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THE (LACK OF) REGULATION OF INTESTATE SUCCESSION FOR UNMARRIED PARTNERS IN EUROPE**

INTRODUCTION

It is commonly agreed that cohabitation patterns in Europe have changed significantly over the last few decades. While marriage remains the prevalent form of long-term relationship in Europe, the number of unmarried partnerships (also called *de facto* marriages, extramarital partnerships or consensual unions) has increased significantly over the last few decades. In 2011, 11.7% of people living in a couple in the European Union lived in consensual unions (as unmarried partners); only ten years later, approximately 17% of all persons living in a couple were neither married nor in a registered partnership¹. It seems that unmarried partnerships are more prevalent in Scandinavian countries (in Sweden, as many as 33% of all the couples are made up of unmarried partners) and less so in traditionally Roman Catholic or Eastern Orthodox countries (in Poland, approximately 8%; in Greece, only around 4%). Across Europe, the number of couples living together in one household in a spouse-like relationship, without being formally married or registered, has been growing².

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¹ Eurostat: *Population by family status, broad age groups and NUTS 3 region*, available at: https://ec.europa.eu/eurostat/databrowser/view/cens_21f_r3/default/table?lang=en&category=cens.cens_21.cens_21fh. Hereinafter, the term “registered partnership” (also called by various designations such as civil unions or life or domestic partnerships, depending on the jurisdiction) will refer to a legally recognized relationship between two individuals — whether of the same or different sex — that does not qualify as a marriage but does require formal registration in order to be effective and that often grants rights and obligations similar or nearly identical to those accorded by marriage, such as inheritance, social benefits, and next-of-kin status.

² France seems to constitute the only exception. In 2021 18% of couples in France were made up of unmarried partners in comparison to 20% in 2011. Eurostat: *Population..., op. cit.*

The growing number of unmarried partnerships across Europe has sparked an ongoing debate about whether the respective partners in such relationships should be granted rights and obligations comparable to those afforded to spouses³. Legal scholarship often emphasizes the need to protect vulnerable unmarried partners and to safeguard the welfare of families formed outside of marriage, particularly following the death of one partner or after a break-up. Legal literature also highlights several other factors that support extending legal recognition to unmarried partnerships: the intimate emotional bond between partners; their financial interdependence; family solidarity; and relationships within the unmarried unit that are typically closer than those with family members outside it⁴. The literature also points to the social recognition of such partnerships as equivalent to marriage, as well as to widespread misconceptions regarding their legal status⁵. Arguments opposing the extension of marriage-like rights to unmarried couples highlight the importance of respecting individual autonomy and self-determination, as well as the need to preserve the special legal status and protections of marriage.

There are no general statutory rules comprehensively regulating unmarried partnerships in most European countries, but across Europe, the shifts in societal relationship patterns have inspired amendments to national legislation, often in legislative responses to particular problems that the increasing number of unmarried partnerships cause in various areas of law. Unmarried partners have been granted a range of rights. In many countries (for example, in France since 1994)⁶, unmarried partners have certain rights in criminal law, such as the right to refuse to testify against each other. They also enjoy selected private-law rights; for instance, unmarried partners have had conditional claims for financial provision after a break-up

³ See, e.g., I. Schwenzer: *Vom Status zur Realbeziehung. Familienrecht im Wandel*, Baden-Baden 1987; T. Rauscher: *Reformfragen des gesetzlichen Erb- und Pflichtteilsrechts, II. Reformvorschläge. Gesetzliches Erbrecht*, Regensburg 1993; J.M. Scherpe and N. Yassari (eds.): *Die Rechtsstellung nichtehelicher Lebensgemeinschaften — The Legal Status of Cohabitants*, Tübingen 2005; J.M. Scherpe: *Protection of Partners in Informal Long-Term Relationships*, International Law FORUM du droit international 2005; W. Lange: „Verwirrung“ — oder was wir aus dem Erbfall Stieg Larsson lernen können, JuristenZeitung 2011, no 23; I. Kroppenber: *Should the Surviving Cohabitant Be Given Hereditary Rights to the Estate of the Deceased?* (in:) *Inheritance law — challenges and reform*, T. Frantzen (ed.), Berlin 2013; J. Asland: *The legal position of the surviving cohabitant* (in:) *Nordic Cohabitation Law*, J. Asland (ed.), Cambridge 2015; J.J. Miles: *Unmarried cohabitation in a European perspective* (in:) *European Family Law, Volume III, Family law in a European perspective*, J.M. Scherpe (ed.), Cheltenham 2016; K. Boele-Woelki et al.: *Principles of European Family Law Regarding Property, Maintenance and Succession Rights of Couples in de facto Unions*, Cambridge 2019; K.G. M. Abrahamsen: *Do Unmarried Cohabitants Have Inheritance Rights (in Practice) in Denmark?* (in:) *Nordic inheritance law through the ages*, M. Holdgaard et al. (eds.), Leiden–Boston 2020.

⁴ To explore these reasons in more detail see See D. Miler: *Nichteheliche Lebenspartner als gesetzliche Erben? Eine rechtsvergleichende Analyse mit einem Vorschlag de lege ferenda*, Zeitschrift für die gesamte Privatrechtswissenschaft 2025, no 1, pp. 94–96.

⁵ See, e.g., H.-W. Strätz, *Rechtspolitische Gesichtspunkte des gesetzl. Erbrechts und Pflichtteilsrechts nach 100 Jahre BGB*, Zeitschrift für das gesamte Familienrecht (FamRZ) 1998, pp. 1564–1565; J. Asland, *The New Norwegian Inheritance Act*, International Survey of Family Law 2021, p. 386.

⁶ Art. 434-5 of the French Penal Code.

in Scotland since 2006⁷; in Germany, they have been able to adopt a child of the other partner since 2020⁸. These and other examples of rights and claims granted to unmarried partners show that even though the legal status of unmarried partnerships has not been comprehensively regulated by most European national legislators, in general, national laws recognize unmarried partners as a specific, separate group.

Moreover, in all European countries, succession law has become more inclusive since the end of World War II. Reforms have provided succession-law rights, including intestate rights, based not only on marriage but also on adoption and consanguinity (especially for children born outside marriage). In certain countries, individuals in formalized same-sex unions also enjoy the same legal rights, including those related to succession law, as spouses⁹. These changes, in particular the equalization of treatment of married and unmarried couples, were based on social developments, shifting social values, and the associated changes in the understanding of family and marriage.

Together, the three factors of increasing numbers of unmarried partnerships, legislation affecting unmarried partners' rights, and the growing inclusiveness of succession law lead to a question: Should unmarried partners also be among each other's intestate heirs? The majority of European countries do not provide for unmarried partners to inherit from one another in intestacy. But some current legal provisions do grant rights or claims to unmarried partners in intestacy; from the European perspective, such provisions are both exceptional as well as innovative. They are also largely unexplored in international legal literature. Thus, the first aim of this paper is to collect and analyze the relevant provisions from across Europe. Accordingly, the discussion begins with a systematic overview of the rights and claims currently available to unmarried partners in Europe in intestacy (Part I). This part of the publication comprises four sections: The first two provide an overview of the different types of intestate rights unmarried partners can exercise; the third and fourth survey the claims they can pursue. Part I concludes by stressing the profound diversity of the various legal solutions across Europe. The second aim of this paper is to support efforts to draft legislation to grant intestate rights or claims to unmarried partners to remedy the current situation in which unmarried partners do not inherit from each other in most European jurisdictions. Based on the overview provided in Part I, Part II therefore examines the policy questions (and challenges)

⁷ The Family Law (Scotland) Act 2006 [Scot. FLA] Section 28.

⁸ § 1766a of the German Civil Code.

⁹ E.g., in Germany, see: Act on Registered Life Partnerships [LPartG] of February 16, 2001 (*Gesetz über die Eingetragene Lebenspartnerschaft [LPartG] vom 16.2.2001*), BGBBl I 266; Act Implementing the Law Introducing the Right to Marriage for Persons of the Same Sex of December 18, 2018 (*Gesetz zur Umsetzung des Gesetzes zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts vom 18.12.2018*), BGBBl I S. 2639.

that legislators must consider and address when regulating entitlements for unmarried partners. It emphasizes that there is no universal solution that could be implemented in every country; the introduction of rights or claims for unmarried partners must be preceded by consideration of the unique legal and socio-cultural framework in a given jurisdiction and must be harmonized with other succession-law rights and claims available there.

Three further initial remarks are necessary to frame the study.

Legislation currently in force across European jurisdictions distinguishes between two forms of unmarried partnerships. In a first group of jurisdictions, unmarried partners must register or otherwise formalize their relationship in order to secure certain rights or claims, including those provided in succession law. This form of legal recognition, often referred to as “marriage light”, is available, for instance, in France. A second group imposes no such requirement: Legal protections are extended to all unmarried partners despite the absence of formal registration. Granting legal recognition without formalization is a more inclusive approach that accommodates a broader spectrum of partnerships. Accordingly, the following analysis focuses on the jurisdictions that follow the second model. Therefore, unless otherwise stated, an “unmarried partnership” will hereinafter refer specifically to unregistered unmarried partnerships.

The succession-law status of an unmarried partner is shaped by a range of legal mechanisms. These encompass, *inter alia*, the right to remain temporarily in the residence formerly owned by the deceased, the right to receive maintenance from the estate for a certain time following the deceased’s death, the right to succeed the deceased in an existing tenancy, or the right to benefit from the deceased’s life or social insurance. Nevertheless, the following analysis focuses exclusively on rights and claims — hereinafter referred to collectively as the “intestate entitlement” — that allow a surviving unmarried partner to receive a portion of the deceased’s estate in intestacy, as in the context of succession law these are the most significant economic entitlements.

The following discussion presents the preliminary findings from the initial phase of a broader research project aimed at determining whether legal provisions should be introduced in Poland to grant individuals in unformalized relationships (including unmarried partnerships) rights or claims in cases of intestate succession, and if so, what provisions. This phase encompasses two components: (1) the identification, systematization, and analysis of legal frameworks across diverse European jurisdictions that grant intestate entitlements to unmarried partners; and (2) the assessment of factors to consider when designing specific intestate entitlements within the framework of any national succession law. The subsequent analysis is conducted independently of the Polish legal framework and is intended to be broadly applicable across various national contexts.

PART I: AN OVERVIEW OF THE RIGHTS AND CLAIMS AVAILABLE TO UNMARRIED PARTNERS IN EUROPE

There are two types of intestate entitlements provided to unmarried partners in Europe.

The first type of intestate entitlement applies in 15 particular European jurisdictions that grant intestate rights to unmarried partners. In one category of these, statutory provisions explicitly stipulate intestate rights for unmarried partners (sub-category 1). In the other category, unmarried partners acquire intestate rights not as unmarried partners but rather as dependents of the deceased; here, no separate legal framework is directed specifically at unmarried partners (sub-category 2).

The second type of intestate entitlement applies in a further set of nine European jurisdictions. In these, unmarried partners do not have intestate rights in the traditional sense; instead, they have a claim against their deceased partner's estate. These jurisdictions also fall into two categories. In one, an unmarried partner can submit a claim to the court, which then determines whether he¹⁰ should receive any provision from his partner's estate and if so, what or how much it should be (sub-category 3). In the other, these decisions are made by a state authority other than the court (sub-category 4).

Below is an outline of the principal features of the legal framework in each category of jurisdiction. It offers a conceptual foundation for identifying the policy considerations that legislators should examine when crafting intestate entitlements for unmarried partners in their own jurisdictions. These policy considerations are specified in Part II of this paper.

SUB-CATEGORY 1: INTESTATE RIGHTS OF UNMARRIED PARTNERS

The first sub-category of intestate entitlement consists of intestate rights granted specifically to unmarried partners. Such rights are granted in most post-Yugoslavian countries (Croatia, Kosovo, Montenegro, Slovenia, and two parts of Bosnia and Herzegovina), Catalonia (an Autonomous Community of the Kingdom of Spain)¹¹, Austria, Ukraine and Norway. Article 8 section 2 sentence 1 of the

¹⁰ To improve readability and to avoid awkward constructions such as “he or she” and “his or her,” masculine pronouns are used unless the context requires the use of feminine pronouns or gender-neutral language. Where masculine pronouns have been used, readers should assume that they refer to all genders, unless the context suggests otherwise.

¹¹ An analogous rule was introduced in Navarre. However, it was found unconstitutional by the Spanish Constitutional Court, see, e.g., A. Lamarca: *Regulating cohabitation in Spain: the constitutionality of current legislation*, International Family Law 2014, p. 44. Moreover, some publications also list Aragon as a Spanish autonomous community that provides intestacy rights to unregistered unmarried partners; see, e.g., A.L. Marqués: *The Unconstitutionality of Cohabitation. Regulation — Two Decisions of the Spanish Constitutional Court* (in:) *Festschrift*

Croatian Inheritance Act of 2003, for instance, stipulates that an unmarried partner has intestate rights equal to those of a marital spouse¹².

PREREQUISITES FOR INTESTATE RIGHTS

In jurisdictions where intestate rights are expressly conferred upon unmarried partners, a partner must fulfill specific criteria at the time of the death of his partner for their relationship to be legally acknowledged as an unmarried partnership:

(1) Two people only: The relationship can consist of only two people. This is explicitly stated in Catalanian and Norwegian law¹³, and the legal provisions applicable, for instance, in Croatia, Montenegro or Slovenia, lend themselves to this interpretation¹⁴.

