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Protection of Family Members of the Deceased not Related by Blood or Mariage in the Law of European States*

Abstract

This study aims to demonstrate, using examples from selected European jurisdictions, the extent to which persons not related by blood or marriage to the deceased are protected in the event of their death. In other words, it considers those outside the traditionally and narrowly defined family unit. This protection can be seen at several levels: they may be granted intestate succession status, a right to a fixed portion of the estate or a forced share, certain housing rights (such as the right to use the dwelling and furnishings or succeed to a tenancy upon the tenant's death) and maintenance-type claims. It is these various forms of protection that provide the framework for the analysis.

KEYWORDS: family protection, *de facto* unions, cohabitation, succession law, comparative law

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1 Introductory Remarks

European societies are undergoing profound social transformations. Deinstitutionalisation, secularisation, individualisation, the spread of egoistic attitudes, and Giddens' notion of the "pure relationship" – the emancipation of intimate bonds from the rigid corset of customary norms – have significantly reshaped lifestyles across the continent (and beyond). The mosaic-like character of family life and interpersonal ties, the proliferation of forms of "living together", have become firmly entrenched in the twenty-first century. Against this backdrop, the pressing question is to what extent these changes ought to be reflected in the law, including in succession law?

This study sets out to demonstrate, by reference to examples from selected European jurisdictions, the scope of succession-related protection afforded to persons not related by blood or marriage to the decedent. In other words, those outside the traditionally and narrowly construed family, membership in which determines a particular legal "status" – that is, persons other than the spouse, the partner in a registered partnership, or relatives by blood or marriage. Protection of persons not related by blood or marriage can be discerned at several levels: they may be granted the status of an intestate successor, a right to a fixed portion of the estate, a right to a forced share, certain housing rights (such as the right to use the dwelling and household furnishings or to succeed to a tenancy upon the tenant's death), maintenance-type claims, and the like. These various forms of protection of persons not related by blood or marriage to the decedent provide the framework for the analysis that follows.

2 Persons not Related by Blood or Marriage as Intestate Successors

Reflections on the possible extension of the catalogue of intestate successors, so as to encompass persons outside the traditionally understood family, should, in my view, begin with two preliminary considerations of a fundamental nature. First, it is necessary to recall the cornerstone principle of succession law, namely, respect for the will of the decedent (including his or her presumed or reconstructed will). This principle, when

interpreted in the light of contemporary social realities, appears to lend support to the inclusion of such persons among the intestate successors. It may reasonably and with a high degree of plausibility be assumed that, where an individual was in a long-standing intimate relationship with the decedent, or was voluntarily and consistently supported by the latter, the decedent would not have wished to leave that person entirely "with nothing" upon death. Secondly, attention should be drawn to the principle of legal certainty, which constitutes a value of particular importance (not only in succession law, but also in private law more generally). In the overwhelming majority of contemporary legal systems, the class of intestate successors is determined not solely by the closeness of personal ties with the decedent but also, and indeed primarily, by reference to a formalised and objective criterion (the so-called *status-orientation, Statusorientierung*). This orientation ensures that identifying the intestate successors in a given case ordinarily does not give rise to significant practical difficulties. By contrast, extending the class to persons connected with the decedent only by factual, rather than legal, bonds necessitates proceedings to establish whether the statutory requirements have been satisfied (for example, proof of cohabitation for a specified minimum period of time). Such proceedings must, by their very nature, rely on the testimony of only one partner (the other being deceased), supplemented by documentary evidence and statements from third parties, and this inevitably carries with a risk of distorting reality or producing inconsistent results. It should also be borne constantly in mind that the making of a holographic will is generally possible, free of charge, thereby enabling the decedent to determine the order of succession with precision and in exact conformity with his or her wishes, without the necessity of awaiting legislative intervention or reform.

Despite these reservations, several European and non-European jurisdictions have opted to include persons not related by blood or marriage among intestate successors.

