Inheritance (Anerbenrecht)

Definition:
The right of inheritance refers to the inheritance of an agricultural estate by a single heir, so that it remains intact. This is a special inheritance in the farm. The farm is inherited by the heir according to special rules, separate from other assets, which are inherited according to general rules. In the feudal tradition, primogeniture corresponds to the right of inheritance. The opposite of this is real division. The farms that are subject to the right of inheritance are called 'Erbhof', and in Tyrol (the federal state of Tyrol and the autonomous province of Bolzano-South Tyrol), they are called 'Geschlossener Hof'.

History:
The right of inheritance is a transfer of feudal kinship structures to the peasantry. This only took place in Central Europe from the late Middle Ages onwards. Before that, land ownership was generally either regulated within common land communities or owned by lords and granted as a fief. In parallel, a hereditary lease developed. With the emergence of a free peasantry, which first enabled family succession in the fourth estate, the division of real property led to a progressive fragmentation of estates (including concepts of land size such as half-farms, quarter-farms, and even sixteenth-farms), and consequently to an increasing impoverishment of the rural population, as their ever-shrinking farms could no longer sustain them. Therefore, in many areas, they reverted to the inheritance institutions of Germanic law, which prevented the division of property.

In areas with inheritance rights, the pressure to migrate is greater for the non-inheriting parties, who lose everything, than in the case of real division, where each heir receives their share of the land. All other heirs, excluded by inheritance, were compensated far below the actual value. Their alternatives included: acquiring their own farm through purchase or marriage, working as a servant or maid and thus sinking into the class of landless village population, working in urban or rural crafts, seafaring, emigration or migration to new settlement areas (such as internal colonization, i.e. repopulation measures after epidemics or wars, or to the New World). However, statistical analyses in Baden-Württemberg, for example, showed that no migration mechanism could be derived from this. The migration was more dependent on individual mobility gains than on inheritance relationships.

Contrary to the common belief that the *eldest son* always has a certain privilege to the parental estate (Majorat), there were also strongly deviating regulations. Nevertheless, it was the *youngest son* who received the farm (Minorat). If there was no male heir, then the eldest daughter had the priority. If a son cannot inherit, the youngest daughter takes his place; children of the first marriage take precedence over those of other marriages in the order of succession. The right of the youngest also applied in the Wesermarsch and the Delmenhorster Geest.

Types of inheritance rights according to the former states:
In Bavaria, Berlin, Brandenburg, Mecklenburg-Vorpommern, Saarland, Saxony, Saxony-Anhalt, and Thuringia, there is no right of inheritance. However, a draft of a farmland regulation is available for Brandenburg.

In the states of Hamburg, *Lower Saxony*, North Rhine-Westphalia, and Schleswig-Holstein, it existed as partial federal law.

It is important that the validity of the right of succession always requires a special qualification of the farm as an inheritance farm, which is usually achieved by registration in the so-called farm roll or registration as a farm estate in the land register. If this is lacking, the farm is inherited according to general inheritance law. Succession rights are not compulsory inheritance rights. Thus, the testator can determine a different order of succession than the succession of heirs through a will.

If there is no right of inheritance for the farm, it is inherited according to normal inheritance law. These can result in the farm being taken over by a successor designated by the testator on preferential terms, or in a compulsory portion being paid out far below the compulsory portion actually calculated according to the market value.

If the farm is inherited by a community of heirs according to normal inheritance law and no inheritance law in the strict sense applies, there is a possibility that one of the co-heirs may have the farm assigned to them by the Agricultural Court. This agricultural allocation procedure is regulated in the Land Transactions Act. As with the inheritance laws, one of the co-heirs is designated as the farm heir and the farm is allocated to him by decision. In this decision, the compensation for the departing heirs is also determined below the market value. Ultimately, the farm allocation is also an inheritance law regulation, albeit in a broader sense.

According to the Inheritance Act, "hereditary farms are agricultural and forestry operations equipped with a farmstead, which are owned by a natural person, by spouses, or by a parent and a child and have an average yield sufficient to adequately support two adult persons, but not exceeding twenty times this amount". According to the Carinthian Inheritance Act, these are "those whose area size is at least five hectares and whose average yield does not exceed six times what is necessary to support a family of five".

The concept of medium size, which was already introduced during the monarchy, still applies under these regulations to this day. Thus, the right of inheritance is an explicit tool for protecting small-scale farming structures. The lower limit plays a role in this regard in that the inheritance farm and part-time farming largely exclude each other, thereby also supporting the profession of farmer.

In some federal states, a farm - deviating from the legal term - is designated as a hereditary farm if it has been continuously owned by the same family for at least 200 years. The title is awarded by the state.

If the statutory succession comes into effect, the inheritance farm can only be inherited by one person (the heir). If the heirs cannot agree on these individuals, a certain hierarchy is followed. For example, descendants with agricultural or forestry training, or descendants who grew up on the inheritance farm, are given preference. Between heirs with the same qualifications, age decides (depending on local customs, the eldest or the youngest is favored).

The right of succession can be circumvented by a will.

The ancestral farm is separated from the rest of the estate and transferred to the heir. Instead of the ancestral farm, the estate (and thus the heirs) have a claim for payment of the takeover price against the heir. The price is to be set by the probate court, unless the heirs agree on it.

The right to a compulsory portion is not affected by the inheritance distribution rules. It never refers to the entire estate, but only to the farm itself. Compulsory portions are compensated elsewhere (as monetary claims). However, a special feature is the provision according to which the inheritance and compulsory portion claims of the deviating heirs are not determined according to the market value, but according to the much lower takeover price (takeover value). This is intended to ensure the economic viability of the farm. The inheritor enjoys a preferential position in the interest of preserving the family farm: "He is deliberately favored."

The right of succession also provides for the deferral of the division of the inheritance if the heir is a minor (supplementary division of the inheritance), as well as maintenance claims for minor heirs.