(2) Eligibility to marry each other: In all the concerned jurisdictions, unmarried partners generally must be eligible to marry each other¹⁵ or to enter a registered partnership together. For instance, Croatian law requires that the partnership must meet the “the prerequisites required for the validity of the marriage”¹⁶, and Slovenian law stipulates that an unmarried partnership is recognized under the condition that “there are no grounds rendering a marriage between [the unmarried partners] void”¹⁷. Catalanian law includes a list of grounds that bar the recognition of an unmarried partnership. These are, for example, kinship relations in a direct line or in a collateral line within the second degree or a relationship with an unemancipated minor¹⁸. Across all

für Dieter Martiny zum 70. Geburtstag, N. Witzleb et al. (eds.), Tübingen 2014, p. 1150. The Spanish Constitutional Court is currently reviewing the constitutionality of the Catalanian provision.

¹² Succession Act (*Zakon o nasljeđivanju*), Mar. 11, 2003, NN 48/2003 [Croatian SA].

¹³ Catalanian Civil Code (*Codi civil de Catalunya*) July 29, 2010, Ley 25/2010 [Catalonian CC] art. 234-1; Act on Inheritance and Succession of Estates (Inheritance Act) (Lov om arv og dødsboskifte (arveloven)), June 14, 2019, LOV-2019-06-14-21 [Nor. IA] § 2 sentence 3.

¹⁴ Croatian SA art. 8 para 2 sentence 2; Succession Act (*Zakon o nasljeđivanju*), Dec. 12, 2008, br. 74/2008 [Montenegro SA] art. 9 para 3; Succession Act (*Zakon o dedovanju*), June 4, 1976, Uradni list SRS, št. 15/76 [Slovn. SA] art. 4a.

¹⁵ Montenegro SA art. 9; Nor. IA § 2 sentence 3. For details on Norwegian law, see J. Asland and P. Hambro: *New Developments and Expansion of Relationships Covered by Norwegian Law*, International Survey of Family Law 2009, pp. 383–384; J. Asland: *The legal position...*, *op. cit.*, p. 168.

¹⁶ Croatian SA art. 8 para 2 sentence 2. For details, see P. Šarčević and I. Kunda: *Croatia* (in:) *IEL Family and Succession Law* W. Pintens (ed.), 2016, para 190; D. Hrabar: *Legalstatus of Cohabitants in Croatia* (in:) *Die Rechtsstellung nichtehelicher Lebensgemeinschaften — The Legal Status of Cohabitants*, J.M. Scherpe and N. Yassari (eds.), Tübingen 2005, pp. 410–411.

¹⁷ Slovn. SA art. 4a. For details, see, e.g., S. Kraljić and V. Rijavec: *Slovenia* (in:) *IEL Family and Succession Law* W. Pintens (ed.), 2016, para 179; S. Cigoj: *Die rechtliche Behandlung der außerehelichen Lebensgemeinschaft in den Teilrepubliken Jugoslawiens*, *Der Standesamt* 1986, p. 37; V. Rijavec & S. Kraljić: *Die Rechtsstellung nichtehelicher Lebensgemeinschaften in Slowenien* (in:) *Die Rechtsstellung nichtehelicher Lebensgemeinschaften — The Legal Status of Cohabitants*, J.M. Scherpe and N. Yassari (eds.), Tübingen 2005, pp. 379–381.

¹⁸ Catalanian CC arts. 234-2. For details, see M. M. Casals: *Grundzüge der vermögensrechtlichen Situation von Ehegatten und nichtehelichen Lebensgemeinschaften im spanischen und katalanischen Recht* (in:) *Eheliche Gemeinschaft, Partnerschaft und Vermögen im europäischen Vergleich*, D. Henrich and D. Schwab (eds.), Bielefeld 1999, p. 296.

the discussed jurisdictions, it is generally accepted that unmarried partners cannot be married to each other¹⁹ or to another person²⁰. Certain exceptions are allowed under Kosovan and Austrian law. Namely, if one of the unmarried partners was married but filed a claim for divorce or for annulment of the marriage and the divorce or annulment was granted after the death of that partner, the unmarried partnership can be recognized under Kosovan succession law²¹. According to the Austrian legal literature, an unmarried partner can inherit even if the deceased unmarried partner was married at the time of his death if the deceased's spouse is not an heir in intestacy and not entitled to a compulsory portion (regardless of the reason)²².

The intestate rights of same-sex partners are contingent upon their ability to marry or enter a registered partnership within a given jurisdiction. In Kosovo, Montenegro, Bosnia and Herzegovina, and Ukraine, where same-sex relationships are not legally recognized, intestate rights are conferred exclusively upon different-sex unmarried partners.

(3) Shared household: Austrian law explicitly requires that unmarried partners must share a household²³. The same follows from a direct interpretation of the relevant Norwegian as well as the Ukrainian legal provisions²⁴. Literature concerning the law applicable in other jurisdictions mentions this as a prerequisite as well. Nevertheless, Norwegian case law illustrates that the recognition of an unmarried partnership need not mean that partners must be formally registered at the same residential address²⁵. Moreover, partners who reside separately for compelling reasons — such as educational pursuits, employment obligations, health-related circumstances, or comparable factors — may still be regarded as unmarried partners, provided that the emotional and relational closeness of their partnership remains uninterrupted²⁶.

(4) Marriage-like relationship: Almost all jurisdictions expressly state that the unmarried partners must live in a partnership²⁷. In Norway and Catalonia, the relevant legal provisions also clarify that the relationship of the unmarried partners must be

¹⁹ Explicitly stated in Slovn. SA art. 4a.

²⁰ Explicitly stated in Kosovo's Inheritance Act (*Ligji Për Trashëgiminë e Kosovës*) Aug. 1, 2006, LIGJI NR. 2004/26 [Kos. IA] art. 28.1.; Brčko District's Family Law (*Porodični zakon Brčko Distrikta BiH*) br. 23/2007 [Brčko District FL] art. 5; Cataloanian CC arts. 234-2 (Catalonia); Nor. IA § 2 sentence 3. For Norwegian law see J. Asland: *The legal position...*, *op. cit.*, pp. 167–168.

²¹ Kos. IA art. 28.1.

²² See, e.g., R. Welser: § 748 (in:) *Der Erbrechtskommentar § 531–824 ABGB*, R. Welser (ed.), Wien 2019, para 4.

²³ Austrian Civil Code (*Allgemeine Gesetzbuch*) [ABGB] § 748 section 1. But see G. Christandl: § 748 (in:) *Großkommentar zum ABGB — Klang Kommentar: §§ 647–755, Erbrecht*, A. Fenyves, F. Kerschner and A. Vonkilch (eds.), Wien, 3rd ed., 2021, para 14.

²⁴ Nor. IA § 2 sentence 3; The Civil Code of Ukraine (*Цивільний кодекс України*) June 19, 2003, року N 980-IV, OBY, 2003 p., N 30, ст. 1527 [Ukr. CC] art. 1264 para 1.

²⁵ J. Asland: *The legal position...*, *op. cit.*, pp. 168.

²⁶ E.g., Nor. IA § 2 sentence 3; ABGB § 748 section 2 (Austria).

²⁷ E.g., Croatian SA art. 8 para 2 sentence 2; Montenegro SA art. 9; Slovn. SA art. 4a; Succession Law Federation of Bosnia and Herzegovina (*Zakon o nasljedjivanju u Federaciji Bosne i Hercegovine*), br. 80/2014 [BiH SA] art. 9.

marriage-like²⁸. In jurisdictions in which the relevant legal provisions are silent on this factor, it is however identified in the legal literature²⁹. It is commonly accepted that a marriage-like relationship is established when the individuals involved regard themselves as a couple, cohabit in a manner that reflects an intimate emotional bond, and engage with one another as spouses; for instance, when they engage with each other physically, spiritually, sexually, and economically.

(5) Permanent relationship: In all jurisdictions, the cohabitation of unmarried partners must last for a substantial period of time in order to be legally recognized. The required duration varies by jurisdiction, for example two years in Catalonia³⁰, three years in Austria and the Brčko District of Bosnia and Herzegovina³¹, five years in Ukraine³², and ten years in Kosovo³³. In Croatia, Montenegro and Slovenia, the relevant legal provisions do not prescribe a fixed number of years that a relationship must last, but they do require that the relationship persist for a lengthy period³⁴. The fulfillment of this requirement is determined on case-by-case basis, taking into account the specific circumstances of each case³⁵. For example, in Slovenia, the necessary duration is contingent upon the intensity of the relationship between the partners: The greater the emotional and relational depth (evidenced by, for example, continuous cohabitation in a shared household or a common child born during the partnership)³⁶, the shorter the cohabitation period needed for the partnership to be legally recognized³⁷. Croatian case law indicates that courts generally require a cohabitation period of at least three years³⁸. This period is calculated from the moment the individuals make “the commitment to a shared life in all respects characteristic of an intimate, close relationship between a man and woman”³⁹.

²⁸ Nor. IA § 2 sentence 3; Catalanian CC art. 234-1.

²⁹ See, e.g., M. Yunko and O. Debryckyi: *Ukraine* (in:) *Internationales Erbrecht* R. Hausmann *et al.* (eds.), Munich 2018, para 258 and in the context of Austrian law: G. Christandl: § 748, *op. cit.*, paras 10–13.

³⁰ Catalanian CC art. 234-1.

³¹ § 748 section 1 ABGB; Brčko District FL art. 5.

³² Ukr. CC art. 1264.

³³ Kos. IA art. 28.1.

³⁴ Croatian SA art. 8 para 2 sentence 2; Slovn. SA art. 4a; Montenegro SA art. 9.

³⁵ S. Kraljić and V. Rijavec: *Slovenia*, *op. cit.*, para 179; D. Hrabar: *Legalstatus...*, *op. cit.*, pp. 405–406; K. Zupančič: *Umriss der rechtlichen Regelung der Erbfolge in Jugoslawien*, *Zeitschrift für Europarecht, internationales Privatrecht und Rechtsvergleichung* 1986, no. 27, p. 25. See also M. Gec-Korosec and S. Kraljić: *The Influence of Validly Established Cohabitation on Legal Relations between Cohabitants in the Slovene Law*, *International Survey of Family Law* 2001, p. 383.

³⁶ B. Novak: *Slovenien* (in:) *Internationales Ehe- und Kindschaftsrecht mit Staatsangehörigkeitsrecht*, D. Henrich, A. Dutta and H.-G. Ebert (eds.), Frankfurt am Main 1.5.2020, p. 47.

³⁷ B. Novak: *Private Autonomy in Slovenian Family Law* (in:) *Confronting the frontiers of family and succession law*, Alain Laurent Verbeke (ed.), Cambridge 2012, p. 1027.

³⁸ D. Hrabar: *Die vermögensrechtlichen Beziehungen zwischen Ehegatten und nichtehelichen Partner im kroatischen Recht* (in:) D. Henrich and D. Schwab (eds.), *Eheliche Gemeinschaft, Partnerschaft und Vermögen im europäischen Vergleich*, Bielefeld 1999, 143, 150.

³⁹ D. Hrabar, *Legalstatus...*, *op. cit.*, pp. 405–406.

In many jurisdictions, the required length of a relationship is shortened when the partners have a child in common⁴⁰. However, only in Norway does having a common (biological or adopted) child or expecting one constitute a separate, independent condition for the establishment of an unmarried partner's intestate rights⁴¹. Shared parenthood serves as evidence of the partnership's stability and enduring nature.

(6) Relationship until death: In most jurisdictions, including Croatia, Montenegro and the relevant parts of Bosnia and Herzegovina, the law explicitly stipulates that an unmarried partnership must dissolve only upon the death of one of the partners⁴². This requirement is accepted in legal literature that discusses the law applicable in other jurisdictions as well⁴³.

THE EXTENT OF INTESTATE RIGHTS

The scope of the intestate rights granted to unmarried partners varies considerably across jurisdictions. In most of the examined jurisdictions, such rights are extensive, in contrast to Norway, in which they are limited, and to Austria and Ukraine, where they are of merely symbolic significance.

The most extensive rights are granted to unmarried partners in post-Yugoslavian jurisdictions (Croatia, Kosovo, Montenegro, Slovenia, parts of Bosnia and Herzegovina)⁴⁴ and in Catalonia⁴⁵, where the intestate rights of unmarried partners are equal to those of legal spouses. In other words, the relevant provisions grant a surviving unmarried partner the same share of the deceased's estate that the deceased's legal spouse would have been accorded. Under Slovenian law, for example, an unmarried partner inherits in the first order of succession alongside the deceased's descendants, each receiving an equal share of the estate; in the second order⁴⁶, he and the deceased's parents or their descendants each inherit one-half of the estate⁴⁷;

⁴⁰ Brčko District FL art. 5; Catalanian CC art. 234-1; Kos. IA art. 28.1. For Croatia, see D. Hrabar, *Legalstatus...*, *op. cit.*, pp. 405–406. In the context of Catalanian law, see A. Lamarca: *Regulating cohabitation...*, *op. cit.*, p. 44; M. Martin-Casals and J. Ribot: *The Postmodern Family and the Agenda for Radical Legal Change*, International Survey of Family Law 2008, pp. 421–422.

⁴¹ Nor. IA § 12 sentence 1. For details see J. Asland: *The legal position...*, *op. cit.*, pp. 174.