Mexico, an example of a non-European country, was a pioneer in this respect: as early as 1928, the country recognised the rights of *de facto* partners to inherit intestate. Similar provisions were subsequently adopted in Brazil, Colombia, Costa Rica, El Salvador, Paraguay, Uruguay, and Venezuela.[1]

1 Jan Peter Schmidt, "Intestate Succession in Latin America," [in:] *Intestate Succession*, ed. Kenneth G.C. Reid, Marius J. de Waal, Reinhard Zimmermann (Oxford: Oxford University Press, 2015), 151 and the literature cited therein.

New Zealand and New South Wales likewise recognise *de facto* partners as intestate successors.[2]

In Europe, Austria provides a notable example. Its succession law underwent a comprehensive reform in 2015,[3] and the changes introduced also extended to *de facto* partners. They were granted the right to inherit intestate, in the absence of a spouse, registered partner, or relatives (thus becoming a kind of "fallback" intestate successor, similar to the position of a stepchild under Polish law – Article 934^1 of the Polish Civil Code). An additional condition must also be satisfied: cohabitation as partners in a common household for at least three years prior to the decedent's death. The requirement of a common household does not apply if compelling reasons – such as health or employment – prevented joint residence, provided that a close relationship, characteristic of life partners, nonetheless existed (Vorausvermächtnis; § 748 ABGB).

In Ukraine (Article 1264, Ukrainian Civil Code), individuals who had lived with the decedent "as family" for at least five years prior to the opening of succession are entitled to inherit intestate in the fourth class of intestate successors. Ukrainian law does not require such individuals to be legal family members, but merely to have lived "as family," maintaining a common household. Whether family life existed in a given case must be determined by the court. It is worth noting, however, that under Article 3(2) of the Ukrainian Family Code, family is defined as individuals living together, maintaining a common household, and having mutual rights and duties. Family bonds may arise not only from marriage, kinship, or adoption, but also from other circumstances, provided these are not contrary to law or public morality (Article 3(4), Ukrainian Family Code). Ukrainian law has thus *de facto* come to recognise family in a broader, sociological sense – one in which members are not necessarily related solely by legal ties.

In the states of the former Yugoslavia, *de facto* partners are often treated in succession law on par with spouses, and are therefore included in the class of intestate successors. This is the case, for instance, in Slovenia, provided that the *de facto* partners are of opposite sex, live in a long-term relationship, have not entered into marriage, and no grounds exist that would render a marriage between them invalid (Article 25, in conjunction

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2 Prue E. Vines, Nicola Peart, "Intestate Succession in Australia and New Zealand," [in] *Intestate Succession*, ed. Kenneth G.C. Reid, Marius J. de Waal, Reinhard Zimmermann (Oxford: Oxford University Press, 2015), 358-362.

3 Erbrechts-Änderungsgesetz 2015 – ErbRÄG 2015, BGBl. I Nr. 87/2015.

with Article 4a, Slovenian law of succession). Similar provisions exist in Bosnia and Herzegovina (Article 9 Bosnian law of succession), Montenegro (Article 9 Montenegrin law of succession), and Croatia (Article 8 Croatian law of succession). Other jurisdictions impose requirements as to the minimum duration of the relationship: in Macedonia, a person with whom the decedent had been in a stable relationship lasting at least five uninterrupted years prior to death may inherit intestate (Article 29 Macedonian law of succession), while in Kosovo the relationship must have lasted at least ten years – or at least five years if children were born of it (Article 28 Kosovar law of succession).

In many Spanish autonomous communities – contrary to the national Código Civil Español – the positions of the spouse and the *de facto* partner have been equalised. For example, in Catalonia (Article 442-3, Catalan Civil Code), the surviving spouse or *de facto* partner, if the decedent left descendants, acquires a usufruct right over the estate, which may be converted into a right to one quarter of the estate (Article 442-5, Catalan Civil Code). If the decedent dies without descendants, the estate passes to the spouse or the *de facto* partner. Thus, Catalan law unequivocally recognises the *de facto* partner as an intestate successor.

