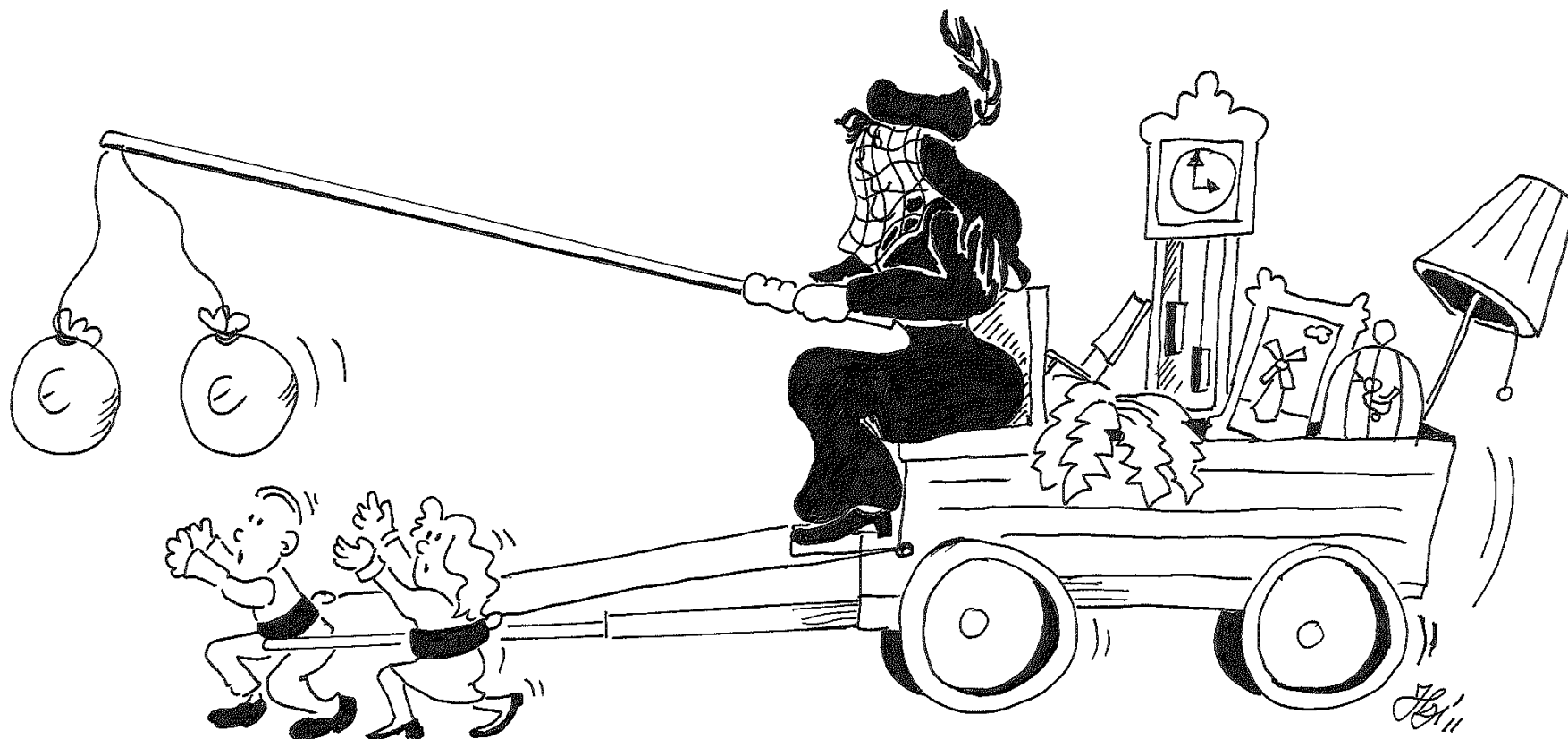




Supervision of the administration of minors' assets by parents and guardians

› **Hans ter Haar**







Research: supervision of administration of minors' assets

- › Relevance
- › Conflict: interest to safeguard property of minors vs. undesirability of government interference in family affairs
- › Inconsistencies and ambiguities