⁴² Croatian SA art. 8 par 2 sentence 2; Montenegro SA art. 9; BiH SA art. 25 (3); Act about Succession of Brčko District (*Zakon o nasljedivanju Brčko distrikta BiH*) 36/2017 [Brčko District SA], art. 26 para 3. But see also, e.g., Ukr. CC art. 1264 para 1 and Nor. IA § 12 sentence 1, Catalanian CC art. 234-14. See also Croatian SA art. 25 para 3.

⁴³ See, e.g., in the context of Austrian law, see also G. Christandl: § 748, *op. cit.*, para 19.

⁴⁴ Croatian SA art. 8 par 2 sentence 1. See T. Josipović, *Croatia* (in:) *IEL Family and Succession Law*, W. Pintens (ed.), 2016, para 356; Kos. IA art. 28.1.; Montenegro SA art. 9; Slovn. SA art. 4a; BiH SA art. 9; Brčko District SA art. 9.

⁴⁵ Catalanian CC art. 234-14.

⁴⁶ Slovn. SA arts. 11–12.

⁴⁷ *Ibidem*, arts. 14–16.

and in the absence of such relatives, the surviving partner inherits the entire estate⁴⁸.

The rights granted to unmarried partners in Norway are limited⁴⁹. Their rights are analogous to the rights of surviving (legal) spouses, but they were also specifically tailored for unmarried partners and are, by design, less extensive. Thus, a surviving unmarried partner is entitled to four times the basic amount of the statutory pension and social insurance (the basic amount of the National Social Insurance⁵⁰). His share is to be satisfied prior to the distribution of the compulsory portions to the deceased's children⁵¹ and is accorded priority in instances where the value of the estate is insufficient to fulfill both entitlements⁵². Alternatively, the surviving unmarried partner may request undivided possession of specific assets from the deceased's estate (*uskifte*)⁵³, such as the shared residence, household furnishings, recreational property, and vehicles utilized jointly by the couple⁵⁴. Generally speaking, the surviving partner is entitled to the use of the designated assets until his death or marriage⁵⁵ or — conditioned on a claim of the deceased's descendants — until he establishes a new unmarried partnership⁵⁶, at which point the respective assets are distributed to the heirs of the initially deceased unmarried partner. As the granting of *uskifte* to a surviving unmarried partner may affect the rights of the deceased's descendants, such an arrangement requires the consent of the deceased's descendants who are not descendants of the surviving partner⁵⁷.

Finally, the intestate rights granted to surviving unmarried partners in Austria and Ukraine are symbolic in nature and of limited practical significance under existing legal frameworks. Under Austrian law, only if the deceased was not survived by

⁴⁸ *Ibidem*, arts. 17.

⁴⁹ In Sweden an unmarried partner has “the right to a share in property at a value of no less than twice the basic amount for national security according to the Act on Social Insurance, as long as the estate suffice[s]” (Swedish Cohabitees Act § 16). However, Swedish scholars do not classify this right as an intestate right of a surviving unmarried partner; see, e.g., J.M. Scherpe: *Rechtsvergleichende Gesamtwürdigung und Empfehlungen zur Rechtsstellung nichtehelicher Lebensgemeinschaften* (in:) *Die Rechtsstellung nichtehelicher Lebensgemeinschaften — The Legal Status of Cohabitants*, J.M. Scherpe and N. Yassari (eds.), Tübingen 2005, p. 589; K. Boele-Woelki *et al.*: *Principles of European Family Law...*, *op. cit.*, pp. 216–217; E. Ryrstedt: *Legal Status of Cohabitants in Sweden* (in:) *Die Rechtsstellung nichtehelicher Lebensgemeinschaften — The Legal Status of Cohabitants*, J.M. Scherpe and N. Yassari (eds.), Tübingen 2005, pp. 428–429.

⁵⁰ T. Egg: *Inheritance Rights for Cohabitants: Current Norwegian Law and Some Thoughts on the Future Regulations* (in:) *Inheritance law — challenges and reform*, T. Frantzen (ed.), Berlin 2013, pp. 63, 64.

⁵¹ Nor. IA § 12; T. Frantzen: *Erbrecht nichtehelicher Lebensgefährten im norwegischen Recht*, Zeitschrift für das gesamte Familienrecht (FamRZ) 2009, p. 1554.

⁵² J. Asland: *The legal position...*, *op. cit.*, p. 175.

⁵³ I. Kroppenberget: *Should the Surviving Cohabitant...*, *op. cit.*, p. 87.

⁵⁴ Nor. IA § 32; J. Asland: *The legal position...*, *op. cit.*, p. 183.

⁵⁵ J. Asland: *The New Norwegian Inheritance Act...*, *op. cit.*, p. 386.

⁵⁶ J. Asland and P. Hambro: *New Developments...*, *op. cit.*, p. 382.

⁵⁷ G. Lind: *The Development of Cohabitation and Cohabitation Law in the Nordic Countries* (in:) *Nordic Cohabitation Law*, J. Asland (ed.), Cambridge 2015, p. 27.

a spouse or any other statutory heirs⁵⁸ apart from legatees (who are treated as heirs under Austrian law as well) and the State⁵⁹ does a surviving unmarried partner inherit the entire estate of his deceased partner on intestacy⁶⁰. Notably, the most distant relatives eligible to inherit under Austrian succession law are the deceased's great-grandparents⁶¹. Similarly, in Ukraine, an unmarried partner occupies the penultimate order of statutory heirs (the fourth order) and inherits the entire estate of the deceased if no surviving spouse, uncles, aunts, or closer relatives inherit⁶².

In addition, in some post-Yugoslavian jurisdictions (Croatia, Montenegro, Slovenia, and two parts of Bosnia and Herzegovina)⁶³ as well as in Catalonia⁶⁴, unmarried partners have a right to receive “mandatory family protection”⁶⁵.

SUB-CATEGORY 2: INTESTATE RIGHTS OF A DECEASED'S DEPENDENTS

The second sub-category of intestate entitlement consists of intestate rights that unmarried partners acquire as dependents of the deceased rather than under their status as an unmarried partner; other individuals apart from the surviving unmarried partner can therefore also inherit based on the relevant legal provisions. For instance, arts. 1636 and 1637 of the Czech Civil Code of 2012 states that “those who lived with the decedent in the common household for at least one year before his or her death and, as a result, cared for the common household or were dependent in maintenance on the decedent” also have intestate rights⁶⁶. The following jurisdictions provide rights belonging to this sub-category: Albania, Belarus, Czechia, the Russian Federation, Slovakia, and Ukraine. Ukraine is the only European jurisdiction in which — at least in theory — a surviving unmarried partner may inherit from his deceased partner either pursuant to provisions specifically and exclusively applica-

⁵⁸ See C. Fischer-Czermak: *Ehegattenerbrecht, Rechte des Lebensgefährten und Abgeltung von Pflegeleistungen* (in: *Das neue Erbrecht*, C. Rabl and B. Zöchling-Jud (eds.), Wien 2015, pp. 35–36).

⁵⁹ ABGB §§ 749–750.

⁶⁰ *Ibidem*, § 748 section 1.

⁶¹ *Ibidem*, § 731.

⁶² Ukr. CC art. 1264.

⁶³ Croatian SA art. 69 para 1 in conjunction with art. 8 para 2; Montenegro SA art. 27 para 1 in conjunction with Art. 9 para 2; Slovn. SA Art. 25 in conjunction with art. 4a; BiH SA art. 28 para 1 in conjunction with art. 9 para 1; Brčko District SA art. 31 para 1 in conjunction with art. 9 para 1.

⁶⁴ Catalanian CC art. 452-1 and following.

⁶⁵ The term, which will continue to appear throughout, was coined by Kenneth G C Reid, Marius J de Waal, and Reinhard Zimmermann. “Mandatory family protection” can be defined as a mechanism that ensures that certain family members are entitled to a portion of a deceased person's estate or its value, regardless of any contrary testamentary dispositions. These provisions can amount to a reserved portion or a compulsory portion or family provisions. For details see K.G.C. Reid, M.J. de Waal, R. Zimmermann (eds.): *Comparative Succession Law: Volume III: Mandatory Family Protection*, Oxford 2020.

⁶⁶ 2012 Civil Code (*Občanský zákoník*) č 89/2012 Sb. [Czech CC].

ble to unmarried partners or, where the facts render these provisions inapplicable, under legal provisions that apply to the deceased's dependents.

PREREQUISITES FOR INTESTATE RIGHTS

The following prerequisites must be fulfilled at the time of the deceased's death in order for the surviving unmarried partner, or any other individual for that matter, to have intestate rights in the deceased's estate:

(1) Dependency: The person's dependence on the deceased must be financial in nature. In all the considered countries, the deceased must have financially supported the surviving dependent⁶⁷. Ukrainian law even states explicitly that the financial assistance the deceased provided must have constituted "the only or main source of livelihood for" the dependent⁶⁸. Moreover, in Albania, Belarus, the Russian Federation, and Ukraine, the source of the dependency must have been the dependent's incapacity to work⁶⁹. This limits the person of the dependent to minors, seniors, or the disabled. For instance, in Albania, an individual may not have reached the age of 16 (18 if he is still pursuing education) at the time of the deceased's death⁷⁰. Alternatively, in both Albania and Ukraine, entitlement may arise if the person is a woman over 55 or a man over 60, or irrespective of age, is designated as a person with disabilities⁷¹. This limited understanding of who qualifies as a dependent is not applicable under Czech or Slovakian law; either requires that an individual was regularly financially supported by the deceased (either voluntarily or based on a statutory obligation)⁷² or, alternatively, managed their common household during the time he lived with the deceased⁷³.

(2) Shared household: The applicable law in all considered jurisdictions, apart from Ukraine, requires that a person, including the unmarried partner of the deceased, must have resided in the same household as the deceased at the time of the deceased's death⁷⁴. In Albania, the applicable legal provisions specify that an individual must have lived with the deceased in a manner akin to familial cohabitation. This require-

⁶⁷ Civil Code of the Republic of Albania (*Kodi Civil i Republikës së Shqipërisë*), July 29, 1994, Nr.7850 [Alb. CC] art. 363; Civil Code of the Republic of Belarus (*Грамадзянскі кодэкс Рэспублікі Беларусь*), Dec. 7, 1998, No. 218-3 [Belr. CC] art. 1063 point 2; Czech CC §§ 1636 and 1637; Civil Code of the Russian Federation (*Гражданский кодекс Российской Федерации*), Oct. 21, 1994, N 51-ФЗ [Russ. CC] art. 1148 point 2; Civil Code (*Občanský zákoník*) [Slovk. CC] arts. 474 and 475; Ukr. CC art. 1265 section 2.

⁶⁸ Ukr. CC art. 1265 section 2. Similarly, W. Stoppel: *Albanien* (in:) *Internationales Erbrecht*, R. Hausmann et al. (eds.), Munich 2020, para 42.

⁶⁹ Alb. CC arts. 363, 371; Belr. CC art. 1063 point 2; Russ. CC art. 1148 point 2; Ukr. CC art. 1265 section 2.

⁷⁰ Alb. CC art. 371.

⁷¹ *Ibidem*, art. 371; M. Yunko and O. Debrycky: *Ukraine, op. cit.*, para 265.

⁷² See, e.g., J. Dvořák, J. Švestka and M. Zuklinová: *Občanské právo hmotné 4*, Praha 2019, p. 123.

⁷³ Czech CC §§ 1636 and 1637; Slovak. CC arts. 474 and 475.

⁷⁴ Alb. CC art. 363; Belr. CC art. 1063 point 2; Czech CC §§ 1636 and 1637; Russ. CC art. 1148 point 2; Slov. CC arts. 474 and 475.

ment includes cases where the deceased and the dependent were actually related⁷⁵. The contrary is required under Ukrainian law: In order to qualify as dependents for inheritance purposes, individuals cannot have been related to the deceased⁷⁶. Furthermore, some jurisdictions (in particular Albania, Czechia, and Slovakia) recognize that a dependent may nonetheless not live with the deceased, for example if they are pursuing educational opportunities⁷⁷. The decisive factor, however, is still a demonstrable intent, at the time of the deceased's death, to resume shared living arrangements⁷⁸.

(3) Permanent relationship: In the majority of the discussed jurisdictions (Albania, Belarus, Czechia, the Russian Federation, and Slovakia), the relationship between the deceased and a putative dependent, including an unmarried partner, must have lasted for "at least one year before" the deceased's death⁷⁹. Only Ukraine requires the relationship to have lasted at least five years⁸⁰.

(4) Relationship until the death: In all concerned jurisdictions, the relevant legal provisions stipulate that the dependency relationship between the deceased and the individual must have persisted until the time of the deceased's death⁸¹. An earlier cessation of the dependency means the individual cannot qualify as a dependent of the deceased.

THE EXTENT OF INTESTATE RIGHTS

The intestate rights of individuals who classify as the deceased's dependents can be characterized as strong, moderate, or symbolic.

Belarus and the Russian Federation provide the strongest intestate rights to dependents of the deceased. In these two countries, the deceased's dependents (including an unmarried partner, if he qualifies) are entitled to a share of the estate equal to that received by other intestate heirs. They inherit in every order of succession, beginning with the first one. In Belarus, the size of the entitlement is subject to a statutory cap: Dependents may not receive more than one quarter of the estate. In both jurisdictions, if there are no other heirs, the deceased's dependents inherit the entire estate as statutory heirs of the last order⁸².

⁷⁵ W. Stoppel: *Albanien*, *op. cit.*, para 42.

⁷⁶ Ukr. CC art. 1265 section 2.