In certain European jurisdictions, the status of intestate successor is conferred on the basis of criteria linked to maintenance obligations. Russia provides a clear example. Under Article 1148, § 2 of the Russian Civil Code, a person outside the class of intestate successors (as defined in Arts. 1142–1145, e.g. a *de facto* partner) may inherit intestate if three conditions are met: (1) the person is unable to work at the time of the opening of succession[4]; (2) the decedent maintained that person for at least one year prior to death; and (3) they lived together until the decedent's death. In such circumstances, the dependent inherits alongside the intestate successors otherwise entitled in the particular case (Article 1141 § 2). A similar solution exists in Belarus (Article 1063, § 2 Belarusian Civil Code), where the legislator limits the share of the estate accruing to a dependent who is unable to work. If the decedent left other intestate successors, the dependent inherits with them, but may not receive more than one quarter of the estate. If the decedent left no other successors, such dependents inherit

4 In Russian law, from 1 January 2019, women who have reached the age of 50 and men over the age of 60 are likewise regarded as unable to work – Fiedieralnyj zakon ot 25 diekabria 2018 N 495-FZ O wniesienii izmienienija w Fiedieralnyj zakon „O wwiedienii w diejstwije czasti trietjej Grażdanskogo kodieksa R".

in equal shares. Comparable provisions are also found in Albania (Arts. 363–364, Albanian Civil Code). Thus, Russian, Belarusian, and Albanian law adopt a maintenance-based model of intestate protection for dependents.

Polish legal doctrine has, on at least two occasions, proposed extending the class of intestate successors to include *de facto* partners. The first proposal argued that their inclusion would be justified "if, however, Polish law were to regulate the civil law effects of cohabitation in greater detail," and would in any event be confined to long-term unions[5]. The draft provision, to be added after Article 935 of the Polish Civil Code, was formulated as follows: "The provisions on succession by the spouse shall apply mutatis mutandis to the succession of a person who lived with the decedent in a de facto marital union for at least one year prior to the decedent's death, provided that, at the opening of succession, neither that person nor the decedent was married, or where the decedent's spouse does not wish or is unable to be a successor." Consequently, in the view of the author of this proposal, the class of persons entitled to the forced share should also be extended to include *de facto* partners. The second proposal relied on comparative law arguments.[6] However, as is evident from the examples cited, its author erroneously conflated registered partnerships with cohabitation. For this reason, the proposal will not be analysed further.

3 Right to Forced Share/Réserve

Although such cases are admittedly rare, there are nonetheless instances in which European legislators have chosen to extend the ambit of protection against the excessive freedom of the decedent to dispose of his or her estate, reaching beyond the narrow confines of the traditionally understood family. For example, in Slovenia such protection applies to heterosexual *de facto* partners who live in a long-term relationship, have not entered

5 Mirosław Nazar, "Cywilnoprawne zagadnienia konkubinatu de lege ferenda" *Państwo i Prawo*, No. 12 (1989): 112.

6 Mariusz Załucki, "Krąg spadkobierców ustawowych de lege lata i de lege ferenda," *Przegląd Sądowy*, No. 1 (2008): 98; and, in a decidedly stronger vein: Mariusz Załucki, "Inheritance Law in the Republic of Poland and Other Former Eastern Bloc Countries: Recodification of the Circle of Statutory Heirs" *Electronic Journal of Comparative Law*, No. 2 (2010): 7.

into marriage, and where no grounds exist that would render a marriage between them invalid (Article 25, in conjunction with Article 4a, Slovenian law of succession). This protection stems from the full equalisation, in Slovenian succession law, of the positions of the spouse and the *de facto* partner, as noted earlier. Not all states of the former Yugoslavia that have equalised formal and informal unions in succession law have done so with respect to the forced share. In Kosovo, despite recognising the right of *de facto* partners to inherit intestate (under certain conditions), they are expressly excluded from the class of forced heirs (Article 28.2, Kosovar law of succession).

Russia, by contrast, grants the right to a forced share to persons unable to work, who are not included in the class of intestate successors (Arts. 1143–1145, Russian Civil Code), provided that they were maintained by the decedent for at least one year prior to his or her death, and had lived with him or her until that time (Article 1149, in conjunction with Article 1148, Russian Civil Code).