Four related topics (part II)

- Parental usufruct
- Testamentary administration
- Claims under inheritance law to child maintenance in the form of a lump sum
- Expiry and limitation periods



Methodology

1. Doctrinal research (parliamentary history, legal literature and case law)
2. Comparative review foreign law
 - Quicksan
 - Countryreports Belgium, Germany, Sweden
3. Interviews with legal professionals
 - Netherlands: subdistrict judges, notaries
 - Foreign countries: supervisory officers (judges, chief guardians) and notaries



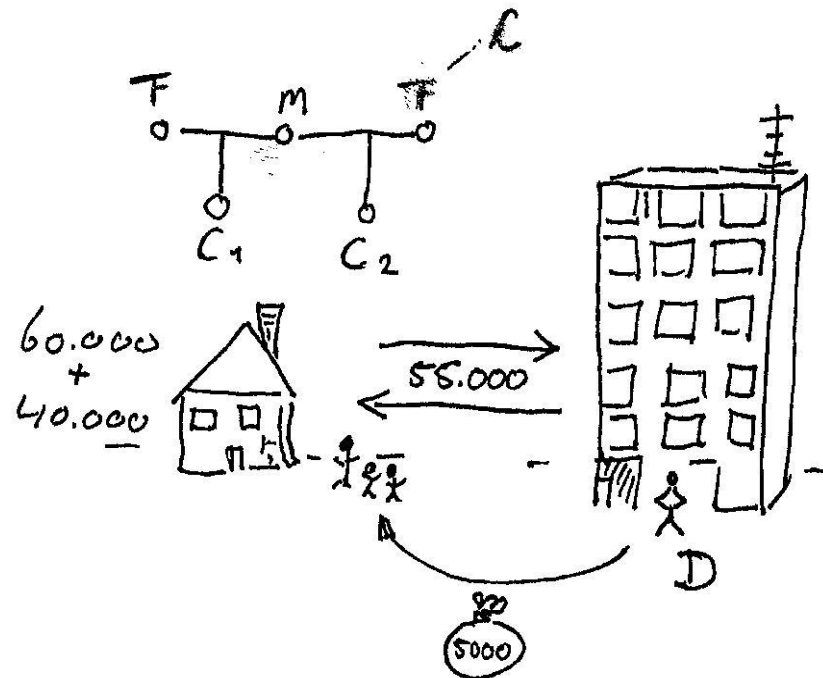
Findings

- › Objective of legislator (1948/1964) is to provide minors with *paractical* and *effective protection* by means of *workable regulations*. The regulations need to be *proportionate*.
- › No protection against all risks
- › Radical changes of legislation since 1964 caused inconsistencies (custody, inheritance law, change competence subdistrict judge/ civil law district judge)



International standards

- › ECHR 7 May 2015, App. nr. 13712/11 (s.l. and j.l. vs. Croatia/a flat for a villa)





EHRC 7 May 2015, 13712/11 (flat for villa)

- › Art. 1, 1st Protocol ECHR
- › Art. 3 CRC
- › Positive obligation requiring the State to take measures necessary to protect the child's proprietary interests against any malevolent or negligent actions on the part of others, including their legal representatives and natural parents.