⁷⁷ W. Stoppel: *Albanien*, *op. cit.*, para 42; M. Hrušáková and L. Westphalova: *Czech Republic* (in:) *IEL Family and Succession Law*, W. Pintens (ed.), 2016, para 502.

⁷⁸ *Ibidem*, para 502.

⁷⁹ Alb. CC art. 363; Belr. CC art. 1063 point 2; Czech CC §§ 1636 and 1637; Russ. CC art. 1148 point 2; Slov. CC arts. 474 and 475.

⁸⁰ Ukr. CC art. 1265 section 2.

⁸¹ Alb. CC art. 363; Belr. CC art. 1063 point 2; Czech CC §§ 1636 and 1637; Russ. CC art. 1148 point 2; Slov. CC arts. 474 and 475; Ukr. CC art. 1265 section 2.

⁸² Belr. CC art. 1063 point 2; Russ. CC art. 1148 points 2 and 3.

Moderate intestate rights are afforded to the deceased's dependents in Albania, Czechia, and Slovakia. Under these jurisdictions' laws, unmarried partners are heirs in the second order of succession; they inherit alongside the deceased's spouse and/or parents. In the absence of other second-order heirs, they take as heirs of the third order alongside the deceased's siblings and/or their descendants (and in Albania, additionally with surviving grandparents). Within each order, statutory heirs are entitled to equal shares of the estate, with the exception of the deceased's spouse, who as an heir of the second order inherits one half of the estate⁸³.

The weakest form of intestate succession rights — those of a purely symbolic nature — are granted to the deceased's dependents in Ukraine. Such individuals fall within the fifth (and final) order of succession of intestate heirs and share the estate with the deceased's closest surviving relatives, provided those relatives are within the sixth degree of kinship⁸⁴. These rights may also extend to unmarried partners, insofar as they do not meet the eligibility criteria to inherit under the fourth order of succession. Given the distant order of succession, it is unlikely for an unmarried partner to inherit this way, and the right is considered symbolic.

In Albania and the Russian Federation, moreover, if a surviving unmarried partner is eligible to inherit as a deceased's dependent, then he is entitled to the mandatory family protection (a reserved portion) even if a testamentary disposition states otherwise. In the Russian Federation, the size of the reserved portion is half of the intestate share; in Albania it is the entire share⁸⁵.

SUB-CATEGORY 3: CLAIMS FOR COURT-AWARDED PROVISIONS

The second type of intestate entitlement available to unmarried partners in some European jurisdictions comprises claims against (rather than — as in case of previously discussed jurisdictions — rights in) deceased unmarried partners' estates. This first type of claim in this third sub-category of intestate entitlements is one that a surviving unmarried partner can file with a court against his deceased unmarried partner's estate. Such claims for court-awarded provisions are available in England and Wales, Finland, Ireland, Northern Ireland, Portugal and Scotland. For instance, art. 2020 of the Portuguese Civil Code stipulates that “[t]he surviving member of the *de facto* union has the right to demand maintenance from the deceased's estate”⁸⁶.

⁸³ Alb. CC arts. 361–363; Czech CC §§ 1636 and 1637; Slov. CC arts. 474 and 475.

⁸⁴ *Ibidem*, art. 1265.

⁸⁵ Russ. CC Art. 1141 point 1; Alb. CC Art. 379.

⁸⁶ The Portuguese Civil Code (*Código Civil*) Diário do Governo n.º 274/1966, Série I de 1966-11-25 [Port. CC] Art. 2020.

PREREQUISITES FOR INTESTATE ENTITLEMENT

An unmarried partnership must fulfill certain requirements in order for the surviving partner to be eligible to file a claim for an award against the deceased unmarried partner's estate. The requirements vary substantially across the relevant jurisdictions. In principle, however, the following conditions must be met in all of them:

(1) Two people only: As explicitly stated in Irish as well as Portuguese law⁸⁷, and as commonly accepted in other jurisdictions, the survivor's relationship with the deceased, based on which a surviving unmarried partner becomes eligible to file a claim against a deceased's estate, must have consisted of two people only. In all the considered jurisdictions, it is clarified that the relationship may have involved any two people, meaning that it may have been two people of different or of the same sex⁸⁸.

(2) Not married to each other: None of the jurisdictions discussed explicitly requires that the partners should have been eligible to marry one another. However, Finnish as well as Irish law states that the unmarried partners cannot have been married to each other or have been one another's "civil partner" (registered partner)⁸⁹. Irish law further stipulates that unmarried partners must not have been "related to each other within the prohibited degrees of relationship"⁹⁰. Moreover, in both jurisdictions, the partners cannot be married or in a registered partnership with another person⁹¹. Irish law also requires that, if an unmarried partner had been married and then divorced, he must have lived apart from his former spouse for at least 4 of the 5 years prior to the death of the first unmarried partner⁹². In Portugal, neither of the unmarried partners should be married to anyone else, but if one of them is, he must have separated from his legal spouse⁹³. And there are still other requirements that would apply as well to entering into a marriage or a registered

⁸⁷ The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Number 24 of 2010 [Irish CPCRA 2010] Art. 172 (1); Law No. 7/2001, of May 11, which establishes measures to protect *de facto* unions (*Lei n.º 7/2001, de 11 de maio, que estabelece medidas de proteção às uniões de facto*), Diário da República n.º 109/2001, Série I-A with later amendments [Port. Law on Measures], Art. 1 (2).

⁸⁸ Explicitly stated in Irish law: Irish CPCRA 2010 Art. 172 (1). It seems a more recent development in Portuguese law; see C. F. Nordmeier, A. Albuquerque: *Portugal* (in:) *Internationales Ehe- und Kindschaftsrecht mit Staatsangehörigkeitsrecht*, D. Henrich, A. Dutta and H.-G. Ebert (eds.), Frankfurt am Main 1.12.2023, p. 47; contrary E. Huzel: *Portugal* (in:) *Eherecht in Europa: mit Eingetragene Lebenspartnerschaft und Adoption*, R. Süß and G. Ring, Bonn 2020, para 103.

⁸⁹ The Finnish Act on the Dissolution of Common-law Spouses (*Laki yhteistalouden purkamisesta avioliiton päätyessä*), January 14, 2011, SDK 26/2011 [Fin. ADCLS] Section 3; Irish CPCRA 2010 Art. 172 (1).

⁹⁰ Irish CPCRA 2010 Art. 172 (1).

⁹¹ S. Silvola: *National report: Finland*, available at: Commission on European Family Law, <https://ceflonline.net/wp-content/uploads/Finland-IR.pdf>, Question no 53; Irish CPCRA 2010 Art. 172 (6).

⁹² Irish CPCRA 2010 Art. 172 (6).

⁹³ Port. Law on Measures Art. 2(c); S. Müller-Bromley: *Portugiesisches Zivilrecht, Volume 2: Familienrecht, Erbrecht*, Baden-Baden 2013, p. 63.

partnership; in particular, the unmarried partners must have been at least 18 years old and of full legal capacity⁹⁴.

(3) Cohabitation: Irish law contains the most precise regulation of cohabitation. Apart from stating that unmarried partners must “live together as a couple in an intimate and committed relationship”⁹⁵, it further provides a list of circumstances that must be considered to determine whether two people cohabit. These include, *inter alia*, “the basis on which the couple lives together [...]; the degree of financial dependence of either adult on the other and any agreements in respect of their finances; [...] the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property; [...] whether there are one or more dependent children; [...] whether one of the adults cares for and supports the children of the other; and [...] the degree to which the adults present themselves to others as a couple”⁹⁶. Scottish law also explicitly mentions cohabitation as a prerequisite; however, its prerequisites are not regulated in turn by statute⁹⁷. England and Wales as well as Northern Ireland require only that unmarried partners live with each other as if they were married or in a registered partnership⁹⁸. Similarly, according to Finnish law, the partners must cohabit in circumstances akin to marriage⁹⁹.

(4) Shared household: The laws of England and Wales, Northern Ireland and Finland explicitly require that the surviving unmarried partner must have lived with the deceased in the same household¹⁰⁰. By contrast, Ireland’s statute merely stipulates that unmarried partners must “live together as a couple”¹⁰¹.

(5) Permanent relationship: The relationship between the deceased and the surviving unmarried partner must have lasted for an extended period of time. In England and Wales, Northern Ireland, and Portugal, the minimum time period is two years¹⁰²; it is five years in Finland and Ireland¹⁰³. In Ireland, if the unmarried partners are the parents of a common child, however, a relationship of just two years’ duration is deemed sufficient¹⁰⁴. The required duration may also be shorter in Finland if the partners have a common child, but the precise threshold of a “shorter period”

⁹⁴ Port. Law on Measures Art. 2(a). Earlier literature indicated the age threshold to be 16 years old; see S. Müller-Bromley: *Portugiesisches Zivilrecht, Volume 2: Familienrecht, Erbrecht*, Baden-Baden 2013, p. 63.

⁹⁵ Irish CPCRA 2010 Art. 172 (1).

⁹⁶ *Ibidem*, Art. 172 (2).

⁹⁷ Scot. FLA Art. 29 (1)(b)(ii).

⁹⁸ The Inheritance (Provision for Family and Dependants) Act 1975, 1975 CHAPTER 63, as amended by the Law Reform (Succession) Act 1995 [Eng. & Welsh IA] Art. 1(A)(b). Similarly, Art. 3 (1A) and (1B) of the Inheritance (Provision for Family and Dependants) (Northern Ireland) Order 1979 [North. Irish IA].

⁹⁹ Fin. ADCLS Section 3.

¹⁰⁰ Eng. & Welsh IA Art. 1(1A)(a); North. Irish IA Art. 3 (1A) and (1B); Fin. ADCLS Section 3.

¹⁰¹ Irish CPCRA 2010 Art. 172 (1).

¹⁰² Eng. & Welsh IA Art. 1(A); North. Irish IA Art. 3 (1A) and (1B); S. Müller-Bromley: *Portugiesisches Zivilrecht, op. cit.*, p. 63.

¹⁰³ Fin. ADCLS Section 3; Irish CPCRA 2010 Art. 172 (5).

¹⁰⁴ Irish CPCRA 2010 Art. 172 (5).

remains legislatively unspecified¹⁰⁵. Scottish legislation does not explicitly state how long the cohabitation must have lasted.

(6) Relationship until death: The partners must have lived together in the unmarried partnership until immediately before the first partner's death (England and Wales, Finland, Ireland, Northern Ireland, and Scotland)¹⁰⁶.

A surviving unmarried partner can only obtain an entitlement from the estate if he files an appropriate claim within the time limits specified in the legislation¹⁰⁷. The prerequisites for filing the claim vary across the relevant jurisdictions.

(1) Legal framework: An unmarried partner's claim is available in testate as well as intestate succession¹⁰⁸. In such cases, the claim serves to secure mandatory family protection, as it may result in the estate being distributed differently from what was set out in a testamentary disposition. Only in Scotland is the claim exclusively available in intestacy¹⁰⁹.

(2) Legal grounds: In Finland, the surviving unmarried partner can file a claim if his livelihood deteriorated as a result of the death of the deceased unmarried partner and receiving an entitlement from the estate is necessary to secure it¹¹⁰. In Portugal, the unmarried partner is entitled to maintenance from the estate¹¹¹. Under Irish law, no order in favor of a surviving unmarried partner may issue unless the survivor was "financially dependent on the deceased" and additionally has not subsequently married, registered a civil partnership, or established an unmarried partnership with another person¹¹². Also in Ireland, a court must be "satisfied that proper provision in the circumstances was not made for the applicant during the lifetime of the deceased for any reason other than conduct by the applicant [...] [and] it would in all the circumstances be unjust to disregard" the claim of the unmarried partner¹¹³. In England and Wales as well as Northern Ireland, it is not required that the survivor should have been financially dependent on the deceased unmarried partner (being maintained by him directly before his death). Instead, such a claim can be filed if the surviving unmarried partner did not receive "reasonable financial provision" on his partner's death¹¹⁴. According to the statutory

¹⁰⁵ Fin. ADCLS Section 3.

¹⁰⁶ Eng. & Welsh IA Art. 1(A); The Finnish Code of Inheritance (*Perintölaaki*), February 5, 1965, SDK 40/1965 [Fin. CI] Chapter 8 Section 2; Irish CPCRA 2010 Art. 172 (5). But see Irish CPCRA 2010 Art. 194 (2); North. Irish IA Art. 3 (1A) and (1B); Scot. FLA Art. 29(1)(b).

¹⁰⁷ Eng. & Welsh IA Art. 1(1) in conjunction with Art 1 (1A); Scot. FLA Art. 29; North. Irish IA Art. 3 (1) in conjunction with (1A) and (1B); Port. CC Art. 2020.

¹⁰⁸ E.g., Eng. & Welsh IA Art. 2(1).

¹⁰⁹ Scot. FLA Art. 29(1)(a).

¹¹⁰ Fin. CI Chapter 8 Section 2.

¹¹¹ Port. CC Art. 2019.

¹¹² *Ibidem*, Art. 194 (5).

¹¹³ Irish CPCRA 2010 Art. 194 (3).

¹¹⁴ Eng. & Welsh IA Art. 1(1) in conjunction with Art 1 (1A); North. Irish IA Art. 3 (1) in conjunction with (1A) and (1B).

definition, reasonable financial provision means “such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance”¹¹⁵.