4 Housing Rights

In Austria, *de facto* partners (alongside spouses) may acquire a dwelling in joint ownership and establish what is known as an "ownership partnership" (*Eigentümerpartnerschaft*) (§ 13 WEG 2002).[7] Upon the death of one partner, his or her share automatically passes to the surviving partner, unless the latter renounces the right or reaches another arrangement with the successors (§ 14 WEG 2002). As a result, the surviving *de facto* partner becomes the sole owner of the dwelling, provided that, in the absence of a contrary will of the decedent, he or she pays the successors a price calculated in accordance with § 14(2–4) WEG 2002.

In Poland (Article 923 of the Polish Civil Code), the spouse and other next of kin of the decedent, who lived with him or her until death (without the need to prove cohabitation or a common household), are entitled, for three months from the opening of the succession, to continue using the

7 Bundesgesetz über das Wohnungseigentum (Wohnungseigentumsgesetz 2002 – WEG 2002), BGBl. I Nr. 70/2002.

dwelling and household furnishings as before. Any testamentary disposition excluding or restricting this right is null and void.

Foreign succession laws differ considerably in their regulation of the duration of the entitlement to remain in the dwelling and to continue using the household furnishings after the death of a next of kin. Legislators, when shaping the contours of this entitlement, are therefore required to strike a particularly careful and equitable balance between conflicting rights and expectations: on the one hand, the legitimate interests of successors or legatees by vindication, to whom the dwelling passes automatically upon the decedent's death, and who may reasonably wish to take immediate possession and dispose of the property as they see fit; and, on the other hand, the no less compelling interests of those who had resided there together with the decedent, and who, in the wake of his or her often sudden and unforeseen death, are faced with the abrupt and frequently distressing necessity of vacating the premises and securing alternative accommodation, all too often under conditions of heightened emotional vulnerability and financial uncertainty.

In Dutch law, the period during which a next of kin may continue living in the dwelling is six months (Article 4:28(2) of the Dutch Civil Code); in Czech law, three weeks (Article 1669 of the Czech Civil Code). In German and Estonian law, the period is one month, during which a member of the decedent's family (a category that includes the *de facto* partner[8]) is entitled not only to use the household furnishings, but also to claim maintenance (§ 1969 BGB – the so-called Dreißigster;[9] § 132 of the Estonian law of succession). Austrian law permits a *de facto* partner to remain in the shared dwelling and use its furnishings for one year, provided that the partners had lived together in a common household for at least three years prior to death, and that the decedent was, at the time of death, neither married nor in a registered partnership (§ 745 ABGB).

Portuguese law provides extensive protection to the surviving *de facto* partner, provided that the relationship had lasted at least two years, i.e., where Law No. 7/2001 on *união de facto* applies. The length of the entitlement to continue residing in the dwelling and using the household furnishings

[8] Germany: OLG Düsseldorf, 14.12.1982, 21 U 120/82, thesis available online: https://research.wolterskluwer-online.de/document/e1cf862c-5d19-4813-9b49-2bea3422432d.

[9] In German law, however, a testator may deprive the entitled person of the right provided for in § 1969 BGB by means of a will.

depends on the duration of the relationship: five years where cohabitation lasted less than five years (but not less than two, as required by the statutory definition of a *união de facto*); and a period equal to the relationship's length, where it exceeded five years (Arts. 3 and 5, Law No. 7/2001). Exceptionally, on equitable grounds, the court may extend this entitlement, taking into account, in particular, the care provided by the surviving *de facto* partner to the decedent or his or her family as well as the *de facto* partner's special needs.

In a separate but related manner, the Portuguese legislator has regulated the consequences of two or more persons bound by spiritual, rather than physical, ties (and thus not necessarily amounting to cohabitation), who had lived together in a common household for more than two years (Law No. 6/2001). In such cases, upon the death of the household's owner, those persons are, as a rule, entitled to remain in the dwelling for five years.

