioned above in this article, and then determine the applicable law for other matters of will presented in the empirical analysis cases of this article, such as the revocation and change of will, the interpretation of will, the specific content of will and other matters related to testamentary succession. In addition, in view of the fact that Article 33 “Validity of the Will” essentially covers the issue of the form of the Will, and the foothold of the dispute over the form of the Will is essentially that both parties have doubts about the validity of the Will, the author believes that the separate provisions on the formal requirements in Article 31 are very redundant. Therefore, it is suggested to delete Article 31 to build a more streamlined and logical application system of foreign-related wills’ inheritance law.

5. Summary

Judging from the 50 judgment documents collected this time, there are still some problems in the legal application of foreign-related testamentary inheritance in China. Compared with testamentary inheritance cases in domestic context, the definition of the concept of “testamentary validity” in foreign-related cases is vague, and there is a phenomenon of expanding the application of Article 33 of the Law on the Application of Foreign-related Civil Relations to solve other testamentary contents other than “testamentary validity” in judicial practice. The author believes that the root of the problem lies in the defects of China’s foreign-related inheritance legal system. Under the background of the in-depth development of globalization, a sound foreign-related legal system is of key significance to ensure the legal operation of China’s foreign exchanges. Perfecting the legal norms of foreign-related inheritance can enable us to better cope with the diversified challenges of the rule of law, improve the international credibility of judicial decisions, and speed up the historical process of China’s transition from a big country ruled by law to a powerful country ruled by law, thus realizing the Chinese dream of rule of law.