(3) Factors for consideration: The factors that courts must consider in adjudicating the claim differ among jurisdictions. In England and Wales as well as Northern Ireland¹¹⁶, courts hearing a surviving unmarried partner’s claim are obligated to consider: (1) the financial resources and financial needs that the surviving unmarried partner and any other applicants as well as the beneficiaries of the estate have or are likely to have in the foreseeable future (Northern Ireland specifies that the examination includes consideration of each person’s earning capacity, financial obligations and responsibilities)¹¹⁷; (2) any obligations and responsibilities of the deceased towards the unmarried partner, other applicants, and the beneficiaries of the estate; (3) the size and nature of the deceased’s net estate; (4) any physical or mental disability of the unmarried partner, other applicants, or the beneficiaries of the estate; as well as (5) any other matter, including the conduct of the unmarried partner or any other person that the court may consider relevant in the circumstances¹¹⁸. In the context of a claim filed by an unmarried partner, courts consider the age of the applicant and the duration of their relationship as well as the surviving partner’s contribution to the welfare of the deceased’s family, including by looking after the home or caring for family members¹¹⁹. A court in Ireland must consider similar factors in ordering provisions that are “appropriate having regard to the rights of any other person having an interest in the matter”¹²⁰. Scotland requires consideration of a shorter list of factors: “the size and nature of the deceased’s net intestate estate; any benefit received, or to be received, by the survivor [...]; the nature and extent of any other rights against, or claims on, the deceased’s net intestate estate; and any other matter the court considers appropriate”¹²¹. In Finland, a court must consider the surviving unmarried partner’s age, duration of his relationship with the deceased partner, ability to secure his livelihood by his own means, and other comparable factors¹²². The Portuguese Civil Code is the only one that does not explicitly specify factors for the court to consider in reviewing a surviving unmarried partner’s application for provision from the estate.

¹¹⁵ Eng. & Welsh IA Art. 1(2)(b).

¹¹⁶ Eng. & Welsh IA Art. 3; North. Irish IA Art 5.

¹¹⁷ North. Irish IA Art. 5(6).

¹¹⁸ Eng. & Welsh IA Art. 3 (1); North. Irish IA Art 5.

¹¹⁹ Eng. & Welsh IA Art. 3 (2); North. Irish IA Art 5.

¹²⁰ See Irish CPCRA 2010 Art. 173 (3) in conjunction with art. 194 (4).

¹²¹ Scot. FLA Art. 29 (3).

¹²² Fin. CI Chapter 8 Section 2.

COURT AWARDS

Courts have wide discretion regarding the size and form of the provisions they can order. In England and Wales, Northern Ireland, and Scotland, a court can order periodic or lump-sum payments as well as transfers of property or modifications of arrangements between the deceased and the surviving unmarried partners during their relationship¹²³. In Ireland and Scotland, however, the award cannot “exceed the amount to which the survivor would have been entitled had the survivor been the spouse or civil partner of the deceased”¹²⁴. In Finland, a surviving unmarried partner can receive monies, property, or the right to use property in the estate¹²⁵. However, an order in favor of the surviving unmarried partner may not infringe on the rights of the deceased’s compulsory heirs to receive a compulsory share of the estate unless there are compelling reasons¹²⁶. In Ireland, an order in favor of the unmarried partner “shall not affect the legal right of a surviving spouse”¹²⁷. In Portugal, an unmarried partner is entitled to maintenance; however, the law explicitly states that “the right to maintenance ceases if the recipient enters into a new marriage, starts a *de facto* union, or becomes unworthy of the benefit due to their moral conduct”¹²⁸.

SUB-CATEGORY 4: CLAIMS FOR STATE-AWARDED PROVISIONS

The final sub-category of intestate entitlements comprises claims for the transfer of all or part of a deceased unmarried partner’s estate. However, rather than being adjudicated by a court, these claims are decided by a statutorily determined state authority other than a court. Such claims are available to persons who were close to the deceased, which includes a surviving partner, in Denmark, England and Wales, Ireland, and Norway¹²⁹.

PREREQUISITES FOR INTESTATE ENTITLEMENT

In the considered countries, a state authority (in Denmark, the Minister of Justice¹³⁰; in England and Wales, the Crown, the Duchy of Lancaster, or the Duke

¹²³ Eng. & Welsh IA Art. 2 (1). Similarly North. Irish IA Art. 4; Scot. FLA Art. 29 (2).

¹²⁴ Irish CPCRA 2010 Art. 194 (7); Scot. FLA Art 29 (4).

¹²⁵ Fin. CI Chapter 8 Section 2.

¹²⁶ *Ibidem*.

¹²⁷ Irish CPCRA 2010 Art. 194 (10).

¹²⁸ Port. CC Art. 2019.

¹²⁹ Inheritance Act (*Bekendtgørelse af arveloven*), Legislative Decree No. 584 of 1 Sept. 1986, § 95.

¹³⁰ The Inheritance Act of 1986, Legislative Decree No. 584 of 1 September 1986 with later amendments [Danish IA] § 95.3. 1).

of Cornwall¹³¹; in Ireland, the Minister for Finance¹³²; in Norway, a government minister¹³³) determines whether to make an award in favor of the claimant and what the award should amount to¹³⁴. The respective statute governing the filing of the claim specifies only the following explicit prerequisites:

(1) Legal framework: The inheritance must pass to a state as a result of it not being inherited by any other person either on intestacy or under testamentary provisions¹³⁵. It is irrelevant why the estate should pass to the state (e.g., whether there were no eligible heirs or those that were renounced the inheritance).

(2) Person close to the deceased: Only a person who was particularly close to the deceased can make a claim. In Ireland, the determination of eligibility to apply in particular cases is left to the Minister for Finance¹³⁶. Norwegian legislation is equally vague; it speaks very generally of persons close to the deceased¹³⁷. In England and Wales, any person is eligible “for whom the [deceased] might reasonably have been expected to make provision”¹³⁸. Only in Denmark is an unmarried partner explicitly listed as a potential applicant¹³⁹. Also only in Denmark, the applicable provision stipulates that a claim by a surviving unmarried partner takes priority over claims by other eligible parties¹⁴⁰.

(3) Particular circumstances: A claim for an award from the estate can be made when there are circumstances that particularly favor awarding the estate or a part of it to a particular person; for instance, a surviving unmarried partner¹⁴¹.

AWARDS

The state authority determines whether an award should be granted to the applicant, and if so, whether it should encompass the entire estate or only a portion thereof.

In all the considered jurisdictions, claims lodged with state agencies are of limited practical significance. On one hand, that they may be brought only if both intestate as well as testate heirs are absent makes such claims relatively rare.

¹³¹ Administration of Estates Act 1925, 1925 c. 23 [Eng. & Welsh AEA] Art. 46 (1) (iv).

¹³² Succession Act, 1965 [Irish SA] Section 73(2).

¹³³ Nor. IA § 76.

¹³⁴ Danish IA § 95.3. 1); Nor. IA § 76; Eng. & Welsh AEA Art. 46 (1) (iv); Irish SA Section 73(2).

¹³⁵ Danish IA § 95.3. 1); Nor. IA § 76; Irish SA Section 73(1); Eng. & Welsh AEA Art. 46 (1) (iv).

¹³⁶ Irish SA Section 73(2).

¹³⁷ Nor. IA § 76.

¹³⁸ Eng. & Welsh AEA Art. 46 (1) (iv).

¹³⁹ Danish IA § 95.3. 1).

¹⁴⁰ *Ibidem*; G. Meldgaard Abrahamsen: *Restricted Access Chapter 15 Do Unmarried Cohabitants Have Inheritance Rights (in Practice) in Denmark?* (in:) *Nordic inheritance law through the ages*, M. Holdgaard et al. (eds.), Leiden 2020, p. 359.

¹⁴¹ Irish SA Section 73(1); Eng. & Welsh AEA Art. 46 (1) (iv); Danish IA § 95.3. 1).

On the other hand, that awards are at the discretion of a state authority makes their outcome highly unpredictable.

CONCLUSIONS

Even a brief overview of these intestate entitlements, their prerequisites, and the range of rights and awards they afford to unmarried partners across European jurisdictions reveals profound diversity. This diversity cannot be explained based on any single factor and is visible at multiple levels.

Firstly, the distinction between civil law and common law systems does not yield a consistent framework for categorizing these entitlements. For instance, there are civil-law countries (Finland, Portugal, Denmark, and Norway) that allow unmarried partners to assert claims against each other's estates, and their outcome is determined by a court or other state authority exercising near-unlimited discretion. Such grants of discretion are highly atypical within the succession-law framework of civil-law jurisdictions, where entitlements are generally based on intestate rights or claims that may be filed only under narrowly defined conditions and that typically affect a precisely calculated portion of the estate.

Secondly, no two jurisdictions (with the notable exception of England and Wales and Northern Ireland) that provide the same type of entitlement (e.g., intestate rights specifically for unmarried partners, as opposed to for dependents of the deceased) are found to have substantially similar legal provisions on the same issue. This heterogeneity is seen even among countries whose legal systems derive from common legislative origins, such as the post-Yugoslav states rooted in Yugoslavian law, or the post-Soviet countries shaped by Soviet heritage.

Thirdly, no recognizable correlation exists between the type of entitlement and the size or the likelihood of the unmarried partner's actual participation in the deceased's estate. No matter the sub-category, the size and priority of the unmarried partner's entitlement compared to that of other people varies considerably among jurisdictions. Where unmarried partners are granted intestate rights as such, both the extent of and the priority of their rights relative to other intestate heirs vary significantly. For instance, some jurisdictions grant a surviving unmarried partner as such a share equal to that of a surviving spouse (Catalonia, Croatia, Kosovo, Montenegro, Slovenia, and two parts of Bosnia and Herzegovina); others only affirm him limited rights in comparison to a surviving spouse (Norway). But certain similarities of magnitude can nevertheless be observed between the different sub-categories of entitlement. For example, the intestate rights specifically of unmarried partners in Austria and Ukraine as well as the intestate rights of the deceased's dependents in Ukraine are both merely symbolic. Since any final award in the case of claims against the estate (rather than rights) will have been adjusted to the circumstances

of a particular case, the ability to intercompare such awards by jurisdiction is even more limited. Thus, it seems that the question of what specific entitlement (specific intestate rights or claims) is granted to unmarried partners on intestacy of their deceased partner can be answered independently of the requirements (conditions to be satisfied as of one partner's death) in order for the surviving partner to be eligible for it.

However, in each jurisdiction where a surviving unmarried partner is granted mandatory family protection, the form of this protection corresponds to the form of intestate entitlement established in that jurisdiction for such a person. Thus, for example, jurisdictions that provide intestate rights also offer mandatory family protection in the form of a right. Nevertheless, because Finland has adopted a claim (court award) rather than a compulsory portion for a deceased's unmarried partner, it cannot be stated that the form (whether it is a right or a claim) of the mandatory family protection afforded to the surviving unmarried partner mirrors the form of the mandatory family protection granted to other members of a deceased's family.

Accordingly, no coherent or universal model of intestate entitlement emerges at the European level. Therefore, despite some proposals advanced in the legal scholarship¹⁴², the foundation for advocating for the adoption of a uniform model across all European jurisdictions or for harmonization of this area of succession law is insufficient. Instead, any new provisions must be tailored to align with the unique national and succession-law legal framework of the jurisdiction in question.

PART II: CHALLENGES POSED BY INNOVATIVE REGULATORY APPROACHES

In jurisdictions the present analysis does not cover, the thought of introducing intestate entitlements for unmarried partners — that is, of introducing rights or claims to come up in the absence of a testamentary disposition in their favor — will raise several important questions, the most significant being, in the first place, What legal rights and claims are currently available to unmarried partners following the death of one partner under the applicable national law? Should they be granted any (additional) intestate entitlement? Would new intestate entitlements for unmarried partners be compatible with the national (constitutional) law? How should unmarried partners be defined? And how should the intestate entitlement of unmarried partners ultimately be regulated? The different legal and socio-cultural frameworks of each country will require separate respective determinations on whether and how to regulate these kinds of entitlement. Furthermore, the introduction of such entitlements must be harmonized with other succession-law rights and claims. There is no

¹⁴² See, e.g., K. Boele-Woelki *et al.*: *Principles of European Family Law...*, *op. cit.*

universal solution that could be implemented in every country. Nonetheless, there is a broader question that can be universally answered: *What policy considerations should be addressed in the (potential) regulation of succession-law entitlements for unmarried partners?* This question can be explored based on the collective experience of applying the legal provisions already in force in European jurisdictions.

In spite of the many differences between the applicable legal frameworks, commonalities can be identified at the European level in the regulation of the intestate entitlements of unmarried partners. As already argued, however, the commonalities do not lie in the content of the national regulations. Instead, they consist of elements of the applicable legal framework that must be considered and choices to be determined in the regulation. Four such elements can be distinguished: (1) the definition of unmarried partners; (2) the form of the applicable entitlement (right or claim); (3) how the entitlement of unmarried partners compares that of other persons (for instance, surviving spouses); (4) the distribution of the estate on intestacy (in particular, how the new distribution in respect of unmarried partners should affect particular members of a deceased's family). In any jurisdiction contemplating granting unmarried partners entitlements in intestacy or amending the existing rules, the legislator must thoroughly consider these elements.

Regulating the four above-mentioned elements within a particular legal framework requires identifying the spectrum of possible solutions and assessing the implications of adopting each. The questions and issues must be examined individually, but the ultimate regulation of each element must be considered in unison with the others to ensure that the proposed legal solution is coherent. The following examination is dedicated to identifying and systematizing the possible modes of regulating these four elements and the legal consequences of each based on the law already applicable in Europe. As these are (only) preliminary findings from the initial phase of a broader research project, they may however need to be supplemented based on future research.