In Belgium, protection is afforded to a specific category of adults living together without marital ties, who file with the municipality a written declaration of legal cohabitation (*cohabitation légale*; *wettelijke samenwoning*) (Article 1475, former Belgian Civil Code). Since the Code does not prohibit kinship by blood in such declarations, the arrangement may also encompass relationships in which physical intimacy is *ex definitione* absent, such as caregiving or friendship-based ties. These relationships do not qualify as traditionally understood cohabitation (*cohabitation de fait / feitelijke samenwoning*). Under succession law, persons in legal cohabitation enjoy a usufruct right over the dwelling (together with its furnishings) constituting their principal residence at the opening of the succession. This right may be renounced (Article 4.23, Belgian Civil Code), or converted into ownership under Arts. 4.60–4.64.

Polish law also provides specific rules in the event of the death of a tenant (Article 691 Polish Civil Code). In such cases, a person who had lived in *de facto* cohabitation with the tenant, and resided permanently in the dwelling until the tenant's death, enters into the tenancy *ex lege*.

A comparable regulation exists in Austria (§ 14 Mietrechtgesetz), though with notable differences. First, the persons listed do not enter into the tenancy *ex lege* but merely enjoy priority to conclude a new lease. Second, Austrian law requires not only cohabitation and a common household with the tenant but also that the person be in need. Third, *de facto* partners must have lived together and run a household as spouses for at least three years prior to the tenant's death. By contrast, Polish law does not prescribe any minimum duration of cohabitation.

Slovak law provides that persons who had lived in a common household with the decedent, or were maintained by him or her, provided they had lived together for at least three years prior to death and did not own a dwelling of their own, may enter into the tenancy (§ 706, Slovak Civil Code). In German law, the surviving *Lebenspartner* who lived with the deceased tenant may do so (§ 563 BGB). In French law, the surviving *concubin notoire*[10] or a person maintained by the decedent, provided they had lived together for at least one year, is entitled to enter into the tenancy (Article 14, Law No. 89-462). In Spanish law, a person who had lived permanently with the tenant for at least two years prior to death, in a relationship of affection analogous to marriage, may enter into the tenancy; where the *de facto* partners had common children, the minimum duration requirement does not apply (Article 16 Law No. 29/1994).

5 Other Succession-Related Rights of Persons not Related by Blood or Marriage

In addition to rights arising under intestate succession, the forced share, and housing rights, European legislators have incorporated into their national succession laws a range of further mechanisms designed not only to "modernise" succession law but also to provide more or less tangible support to those belonging to the decedent's family in a broader sense. One such mechanism is aimed at compensating for the burden of caring for the decedent.

The Austrian legislator introduced it in the 2015 reform – the same act that admitted *de facto* partners to the class of intestate successors. It takes the form of a statutory (arising *ex lege*) supra-share legacy for carers (Pflegevermächtnis, §§ 677–678 ABGB), modelled on the German solution (§ 2057a BGB, in force since 1 January 2010).[11] In Germany, however, unlike in Austria, the regulation does not extend to *de facto* partners.

10 The legislator does not define the term *concubin notoire*. In each case, notoriety must be established on the basis of factual circumstances demonstrating the openness, stability, and durability of the relationship.

11 Gesetz zur Änderung des Erb- und Verjährungsrechts, BGBl. I 2009 S. 3142.

Under the statutory carers' legacy, persons in a close relationship with the decedent – specifically, the decedent's intestate successors, children, spouse, registered partner, *de facto* partners of intestate successors, the decedent's *de facto* partner, and the *de facto* partner's children – may obtain compensation by enforcing the legacy, provided that: (1) they cared for the decedent's prior to death; (2) they did not receive adequate remuneration during the decedent's lifetime; and (3) they do not pursue their claim under another legal basis (e.g. unjust enrichment). The care must have been not only gratuitous, but also above average, lasting at least six months within the final three years of the decedent's life. According to the explanatory memorandum, "above average" is satisfied by as little as 20 hours per month.[12] The amount of the entitlement depends on the nature and duration of the care, and its value to the decedent. In determining the amount, the court must take into account the benefit received by the decedent and the expenses saved on another, non-professional carer, thereby applying the principles governing unjust enrichment.[13] The value of the estate is irrelevant. The creditor under the statutory carers' legacy enjoys priority over other creditors of the estate.[14] Thus, while Austrian law extends this protection to *de facto* partners, German law confines it to a narrower class of carers.

