



## The Proposed Belgian Reform of Succession Law and the Children's Perspective

Prof. dr. Charlotte Declerck



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# Overview

- I. Introduction
- II. Situating the problem: why is the reform necessary ?
- III. Guiding principles
- IV. Conclusion

## II. Situating the problem: why is the reform necessary?

- Complex realities of the contemporary family
- Higher life expectancy
- Outdated character of founding principles on which succession law is based

### III. Guiding principles

- A. Curtailment of the statutory portion
- B. Change of rules relating to hotchpot
- C. Expanding the possibility of concluding agreements on future inheritance rights
- D. The introduction of a succession law in value instead of in kind
- E. Redefining the balance between the legal interests of the surviving spouse and the children

## III.A. Curtailment of the statutory portion

- *De lege lata*
  - Type
    - '*pars hereditatis*' and not '*pars bonorum*'
  - Beneficiaries
    - Children (and their issue in case of representation)
    - Ascendants (parents, grandparents and great-grandparents)
    - Surviving spouse

## III.A. Curtailment of the statutory portion

- *De lege lata*
  - Size
    - Children
      - The statutory portion of the children varies according to the number of children
      - The statutory portion of the children is indisputable and can't be taken away from the children in case of 'unworthiness'
    - Ascendants
      - When the ascendants are called to the succession
      - $\frac{1}{4}$  of the succession for each line where ascendants are participating as heirs
      - Exception: gifts made to the surviving spouse or legal cohabitant. If they are in need at the time of death, they may claim maintenance against the estate

## III.A. Curtailment of the statutory portion

- *De lege lata*
  - Size
    - Surviving spouse
      - Abstract statutory portion: usufruct of half of the property of the estate
      - Concrete statutory portion: usufruct of the principal family dwelling and the furniture present
      - Both statutory portions can be combined but not cumulated
      - In certain circumstances the statutory portion can be taken away by the deceased or a judge
      - The spouse's statutory portion proportionally burden the heirs' statutory portion and the disposable portion

### III.A. Curtailment of the statutory portion

	Statutory portion Surviving Spouse	Statutory portion Children or Ascendants	Disposable share
Surviving Spouse + 1 child	$\frac{1}{2}$ in usufruct	$\frac{1}{4}$ in full ownership + $\frac{1}{4}$ in bare ownership	$\frac{1}{4}$ in full ownership + $\frac{1}{4}$ in bare ownership
Surviving Spouse + 2 children	$\frac{1}{2}$ in usufruct	$\frac{1}{3}$ in full ownership + $\frac{1}{3}$ in bare ownership	$\frac{1}{6}$ in full ownership + $\frac{1}{6}$ in bare ownership
Surviving Spouse + 3 or more children	$\frac{1}{2}$ in usufruct	$\frac{3}{8}$ in full ownership + $\frac{3}{8}$ in bare ownership	$\frac{1}{8}$ in full ownership + $\frac{1}{8}$ in bare ownership
Surviving Spouse + 1 Ascendant	$\frac{1}{2}$ in usufruct	$\frac{1}{8}$ in full ownership + $\frac{1}{8}$ in bare ownership	$\frac{3}{8}$ in full ownership + $\frac{3}{8}$ in bare ownership
Surviving Spouse + 2 Ascendants	$\frac{1}{2}$ in usufruct	$\frac{1}{4}$ in full ownership + $\frac{1}{4}$ in bare ownership	$\frac{1}{4}$ in full ownership + $\frac{1}{4}$ in bare ownership

## III.A. Curtailment of the statutory portion

- *De lege lata*
  - Calculation
    - On the basis of a fictive hereditary mass
      - Assets present upon death – the debts + all lifetime gifts made by the deceased
      - All gifts must in principle be added according to their value upon death, while taking into account their condition at the time of the gift
    - To the disposable part, first, the gifts which have been made and, secondly, the testamentary dispositions, are imputed
    - In principle, the reduction is done in kind
  - Limitation period
    - 30 years upon the moment of death

## III.A. Curtailment of the statutory portion

- *De lege lata*
  - Negative effects
    - The existing regulations hinder and obstruct the freedom to dispose
    - The statutory portion in kind and the 30-year limitation period leads to difficulties and legal insecurity
    - The timing of the valuation of the gifts could lead to results contrary to the intentions of the deceased

## III.A. Curtailment of the statutory portion

- *De lege ferenda*
  - Statutory portion in value and not longer in kind
  - The statutory portion of the descendants always consist of half of the estate
  - Elimination of the statutory portion of the ascendants
  - Keeping and preserving the statutory portion of the surviving spouse
  - The spouse's statutory portion will first be imputed to the disposable part and then, for the remainder part, to the statutory part of the descendants

## III.A. Curtailment of the statutory portion

- *De lege ferenda*
  - All lifetime gifts are added to the fictive hereditary mass according to their intrinsic value at the time of the donation. Yet, this value needs to be indexed until the time of death while complying with the consumer price index
  - The surviving spouse will no longer be able to demand reduction of gifts the deceased made prior to their marriage
  - Limitation period for the reduction claim
    - Distinction between gifts made to heirs and gifts made to third parties

## III.B. A change of rules relating to hotchpot

### ■ *De lege lata*

- In general, every gift made to a person who has inheritance rights at the time of the donor's death is seen as a simple advance against his inheritance share
- Distinction between immovable and movable property
  - Collation of immovable property is normally done in kind
  - Collation of movables is normally done in value, by taking less. The value taken into account is the one at the time the gift was made

## III.B. A change of rules relating to hotchpot

- *De lege ferenda*
  - Difference between gifts made to descendants and gifts made to other legal heirs
    - Gifts made to descendants are presumed to be advance on inheritance
    - Gifts made to other legal heirs are supposed to be made while exempting the heir from the obligation to hotchpot
  - The nature of the gift can be changed in a twofold manner
  - In all cases, the collation is done in value
    - The worth taken into account is calculated at the moment the gift was made
    - Indexation is done in compliance with the consumer price index

## III.B. A change of rules relating to hotchpot

- *De lege ferenda*
  - Possibility of generation skipping
  - Gifts to the surviving spouse or legal cohabitant are no longer subject to collation. The surviving spouse or legal cohabitant will no longer have the right to request the application of hotchpot from the other heirs

### III.C. Expanding the possibility of concluding agreements on future inheritance rights

- *De lege lata*
  - An agreement as to succession to a living person's estate is prohibited if that agreement purports to renounce merely contingent rights in such a future estate, or its parts
  - Few legal exceptions

### III.C. Expanding the possibility of concluding agreements on future inheritance rights

- *De lege ferenda*
  - Some specific agreements as to succession should be allowed
  - Possibility to conclude a general agreement as to succession



## III.D. Other changes

- Intestate succession
  - *De lege lata*
    - Division of inheritance rights in usufruct and bare ownership as a source of conflict, especially in recomposed families
  - *De lege ferenda*
    - Introduction of a simplified and extrajudicial conversion of the usufruct

**Thank you for your attention**

**Charlotte.Declerck@uhasselt.be**



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