(1) THE DEFINITION OF UNMARRIED PARTNERS

Rules already applicable in Europe demonstrate that an unmarried partner may be entitled to inherit from his deceased's partner's estate in intestacy by virtue of being the deceased's surviving partner, his dependent, a member of his household, or even a person (emotionally) close to him. Regardless of which of these should be the basis, the specific characteristics of the relationship between the deceased and the individual in question should be clearly defined in order to establish eligibility criteria for intestate succession. Various aspects are currently considered in the definition of an unmarried partnership in European jurisdictions, as well as various criteria for determining whether an individual was a dependent of the deceased.

DEFINING AN UNMARRIED PARTNERSHIP

Introducing intestate entitlements specifically for *a deceased's unmarried partner* requires a precise definition of the unmarried partnership. This is necessary for two reasons. Firstly, an unmarried partnership is unlike a marriage in that there is no formal act legalizing such partnerships or even confirming its existence¹⁴³. Secondly, European literature has generally distinguished three social models of unmarried partnership: “young partners in [a] trial marriage, stable unions [in which] cohabitation substitutes [for] marriage, and cohabitation at a later stage of life after a previous relationship or marriage”¹⁴⁴. Therefore, each legislature must decide whether the partners in each of these models should qualify as “unmarried partners” within the meaning of the proposed legislation. In particular, they must determine what persons are eligible to establish such a relationship, what characteristics the relationship must have, and how long it must have endured upon the death of one of the partners. The issues that should be addressed during the drafting of such a definition can be identified based on examining the law in jurisdictions in which intestate rights to, or claims against, an unmarried partner's estate are granted specifically to surviving partners (sub-categories 1 and 3).

(1) How many people can constitute an unmarried partnership?

The analysis of the applicable legal provisions in the examined jurisdictions demonstrates in principle that a relationship that classifies as an unmarried partnership may be between two people and two people alone¹⁴⁵. In all the jurisdictions, polygamous relationships are excluded from being recognized as unmarried partnerships. It can be safely assumed that this limitation is inspired by prerequisites for the validity of a marriage, as polygamous marriages in general are also not recognized in Europe. However, other solutions would be possible. Legislators should keep in mind that the definition of an unmarried partnership is being drafted specifically for succession-law purposes, so the scope of application should be adjusted to fit the purpose of introducing intestate entitlements for surviving unmarried partners.

¹⁴³ However, in some jurisdictions, for instance Portugal, unmarried partners can have a declaration issued by the competent local authority confirming that they are in an unmarried partnership; see Port. Law on Measures Art. 2-A.

¹⁴⁴ M. Antokolskaia: *Economic Consequences of Informal Heterosexual Cohabitation from a Comparative Perspective: Respect Parties' Autonomy or Protection of the Weaker Party?* (in:) *Confronting the Frontiers of Family and Succession Law*, A.-L. Verbeke at el. (eds.), Cambridge 2012, pp. 45–46. A similar classification was proposed, for instance, by: S. Kraljić: *Consequences deriving from cohabitation-relations between partners and between partners and children* (in:) *Perspectives for the Unification and Harmonisation of Family Law in Europe*, K. Boele-Woelki (ed.), Cambridge 2003, p. 339; P. Di Giulio, R. Impicciatore and M. Sironi: *The changing pattern of cohabitation: A sequence analysis approach*, Demographic Research 2019, no 40, p. 1225 (based on empirical research); A. Barlow et al.: *Cohabitation, Marriage and the Law: Social Change and Legal Reform in the 21st Century (Contemporary Family Trends)*, Oxford 2005, pp. 65–72. For more information on cohabitation, see, e.g., K. Kiernan: *The Rise of Cohabitation and Childbearing outside Marriage in Western Europe*, International Journal of Law, Policy and the Family 2001, no 15, p. 1.

¹⁴⁵ See, e.g., Catalanian CC art. 234-1; Nor. IA § 2 sentence 3.

Depending on the specific purpose — especially if for the protection of vulnerable unmarried partners — it might be advisable to adopt a definition that does not specify how many people may form an unmarried partnership. The definition could instead aim to legally recognize the status of people who had a relationship of a certain quality and strength with the deceased regardless of how many such people there might be. Following this logic would offer protection to a broader set of persons on the death of their partner.

(2) Must the unmarried partners have been eligible to marry each other at the time of death of the first of them?

The analysis of the law of the considered jurisdictions makes it clear that being unmarried partners is precluded by actual marriage to each other, in which case the survivor inherits as a surviving spouse. However, the law applicable in the examined jurisdictions shows that there are different answers to the question of whether the partners must have been *eligible* to marry each other. The highest threshold amounts to the requirement that unmarried partners were indeed so eligible (for instance, in Croatia and Montenegro) or were eligible to enter a registered partnership together at the time of the death of the first of them (for instance, in Croatia)¹⁴⁶. In this case, only those can inherit who did not marry or register, but who could have. A similar requirement that seems slightly lower would be to make it sufficient that there should be no grounds for declaring an assumed marriage between the partners void at the moment of a deceased's death (such as in Slovenia). Thus, if an assumed marriage between the putative unmarried partners would have been voidable (for example because of one of them had not reached the age of majority), the surviving partner would still be entitled to the intestate inheritance¹⁴⁷. Rather than refer to the requirements for eligibility to marry, another option is to provide an explicit list of grounds that bar recognition of an unmarried partnership (as Catalonia and Ireland do)¹⁴⁸. This solution allows the exclusion of relationships between specific classes of people or under certain circumstances. For an even lower threshold, the legislature can require only that neither of the partners be married (as in Finland)¹⁴⁹. This threshold can be raised if, as for instance in Ireland, it is not sufficient that unmarried partners not have been married at the time of death of one of them, but that, if either of partner had had a prior divorce, that partner must have lived apart from his former spouse for a certain length of time prior to the death of the first unmarried partner¹⁵⁰. But it should nevertheless be considered whether marriage must automatically deprive an unmarried partner of his intestate entitlement. Binding law in some of the discussed

¹⁴⁶ Croatian SA art. 8 para 2 sentence 2; Law on Life Partnership of Same-Sex Persons (*Zakon o životnom partnerstvu osoba istog spola*), Jul. 18, 2014, NN 92/2014, art. 3 para 1; Montenegro SA art. 9.

¹⁴⁷ See the details in K. Zupančič: *Izvenzakonska skupnost v pravu Jugoslavije*, *Pravnik* 1987, no. 5–7, p. 277.

¹⁴⁸ Catalanian CC arts. 234–2; Irish CPCRA 2010 Art. 172 (6).

¹⁴⁹ Fin. ADCLS Section 3.

¹⁵⁰ Irish CPCRA 2010 Art. 172 (6).

jurisdictions allows married unmarried partners to inherit under the following circumstances: If one of the unmarried partners had filed for divorce or annulment and it was granted after the death of one of the unmarried partners (Kosovo)¹⁵¹; if the surviving spouse of the first-deceased unmarried partner did not receive anything from the latter's estate (no intestate share or mandatory family protection) (Austria)¹⁵²; or if the unmarried partner and his spouse were separated at the time of death of one of the unmarried partners (Portugal)¹⁵³.

Also here, the purpose of introducing the entitlement for unmarried partners should be decisive for determining its prerequisites. Thus, if financial provision for the surviving partner on his partner's death is the absolute priority, the introduction of an appropriately low threshold should be considered. In that case, even the presence of a surviving spouse might not obstruct recognition of the surviving partner's intestate entitlement. But recognizing an entitlement for a surviving unmarried partner whose partner died while married to or only separated (not divorced) from another person may in fact lead nevertheless to legitimizing relationships that (*de facto*) look like bigamy or polygamy. If protecting the surviving unmarried partner is not to challenge the fundamental principles of marital law, then individuals who would have been ineligible to marry one another should likewise be ineligible to inherit from each other. A middle-ground solution would be to grant unmarried partners intestate succession rights upon each other's death, even if their hypothetical marriage would have been considered voidable rather than void. This solution takes into account that — unlike in the case of marriage — unmarried partners are not formally apprised of the legal prerequisites for the validity of their union at the time of entering it and so might not be aware that they do not fulfill them. Imposing only the absolutely necessary prerequisites could allow for the recognition of more unmarried partnerships and thus protect a broader group of people.

Eligibility to marry or to enter a register partnership is strongly related to the question of the legal recognition of same-sex relationships. In jurisdictions where same-sex relationships are not legally recognized, intestate rights are conferred exclusively upon different-sex unmarried partners. However, it could be considered whether granting intestate entitlements for unmarried same-sex partners might not be a way of providing them with some rights in jurisdictions where, so far, they have none¹⁵⁴.

An overview of the relevant law raises the question of whether the conditions determining intestate entitlement must continue after the death of the first of the partners; that is, whether a surviving unmarried partner must stay unmarried and not

¹⁵¹ Kos. IA art. 28.1.

¹⁵² R. Welser: § 748 (in: *Der Erbrechtskommentar § 531–824 ABGB*, R. Welser (ed.), Wien 2019, para 4.

¹⁵³ S. Müller-Bromley: *Portugiesisches Zivilrecht, Volume 2: Familienrecht, Erbrecht*, Baden-Baden 2013, p. 63.

¹⁵⁴ So it was done in Spain, see, e.g., M. Martin-Casals and J. Ribot: *The Postmodern Family...*, *op. cit.*, p. 412.

be in an unmarried partnership at the time of receiving any benefits from the estate (Norway¹⁵⁵, but also Portugal¹⁵⁶). Once more, the purpose of introducing intestate entitlements for surviving unmarried partners is important here. The particular solution must be tailored to the aim of the regulation: Is it, for example, to provide financial security (maintenance) to the surviving unmarried partner, to compensate him for voluntary services provided to the deceased, or to reward him for showing familial solidarity? The form of the potential award should be considered as well. For instance, periodic payments or undivided possession of specific assets can be easily discontinued if the surviving partner's circumstances change.

Whether the requirements for an unmarried partner's intestate entitlement should be explicitly listed in the applicable succession law or contained in another piece of legislation is ultimately a matter of legislative technique. Even though the eventual solution ought not to influence the content of the law, regulating all the prerequisites in a single provision or cluster of provisions could increase the accessibility of that law.

(3) How should the relationship between unmarried partners be characterized?

In the absence of a marriage certificate, which constitutes the proof of a marital relationship, an unmarried partnership must be recognized based on the characteristics of the relationship between the partners at the time of the death of one of them. Which characteristics should be considered? The examined jurisdictions demonstrate a spectrum of options. At one end lies the general proposition that the relationship must resemble a marriage (Norway and Catalonia, or for instance)¹⁵⁷. At the opposite end of the spectrum is a more or less detailed enumeration of specific features the relationship must possess; for instance, that unmarried partners are expected to have maintained an intimate and close relationship encompassing physical, spiritual, economic, and sexual dimensions. A visible indicator of such a relationship between unmarried partners is maintenance of a shared household (see, for example, Austria), the absence of which should be justified by a compelling reason¹⁵⁸. The absence of any of these key elements (apart from the sexual; see, for example, Ireland)¹⁵⁹ tends to signify a deterioration of the partnership and may result in the surviving unmarried partner being ineligible for intestate entitlement.

In the event of a dispute, court intervention becomes necessary to determine the existence of an unmarried partnership. While the court's involvement allows the determination to be adjusted to particular circumstances, it also makes it more dif-

¹⁵⁵ J. Asland and P. Hambro: *New Developments...*, *op. cit.*, p. 382.

¹⁵⁶ Port. CC Art. 2019.

¹⁵⁷ Nor. IA § 2 sentence 3; Catalanian CC art. 234-1.

¹⁵⁸ Austrian Civil Code (*Allgemeine Gesetzbuch*) [ABGB] § 748 section 1. But see G. Christandl: § 748 (in:) *Großkommentar zum ABGB — Klang Kommentar: §§ 647–755, Erbrecht*, A. Fenyves, F. Kerschner and A. Vonkilch (eds.) Wien, 3rd ed., 2021, para 14.

¹⁵⁹ Irish CPCRA 2010 Art. 172 (3).

difficult to unequivocally determine the characteristics a relationship must have to be qualified as an unmarried partnership. Moreover, it also means that the surviving unmarried partner typically bears the burden of proof. Therefore, ways of limiting judicial discretion and increasing the law's predictability should be considered. For instance, the circumstances that must be considered in determining whether two people are in an unmarried partnership can be listed in the relevant legislation, as they are in Ireland¹⁶⁰. In specifically defined circumstances, the deceased and the surviving partner could also be presumed to have been living in an unmarried partnership; for instance, it could be that the deceased and the putative unmarried partner are registered at the same address and have a joint bank account and a common child. Introducing such a presumption would simplify the application of succession-law norms by decreasing the need for litigation and would also benefit unmarried partners. The presumption could be made rebuttable by requiring proof that other required elements of an unmarried partnership are absent; but the burden of proof would have to be borne by someone other than the surviving unmarried partner.

(4) What is the minimum duration required for an unmarried partnership to be recognized?

The examined jurisdictions have addressed this question in different ways. At one end of the spectrum is the requirement that the relationship have endured for a specific period of time (for instance, two, three, five, or even ten years). At the opposite end of the spectrum is an approach that links recognition of the partnership to its intensity: the stronger the connection between the partners, the shorter the period of cohabitation necessary for legal recognition¹⁶¹.