Other interests of persons not related by blood or marriage have been recognised in the United Kingdom and Portugal, particularly with respect to those who, during the decedent's lifetime, were maintained by him or her, or lived with the decedent in cohabitation. In England and Wales, the Inheritance (Provision for Family and Dependants) Act 1975 grants certain individuals the right to monetary provision out of the estate. These include, *inter alia*, those wholly or partly maintained by the decedent immediately before death,[15] as well as those who lived with the decedent in a common household in a relationship akin to marriage for at least two years

12 688 der Beilagen XXV. GP – Regierungsvorlage – Erläuterungen, p. 17. https://www.parlament.gv.at/dokument/XXV/I/688/fname_423847.pdf.

13 Piotr Sobański, "«Pflegevermächtnis» – austriacki sposób na wynagrodzenie za opiekę nad zmarłym" *Rejent*, No. 2 (2022): 61.

14 688 der Beilagen XXV. GP – Regierungsvorlage – Erläuterungen, p. 17, https://www.parlament.gv.at/dokument/XXV/I/688/fname_423847.pdf.

15 Sec. 3: a person is to be treated as being maintained by the deceased (either wholly or partly, as the case may be) only if the deceased was making a substantial contribution in money or money's worth towards the reasonable needs of that person, other than a contribution made for full valuable consideration pursuant to an arrangement of a commercial nature.

immediately preceding death. The amount of provision must be reasonable and is determined by the court with regard to all the circumstances of the case. Relevant factors include, among others: the present and foreseeable financial position of the claimant and the successor; their current and future financial needs; the decedent's obligations to each of them; the size and nature of the estate; the claimant's age and the duration of cohabitation; the claimant's contribution to the welfare of the decedent's family – including care for the home and family – and any existing maintenance obligations towards the claimant (Sects. 1-3, Inheritance Act 1975).

In Scotland (Family Law [Scotland] Act 2006, Sec. 29), where one *de facto* partner dies intestate, the surviving de facto partner may, within six months of the death, petition the court for payment out of the estate of a specified sum of money (either as a lump sum or in instalments), or for the transfer of ownership of estate assets. The court may also issue any other order it considers appropriate. In determining both the validity of the claim and the provision to be granted, the court takes into account, *inter alia*, the value and composition of the estate, and the benefits already obtained by the surviving *de facto* partner as a result of the other's death. The award – whether monetary or in kind – may not exceed what the *de facto* partner would have received had he or she been the decedent's spouse or civil partner. Thus, Scottish law affords *de facto* partners a measure of protection, but one strictly capped at parity with spouses and civil partners.

In Portugal, the surviving *de facto* partner has the right to claim maintenance from the estate, within a peremptory period of two years from the decedent's death (Article 2020 of the Portuguese Civil Code). An attempt to "modernise" succession law, aimed, *inter alia*, at protecting the interests of those in informal relationships, was undertaken in Switzerland. Under the draft Article 484a ZGB, a *de facto* partner who had lived with the decedent in *de facto* union for at least three years, and had made significant contributions in the decedent's interest (*erhebliche Leistungen im Interesse des Erblassers erbracht*), would have been entitled to claim maintenance in order to preserve an adequate standard of living. The amount was to take into account the financial circumstances of the successors and the value of the estate.[16] This proposal, however, failed to gain approval and was not included in the enacted version of the amendment to the ZGB.

16 On the need to regulate *de facto* unions, see also: Michelle Cottier, "Ein zeitgemässes Erbrecht für die Schweiz. Bericht zur Motion 10.3524 Gutzwiller «Für ein zeitgemässes Erbrecht» zuhanden des Bundesamts für Justiz" *not@lex /succession*, (2014): 29-59.