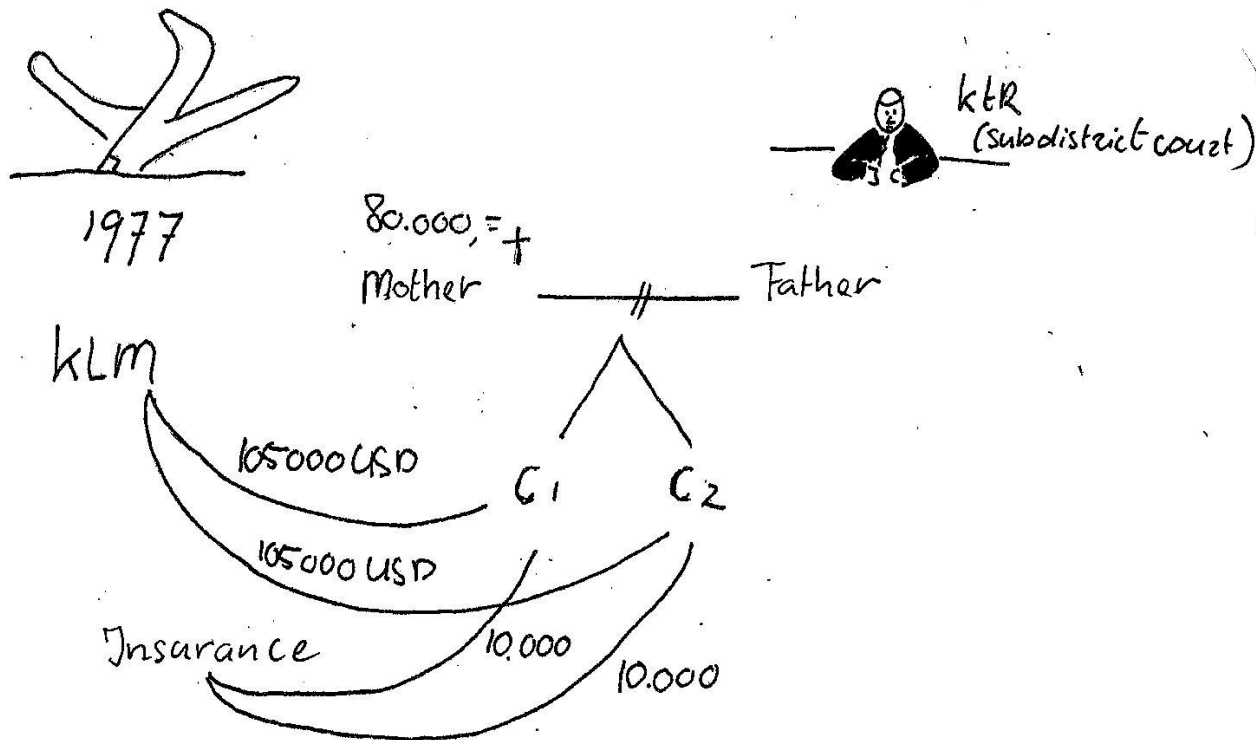


Case law

- › Problems occur in situations where parents went through a divorce
- › Minors' interests are vulnerable when parents have unlimited access to funds (cash and bank accounts)
- › Threats increase when parents get into financial troubles.



HR 20 juni 2014, ECLI:NL:HR:2014:1492





Reports Belgium, Germany, Sweden

Similarities as to supervision on administration:

- › more rules of supervision on administration by guardians than on administration by parents
- › Supervisors' authorization required for parents and guardians to conduct various legal acts related to property.



Countryreports

- › Belgium
 - Vrederechter
 - Authorization of every acceptance or disclaim of an inheritance
 - obligation to deposit funds in special account with limited access
- › Gemany
 - Familiengericht
 - obligation to file an estate inventory with court registry when child acquires assets exceding a value of € 15.000,=



Countryreports

› Sweden

- Överförmyndare (chief guardian)
- Permanent supervision on administration by parents when assets exceed value of € 35.000,=
- Obligation to deposit funds exceeding € 4.000,= in special account with limited access.



Conclusion

- › *Objective* of legislator is in keeping with international standards (effectively provided protection, workable rules, proportionate)
- › In *practice* it offers insufficient effective protection, in particular when a minor has a claim under inheritance law in the estate of one of his or her parents
- › Recommendation: modifications of existing regulations



Possibilities to improve system

- › Obligation to prepare an estate inventory when minor acquires assets of which the value exceeds a certain sum and to send this inventory to the court registry
 - Tax declaration can replace inventory (signed 2x)
 - Active role of subdistrict judge
 - Possibility for subdistrict judge to impose a fine if rules are not complied with



Possibilities to improve system

- › Creating website by Royal Dutch Association of Civil-law Notaries to inform parents and guardians about their obligations, containing possibility to create (digital) estate inventory
- › Obligation to deposit funds exceeding a specific value (by third parties) on account with limited access