An overview of the binding law by jurisdiction indicates that certain factors must be considered as arguments for shortening the required duration; for instance, if the partners have a common child (for example, Ireland and Finland)¹⁶². However, considering Norwegian law, legislators could also consider whether having a common child should not constitute a necessary prerequisite for legal recognition of an unmarried partnership under succession law¹⁶³.

The selected prerequisite must correspond with the desired standing to be accorded to unmarried partnerships under national succession law. If unmarried partners are being provided with the entitlement as a matter of recognizing their equality with married people, it would not appear justified to require the partners to have a child in order for their partnership to be recognized; childbearing may be associated with marriage, but the absence of children does not undermine its legal validity. Accordingly, the same standard should apply to unmarried partnerships. However, if unmarried partnerships should constitute more than just an equivalent

¹⁶⁰ Irish CPCRA 2010 Art. 172 (2).

¹⁶¹ Croatian SA art. 8 para 2 sentence 2; Slovn. SA art. 4a; Montenegro SA art. 9.

¹⁶² Irish CPCRA 2010 Art. 172 (5); Fin. ADCLS Section 3.

¹⁶³ Nor. IA § 12 sentence 1. For details see J. Asland: *The legal position...*, *op. cit.*, pp. 174.

to marriage to be legally recognized, imposing the discussed requirement elevates the criteria for recognition beyond a marriage-like relationship to one that presupposes the existence of a family unit.

In practice, determining the duration of the partnership might be hampered by the difficulty of pinpointing the moment at which the partnership began. There is no ceremony like a wedding or issuance of a marriage certificate that marks the legal introduction of an unmarried partnership. While the beginning of some partnerships could be signified by the initiation of a shared common household, that criteria could fail if accommodations were shared before other characteristics of an unmarried partnership were established. Examination of the range of legislative solutions seems to indicate that the determination of the starting point from which the required duration should be calculated must be determined under individual circumstances on a case-by-case basis.

It seems uncontroversial that the relationship (regardless of the required duration) must have existed until immediately before the first partner's death (as explicitly stated in, for instance, Croatia, Montenegro and the relevant parts of Bosnia and Herzegovina)¹⁶⁴. As there are no proceedings unmarried partners must go through to dissolve their partnership, the dissolution becomes effective on the day the partnership ceases to fulfill the prerequisites for its legal recognition. Thus, a dissolution of the partnership deprives former partners of any intestate entitlement on each other's death.

DEFINING A DECEASED'S DEPENDENT

Alternatively, instead of requiring that intestate entitlement should be provided exclusively for a deceased's unmarried partner, any one of the following could also become eligible for intestate entitlement: a deceased's dependent, a member of the deceased's household, or even a person (emotionally) close to the deceased. However, expanding the group of individuals eligible for intestate succession still necessitates that clear criteria should be established to identify who qualifies. An analysis of the laws applicable in the examined jurisdictions (subcategories 2 and 4) reveals that objective standards are applied solely to determine the deceased's dependents and members of the deceased's household. Other categories of individuals (those closely connected to the deceased) are identified at the discretion of the relevant state authorities. Therefore, the following discussion only considers the prerequisites for identifying the deceased's dependents and members of his household. In many jurisdictions in which members of these classes receive

¹⁶⁴ Croatian SA art. 8 par 2 sentence 2; Montenegro SA art. 9; BiH SA art. 25 (3); Brčko District SA art. 26 para 3.

an intestate entitlement, the requirements are a dependency on the deceased as well as the existence of a permanent relationship between the deceased and the putative dependent.

Granting entitlement to inherit from the deceased in intestacy to a broader group of persons avoids such questions as whether an unmarried partner may have lived with only one partner in a marriage-like relationship; whether the partners in such a relationship must have been legally eligible to marry (and in particular, not already married to someone else); and whether same-sex relationships must be legally recognized. Moreover, a more inclusive determination of who may be entitled can make the law more flexible, in particular by making it amenable to potentially changing family structures. However, a more generalized determination of the group of entitled persons could also potentially extend entitlement beyond the surviving unmarried partner, for instance to children in blended families or to members of families whose form is not currently recognized in the law (such as polygamous marriages). Additionally, a concern could arise that, in the future, this might lead to granting intestate entitlement to persons belonging to emerging family forms, without such inclusion reflecting a conscious legislative intent.

(1) To what extent should a person entitled to inherit have been financially dependent on the deceased?

The scope of the required financial dependency can be structured in various ways. At one end of the spectrum is the requirement that a person may be regarded as a dependent of the deceased only if the support received from the deceased constituted his sole (or at least his main) source of livelihood (Ukraine)¹⁶⁵. At the other end is the requirement that a person under or above certain age (a minor or a senior) be classified as incapable of work and thus dependent on the deceased regardless of the person's actual livelihood, assets, or capacity to work (for instance, Albania)¹⁶⁶. A middle-ground solution (Slovakia and Czechia)¹⁶⁷ holds that financial interdependency between the deceased and the person entitled to inherit from him on intestacy may be established based on the latter's having taken care of their common household. The purpose of the introduction of the intestate entitlement should determine the degree of financial dependency or interdependency required to classify someone as a deceased's dependent.

The existence of a common household between the partners before the death of one of them might be considered to be an indicator of the existence of a dependency or interdependency between them. However, it should be considered whether temporarily residing elsewhere for justified reasons, such as pursuing education or receiving medical treatment, should influence the finding.

¹⁶⁵ Ukr. CC art. 1265 section 2.

¹⁶⁶ Alb. CC art. 371.

¹⁶⁷ Czech CC §§ 1636 and 1637; Slovak. CC arts. 474 and 475.

(2) What is the minimum duration of the relationship between the deceased and his dependent or member of his household?

As with an unmarried partnership, so also with dependency on the deceased: The relationship must have endured for a specified period of time. Accordingly, legislators must determine how long the relationship must last, what circumstances may shorten or extend that period, whether duration must be linked to the fulfillment of additional prerequisites, and whether the relationship must endure until immediately before the deceased's death.

(2) THE APPLICABLE ENTITLEMENT

What should an unmarried partner receive from his deceased partner's estate? An examination of the legal provisions already applicable in Europe demonstrates four different substantial forms of intestate entitlement that an unmarried partner may be granted: intestate rights, undivided possession of specific assets, or a maintenance claim or a claim against an estate. In addition, a surviving unmarried partner may have a right to a mandatory family protection.

In the jurisdictions in sub-categories 1 and 2, surviving unmarried partners are granted intestate rights to their deceased partner's estates. To provide *intestate rights* is to enact statutes that determine the share of the deceased's estate that a particular person inherits on intestacy. The application of this type of intestate entitlement fosters legal certainty and predictability at the expense of rigidity in light of particular circumstances. It also gives a permanent result that cannot be changed subsequent to the division of the estate regardless of any subsequent changes in the situation or status of the surviving unmarried partner. Granting a surviving unmarried partner an intestate share of his deceased's partner's estate requires determining whether the size of the portion should depend on the type and number of other heirs in the particular order of succession or whether it should be a certain constant percentage of the estate. Moreover, extending intestate rights to unmarried partners requires careful rebalancing of the intestate rights of all the individuals who stand to inherit in intestacy.

Under Norwegian law, an unmarried partner can receive *undivided possession of specific assets* belonging to his deceased's partner's estate as an alternative to inheriting a certain amount of money¹⁶⁸. Undivided possession of specific assets grants a surviving unmarried partner legal permission to occupy and utilize part of a deceased person's estate while ownership of the same portion passes to the deceased's heirs. Granting undivided possession of specific assets to the deceased's surviving unmarried partner requires legislators to resolve a number of issues:

¹⁶⁸ Nor. IA § 32.

(1) Should the undivided possession be subject to the permission of one or more other heirs? Under Norwegian law, the surviving unmarried partner can only occupy specific estate assets with the consent of the deceased's descendants from relationships other than the one that ended with the deceased's death (if such descendants survived the deceased). Accordingly, undivided possession can be established only if such an arrangement is approved by this group of heirs. Conversely, without their consent, the right cannot be exercised. (2) What portion of or items in the estate should be subject to undivided possession? The subject portion of the estate can be determined by indicating the share of the estate burdened with it or, as in Norway, by granting undivided possession of certain items (e.g., a shared residence or a vehicle the couple both drove). However, under the Norwegian model, the intestate entitlement can only be implemented if these items are actually part of the estate. This allows unmarried partners to actively influence each other's rights on intestacy by disposing of such items during their lifetime. Moreover, if the list of items is extensive or the estate is modest in size, the entirety of the assets might fall under undivided possession. This could render the heirs' inheritance virtually meaningless for as long as the items remain in the possession of the unmarried partner. Which leads to the next question: (3) For how long should the surviving unmarried partner retain undivided possession of the estate's assets? Undivided possession may be legislatively conferred for a fixed period or for the lifetime of the beneficiary. But it can also be designed to be affected by changing circumstances; for example, use of real estate may be terminated if the beneficiary moves away from the property for health- or employment-related reasons. Moreover (as in Norway), the beneficiary might be deprived of his right to possess the asset under certain circumstances, e.g., if he gets married or enters another partnership. Moreover, additional questions regarding the conditions under which items may be given in undivided possession may include: Should the return of the items to the heirs be based on their value as determined at the time of the deceased's death or on their depreciated or appreciated value when they are released to the heir? Who should be responsible for maintaining the items: the surviving unmarried partner, the estate, or the heirs?

In jurisdictions belonging to the sub-category 3, a *court award* can be made from the deceased partner's estate. A court order may encompass various provisions including periodic payments, a lump-sum payment, the transfer of property, the granting of usage rights in specific assets, or the alteration of a previously agreed arrangement between the deceased and their surviving unmarried partner during their relationship. Providing broad discretion to the court in ordering the type and size of the award allows it to be tailored to the circumstances of both the surviving partner as well as the deceased's heirs. However, this legal framework also leads to significant difficulties. Firstly, letting a court determine who should get what on a case-by-case basis results in judicial involvement each time a surviving partner asserts a claim (unless the matter is resolved outside court). One way to limit the number

of claims, for instance, is to increase the prerequisites for intestate entitlement beyond what other countries that provide surviving unmarried partners with an intestate right require. Secondly, even applying the same level of prerequisites as other countries that provide such rights would limit unmarried partners' access to intestate entitlements, because every claim would have to be made to a court and no entitlement would be granted automatically. Thirdly, the predictability of court orders is limited compared to that of applied statutory intestate rights. A way to limit the court's discretion and increase predictability of the award process could be to introduce precise prerequisites regarding the granting and the size of awards provided. Examples of such prerequisites can be found in almost all the jurisdictions that provide surviving unmarried partners with claims for court-ordered awards. Moreover, the present examples demonstrate that the size of the award to the surviving unmarried partner can be limited, for instance, so as to not exceed the award the same person would have received as the surviving spouse or civil partner (Ireland and Scotland)¹⁶⁹, so it does not diminish the legal entitlement of a surviving spouse (Ireland)¹⁷⁰, or so it does not affect the rights of compulsory heirs unless there are compelling reasons why it should (Finland)¹⁷¹. However, as already mentioned, providing a surviving unmarried partner with a claim rather than a right allows the award to be tailored to the individual circumstances (for instance, to the needs of the unmarried partner or the heirs).

Similar issues must be analyzed if a *state award* is to be the only intestate entitlement a surviving unmarried partner may apply for. In the jurisdictions that grant such awards, the discretion of the state authorities seems unlimited, in particular regarding who should receive an award from the estate, how much and under what conditions. Even considering the very low number of such claims, limitations imposed on the discretion of the state authorities would increase the predictability of the ultimate decision.

An additional concern is whether a surviving unmarried partner should be entitled to a mandatory family protection from the deceased partner's estate. An overview of the rights and claims available to unmarried partners in Europe shows that such provision is afforded to a surviving unmarried partner in some jurisdictions, both in ones that grant unmarried partners intestate rights as well as in some that provide them with a claim on intestacy. These are, for instance, Catalonia, Croatia, Slovenia (intestacy rights of unmarried partners), Albania and the Russian Federation (intestate rights of a deceased's dependents), and England and Wales as well as Northern Ireland (claims for court-awarded provisions). The mandatory family protection constitutes either a share of the deceased's estate or a court-awarded provision. Depending on the legal form of the mandatory family protection (right

¹⁶⁹ Irish CPCRA 2010 Art. 194 (7); Scot. FLA Art 29 (4).

¹⁷⁰ Irish CPCRA 2010 Art. 194 (10).

¹⁷¹ Fin. CI Chapter 8 Section 2.

versus claim), the issues to be considered in a particular jurisdiction, either from introducing intestate rights or from contemplating a claim on intestacy, apply. Once again, the reason for introducing intestate entitlements for unmarried partners and the extent of the protections should be considered in order to determine whether unmarried partners should also be placed within the scope of mandatory family protection. However, a person entitled to mandatory family protection cannot be deprived of it by a deceased unless specific, narrowly defined reasons exist; so the protections to be provided to unmarried partners this way must be balanced against the unique protection of marriage and family, but also in light of the unmarried partners' private autonomy and the various circumstances in which an unmarried partnership might arise and persist¹⁷². In particular, maintaining the superior position of the surviving spouse in succession law could maintain the incentive for entering marriage. Moreover, preventing people from excepting their unmarried partners from mandatory family protection would significantly limit the respective partners' freedom. Imposing mandatory family protection would prevent unmarried partners from accommodating their personal circumstances (e.g., a wish that the only beneficiaries should be children from an earlier relationship). If no mandatory family protection was available to a surviving unmarried partner but intestate entitlement was indeed available to him, then absent contrary testamentary dispositions, such an entitlement would merely create a default rule that applies when the deceased took no action to the contrary.