In some cases, protection is designed to prevent a significant deterioration in the *de facto* partner's living conditions as a result of the enforcement of forced share claims. Such is the case in the Netherlands, where protection is granted to *de facto* partners – provided that they have entered into a cohabitation contract in the form of a notarial deed (as well as to spouses and registered partners). Article 4:82 of the Dutch Civil Code enables the decedent to stipulate in a will that if the forced heirs could satisfy their claims only (in whole or in part) from the property of the surviving *de facto* partner, the claim will become enforceable only upon the latter's death, or upon the occurrence of another condition specified in the will (for example, the *de facto* partner's remarriage). In this way, the estate inherited from the deceased *de facto* partner is protected, and will not be diminished by the enforcement of forced share claims by the forced heirs. It must, however, be emphasised that such a solution cannot be presumed: not only must the union be to some extent formalised (the requirement of a notarial cohabitation contract), but the will of the decedent must also be expressly set out in the will.

In Scandinavia, the scope of protection afforded to *de facto* partners is broad, ranging from the right to use estate assets, to maintenance-type claims, and even to a *sui generis* right of intestate succession. This is primarily a response to the prevalence of informal unions. In Norway, in 2016, there were 5.1 times as many couples living in cohabitation as in marriage (compared to 3.3 times as many in 2006).[17] In Sweden, the number of couples living in informal unions had already surpassed married couples in the 1970s.[18] In the past decade, despite a decline in interest in formalising relationships, the number of cohabiting unions has remained stable.[19] In Finland, 42% of couples live in non-marital unions.[20]

In Finland, a *de facto* partner is entitled, upon dissolution of the relationship, to compensation under the rules on unjust enrichment, if he or she worked for the benefit of the common household or the property of

17 Rune Zahl-Olsen, Frode Thuen, Tonje Holte Stea, "Cohabitation, Marriage, and Union Dissolution in Norway: A Comparative Prospective Study" *Journal of Divorce & Remarriages*, No. 5-6 (2023): 204.

18 Stefano Cantalini, Sofi Ohlsson-Wijk, Gunnar Andersson, "Cohabitation and Marriage Formation in Times of Fertility Decline: The Case of Sweden in the TwentyFirst Century" *European Journal of Population*, No. 1 (2024): 17.

19 Ibidem, 19.

20 Yoann Doignon, Thierry Eggerickx, Ester Rizzi, "The spatial diffusion of nonmarital cohabitation in Belgium over 25 years: Geographic proximity and urban hierarchy" *Demographic Research*, 43 (2020): 1418 (European Social Survey 2016).

the other partner; contributed resources to the common household; made investments in the property of the other *de facto* partner; or engaged in other comparable activities (§ 8 of the Finnish Act on the Dissolution of the Household of Cohabiting Partners, 26/2011). In addition, under succession law, the surviving *de facto* partner may receive, from the successors, in the form of a "reasonable" gift, money, other assets, or the right to use estate property, if his or her financial situation has worsened due to the partner's death and the gift is necessary to secure adequate means of support. In assessing both the justification for such assistance and the amount of provision, the court considers the surviving *de facto* partner's financial means and earning capacity, age, duration of the relationship, and other comparable factors (8 luku, § 2 of the Finnish Code of Inheritance, 40/1965).

In Sweden, by contrast, upon the death of one *de facto* partner, the right to request a division of the cohabitation property is vested exclusively in the surviving *de facto* partner (§ 18 of the Cohabitation Act, 2003:376), to the exclusion of the deceased's successors. The division takes place between the surviving *de facto* partner and the successors of the deceased *de facto* partner. If the surviving *de facto* partner does not request a division under the 2003 Act (for example, because he or she already owns the majority of the cohabitation property), the composition of the estate is determined under the rules of property law.[21] Furthermore, the share of the surviving *de facto* partner in the cohabitation property subject to division may not be less than twice the so-called base amount (*basbelopp*), determined annually by the government. In 2025, the base amount is SEK 58,800 (approximately €5,250).[22] The amount due to the surviving *de facto* partner reduces the estate of the deceased *de facto* partner. Only after the surviving *de facto* partner has been satisfied is the remainder of the estate divided among the successors.[23]