(3) THE COMPARABILITY OF THE ENTITLEMENT OF UNMARRIED PARTNERS WITH THE ENTITLEMENT OF OTHER PERSONS

The type and size of intestate entitlement granted to an unmarried partner must be determined in relation to the entitlements afforded to other individuals in succession law. In other words, it is essential to decide how the unmarried partner should be treated within the broader framework. Should a surviving unmarried partner assume the legal position of a surviving spouse, or should his entitlement be more limited, perhaps to align with that of a particular relative of the deceased? Should his entitlement mirror that of an existing category of heirs, or should a distinct entitlement category be crafted specifically for him and positioned somewhere among the entitlements granted to other family members?

The laws of the examined jurisdictions demonstrate numerous possibilities. A surviving partner can have the same succession-law position *as the surviving spouse* of the deceased (most post-Yugoslavian countries as well as Catalonia)¹⁷³.

¹⁷² See D. Miler: *Nichteheliche Lebenspartner...*, *op. cit.*, pp. 101–102.

¹⁷³ BiH SA art. 9; Brčko District SA art. 9; Catalanian CC art. 234-14; Croatian SA art. 8 para 2 sentence 1; Kos. IA art. 28.1.; Montenegro SA art. 9; Sloven. SA art. 4a.

The surviving partner can be treated as *a selected member of the deceased's family* — as a sibling, parent or more distant relative (Albania, Czechia and Slovakia)¹⁷⁴ or just as the deceased's aunts or uncles (Ukraine)¹⁷⁵ — by inheriting in the same order as the selected person(s). Alternatively, the surviving unmarried partner can be treated the same way as the closest related relative of a deceased that is called to inherit (regardless of who that is) by providing the surviving unmarried partner with the same-sized share as this heir receives (the Russian Federation and Belarus)¹⁷⁶. Finally, a surviving unmarried partner can be designated as *one of the final heirs* (Austria)¹⁷⁷. However, it could be argued that if a surviving unmarried partner's rights are not comparable with the intestate entitlement of a surviving spouse nor with the entitlement of other members of a deceased's family, then the intestate rights provided to the surviving partner constitute a *special regime*. Such a regime could amount to providing a surviving unmarried partner with the right to inherit in every order of succession (the Russian Federation and Belarus) or in an order in which no relative of the deceased inherits, situated somewhere between the orders to which others of the deceased's relatives belong or behind the last order of relatives, respectively (Austria and Ukraine). The special regime can also amount to introducing a new succession-law regime tailored to the situation of surviving partners who do not live in a marital property regime (Norway)¹⁷⁸ or even introducing court-awarded provision for surviving unmarried partners in spite of a civil-law legal framework in force in a particular country (Finland).

In none of the examined jurisdictions does a surviving unmarried partner occupy a position equal to a descendant of the deceased. But legislators may nevertheless consider providing an unmarried partner with intestate rights equal to those of a descendant as well.

(4) THE REDISTRIBUTION OF THE INTESTACY ESTATE

Granting intestate entitlement to unmarried partners requires limiting rights and claims of other people currently entitled to the deceased's estate. This raises a crucial question: Whose rights should be limited?

Firstly, legislators must decide whether the surviving spouse or registered partner's rights or claims can be limited. Concurrent legal recognition of the deceased's unmarried partner as well as his spouse or registered partner is possible if the law does not determine that eligibility to marry is a prerequisite for the entitle-

¹⁷⁴ Alb. CC arts. 361–363; Czech CC §§ 1636 and 1637; Slov. CC arts. 474 and 475.

¹⁷⁵ Ukr. CC art. 1264.

¹⁷⁶ Belr. CC art. 1063 point 2; Russ. CC art. 1148 points 2 and 3.

¹⁷⁷ ABGB § 748.

¹⁷⁸ Nor. IA § 32.

ment of unmarried partners. In practice, it is not difficult to imagine situations in which a person leaves his spouse to begin a romantic relationship with a third person and stays with that person for a long time until his death. Thus, in Kosovo and Austria (both jurisdictions providing intestate rights), unmarried partners can under certain conditions inherit from their partners who were married to another person. In most jurisdictions that grant intestate rights to dependents of the deceased (apart from Ukraine), the legislator has explicitly provided for the situation in which a person is survived by both a spouse and a dependent, thus implicitly recognizing that such a situation can occur. However, an unmarried partner can inherit (at the most) the same-sized portion of the estate as the deceased's spouse. In contrast, in Ireland, the applicable statute explicitly protects the succession-law rights of the surviving spouse by prohibiting court-awards for an unmarried partner that interfere with the surviving spouse's legal entitlements.

Secondly, the introduction of intestate entitlement for a deceased's unmarried partner may affect the intestate rights of the deceased's descendants. That can be a concern specifically if the unmarried partners have children from an earlier relationship. In such a situation, providing unmarried partners with intestate rights in the first order of succession will decrease the share to be assigned to the deceased's children, a likely scenario if the succession law is to treat a surviving unmarried partner like a surviving spouse (Catalonia, Croatia, Kosovo, Montenegro, Slovenia, and parts of Bosnia and Herzegovina among others)¹⁷⁹ or if the survivor is to inherit as a descendant together with other heirs (Belarus and the Russian Federation)¹⁸⁰. Mechanisms are available to protect the rights of the deceased's descendants. For example, an entitlement that affects the intestate rights of the deceased's children could be provided subject to their permission. This would resemble the rule in Norway, where two types of rights are granted to a surviving unmarried partner; transitioning from less intrusive intestate rights (entitlement to a fixed monetary sum) to more substantial rights (undivided possession of specific items from the deceased's estate) requires the consent of the deceased's children from relationships other than the one ended by the deceased's death¹⁸¹. This option secures the interests of the deceased's children. If instead a surviving unmarried partner is to be entitled to file for a court-awarded provision from the deceased's estate, an award in favor of the surviving unmarried partner could likewise decrease the share the descendants stand to inherit. Here too, a mechanism can be introduced to protect the rights of descendants, such as in Finland, where the court cannot issue an order that curtails the rights of the compulsory heirs (including the deceased's descendants) without a compelling reason¹⁸².

¹⁷⁹ BiH SA art. 9; Brčko District SA art. 9; Catalanian CC art. 234-14; Croatian SA art. 8 para 2 sentence 1; Kos. IA art. 28.1.; Montenegro SA art. 9; Slovn. SA art. 4a.

¹⁸⁰ Belr. CC art. 1063 point 2; Russ. CC art. 1148 points 2 and 3.

¹⁸¹ Nor. IA § 32.

¹⁸² Fin. CI Chapter 8 Section 2.

Thirdly, adoption of any intestate entitlement for a deceased's surviving unmarried partner is likely to limit the intestate rights of the deceased's more distant relatives. That can take place if a deceased's unmarried partner inherits in an order that precedes the order in which the more distant relatives inherit or if they inherit together with a surviving unmarried partner and their respective share in the estate is reduced. The question for legislators is whether more distant relatives' rights should be limited to accommodate the rights of a surviving unmarried partner and, if so, then which relatives should be affected. Practically, introducing intestate rights for surviving unmarried partners that would equal those of surviving spouses would diminish or totally defeat the rights of more distant relatives. Also, if a surviving partner inherits together with the deceased's descendants, or, alternatively, with his parents or their descendants, the deceased's more distant relatives likewise are typically excluded altogether. Only if the surviving partner is to inherit in addition to the other statutory heirs (the Russian Federation and Belarus) will his entitlement not influence the order of heirs; the deceased's more distant relatives would thus also inherit if no closer relatives turn up, but the unmarried partner's inheritance would reduce the size of their share.

To completely preserve the rights of the deceased's other heirs unchanged, the surviving unmarried partner would have to belong to the last order of heirs (in practice, Austria)¹⁸³. In that case, an unmarried partner would inherit only if none of the deceased's relatives who classify as intestate heirs would. Here, the deceased's relatives' rights are unaffected by the introduction of intestate rights for a deceased's surviving unmarried partner. However, the intestate rights of a surviving unmarried partner would in that case be merely symbolic.

Providing a surviving unmarried partner with a claim against his deceased partner's estate requires determining whether this claim should apply only in intestacy or also where there are valid testamentary dispositions. If awarding an unmarried partner a provision from a deceased's estate were possible even where the estate is disposed of under a valid testamentary disposition, it would also affect the rights of the testamentary beneficiaries. Thus, legislators must consider whether the succession-law rights of testamentary heirs should be diminished in order to provide part of the deceased's estate to a surviving unmarried partner. This consideration is relevant also if an unmarried partner were to be placed within the scope of mandatory family protection. Reserving a portion of an estate for a person's unmarried partner, not only in intestacy but also under a valid testamentary disposition, would restrict also the testator's (deceased unmarried partner's) freedom of disposition.

¹⁸³ ABGB § 748.

CONCLUSIONS

The overview of rights and claims available to unmarried partners in Europe clearly shows that there is no one universal solution that applies in all the European jurisdictions that provide such an intestate entitlement, such that other jurisdictions could simply adopt it. This study has distinguished four different sub-categories of intestate entitlement based solely on the prerequisites for their applicability (intestate rights of unmarried partners, intestate rights of a deceased's dependents, claims for court-awarded provisions and claims for state-awarded provisions). The analysis has shown that the criteria for entitlement of the deceased's unmarried partners in intestacy and for the size of the respective share of the estate vary across the four sub-categories. If further prerequisites were added, for instance, the practical significance of the applicable entitlement or availability of mandatory family protection for unmarried partners in addition to intestate entitlement, even more sub-categories could be developed. This diversity cannot be explained based on any factor and is visible at multiple levels: The solutions adopted in jurisdictions within the same legal family and even among countries whose succession-law regulations originated from the same source often diverge significantly from one another.

Given the diversity of regulations effecting intestate entitlement of unmarried partners across Europe, rather than propose a uniform regulatory model, it seems more appropriate to study the differences within the context of the legal frameworks in which each regulation was adopted. By recognizing the features, functions, and consequences of these varied approaches, other jurisdictions can more deliberately craft legislation that aligns with their own legal and social environments. Drafting new regulation in particular requires that legislators consider and make choices about four most important elements: (1) the definition of unmarried partners; (2) the applicable entitlement (right or claim); (3) how the unmarried partner's entitlement will compare with that of other persons (for instance, a surviving spouse); (4) the redistribution of the intestacy estate, in particular as to how particular other heirs are affected. Addressing these elements requires examining a number of more specific issues. Developing a coherent regulation requires not only an individual assessment of each element but also careful consideration of how the elements interact. Any modification of succession-law rules to facilitate the rights or claims of unmarried partners must be preceded by thorough consideration of the circumstances of those who will be newly entitled, those whose estates will be affected, and those — other heirs and claimants — whom the rules will also affect. Decisions about the entitlement to be introduced will have practical significance in terms of the frequency of application of the rules and the size of the intestate entitlement unmarried partners are to receive relative to other members of a deceased's family. The legislator's decisions will thus affect the entire succession-law system. Introducing intestate entitlements is a policy choice. Their extent will depend on the degree of

legal recognition the legislature is willing to afford to the surviving unmarried partner, and the particular solutions must reflect the arguments that compelled the introduction of intestate entitlements for unmarried partners in the first place.

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Słowa kluczowe: osoby pozostające w związkach nieformalnych; konkubencji; de facto małżeństwa; prawo spadkowe; dziedziczenie beztestamentowe; dziedziczenie ustawowe; Europa; prawo do dziedziczenia; roszczenie o spadek.

DOROTA MILER

THE (LACK OF) REGULATION OF INTESTATE SUCCESSION FOR UNMARRIED PARTNERS IN EUROPE

S u m m a r y

The increasing numbers of unmarried partnerships, the introduction of legislation affecting unmarried partners' legal position, and the growing inclusiveness of succession law lead to a question: Should unmarried partners also be among each other's intestate heirs? The majority of European countries do not provide for unmarried partners to inherit from one another in intestacy. Only some jurisdictions grant rights or claims to unmarried partners in intestacy; from the European perspective, such provisions are both exceptional as well as innovative. They are also largely unexplored in international legal literature.

Thus, the first aim of this paper is to collect and analyze the relevant provisions from across Europe. Accordingly, the discussion begins with a systematic overview of the rights and claims currently available to unmarried partners in Europe in intestacy (Part I). This part of the publication comprises four sections: The first two provide an overview of the different types of intestate rights unmarried partners can exercise; the third and fourth survey the

claims they can pursue. Part I concludes by stressing the profound diversity of the various legal solutions across Europe.

The second aim of this paper is to support efforts to draft legislation to grant intestate rights or claims to unmarried partners to remedy the current situation in which unmarried partners do not inherit from each other in most European jurisdictions. Based on the overview provided in Part I, Part II therefore examines the policy questions (and challenges) that legislators must consider and address when regulating entitlements for unmarried partners. It emphasizes that there is no universal solution that could be implemented in every country; the introduction of rights or claims for unmarried partners must be preceded by consideration of the unique legal and socio-cultural framework in a given jurisdiction and must be harmonized with other succession-law rights and claims available there.

Key words: unmarried partners; unmarried partnership; de facto marriages; marriage-like relationships; succession law, intestate law; Europe; intestate rights; claims on intestacy.