Norwegian succession law likewise contains specific provisions for *de facto* partners, defined as persons over the age of 18 who lived with another person over the age of 18 in a marriage-like relationship, provided

21 John Asland, "The Legal Position of the Surviving De facto Partner," [in:] *Nordic Cohabitation Law*, Goran Lind, Margareta Brattström, Ingrid Lund-Andersen, Anna Singer, John Asland, Tone Sverdrup (Antwerp: Intersentia Ltd, 2015), 164.

22 https://www.scb.se/hitta-statistik/statistik-efter-amne/priser-och-ekonomiska-tendenser/priser/konsumentprisindex-kpi/pong/statistiknyhet/prisbasbeloppet-for-ar-2025/.

23 Anders Agell, "Family Forms and Legal Policies. A Comparative View from a Swedish Observer," *Scandinavian Studies in Law*, 38 (1999): 200.

there were no impediments to marriage between them, and neither was married to or cohabiting with another person. Temporary separate living arrangements due to study, work, illness or residence in a care facility do not preclude the existence of cohabitation (§ 2 of the Norwegian Succession Act). A *de facto* partner who meets these conditions, and who, at the time of death, lived in *de facto* union with the decedent and had, has, or expects to have a child with the decedent, is entitled to a share of the estate equal to four times the basic amount (*grunnbeløp*) of the national insurance system at the time of death. As of 1 May 2025, this sum amounts to NOK 130,160 (approx. €10,953).[24] This right may be limited by will only if the surviving *de facto* partner was aware of the will before the decedent's death. The requirement of prior knowledge does not apply where it was impossible or unreasonably difficult to inform the *de facto* partner of the will (§ 12 of the Norwegian Succession Act). Naturally, a *de facto* partner may also make a will in favour of the other *de facto* partner – in which case, the restriction of four times the *grunnbeløp* does not apply. Furthermore, the decedent may stipulate in a will that a person with whom he or she had lived during the last five years before death is entitled to a share of the estate of up to four times the *grunnbeløp*, irrespective of the rights of the forced heirs (§ 13 of the Norwegian Succession Act). Alternatively, a *de facto* partner meeting the above conditions has the right of usufruct (*uskifte*) over certain estate assets: the common home, household furnishings, and a secondary residence jointly used by the *de facto* partners (§ 28c of the Norwegian Succession Act). The scope of usufruct may be extended by will or by agreement (§ 28c of the Norwegian Succession Act).

6 Conclusion

As this study has sought to demonstrate, the spectrum of mechanisms available to protect persons not related by blood or marriage to the decedent is both wide and diverse. National legislators, however, integrate them into their legal frameworks to varying extents, and describe the regulated

24 https://www.regjeringen.no/no/tema/pensjon-trygd-og-sosiale-tjenester/innsikt/trygdesystemet/regulering-av-folketrygdens-grunnbelop-og-pensjoner/id2008616/.

reality in markedly different terms. At times, the law simply refers to persons living in *de facto* unions (*de facto* partners); at other times, it accords identical legal consequences to formal and informal marriages; or it places emphasis on the fact that the decedent provided maintenance to the individual concerned, or that they lived together in a common household. In certain jurisdictions, the notion of family is conceived in broad, sociological, rather than strictly legal, terms, extending well beyond spouses, relatives, in-laws, and those related by adoption. Yet, in the overwhelming majority of cases, the persons not related by blood or marriage who enjoy succession-related protection are *de facto* partners, whether heterosexual or same-sex. It would, therefore, be difficult today to defend Napoleon's oft-quoted dictum that, since de facto partners ignore the law, the law should ignore them (*les concubins ignorent la loi, la loi ignore donc les concubins*). The fundamental question that continues to confront both legislators and scholars, however, is how to delineate the personal and material scope of such protection.

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