Access to Justice in Eastern Europe
ISSN 2663-0575 (Print)
ISSN 2663-0583 (Online)
Journal homepage http://ajee-journal.com

Research Article

INHERITANCE AND ONE-TIME FINANCIAL ASSISTANCE FOLLOWING THE DEATH OF A SERVICEMEMBER: LEGAL STATUS ISSUES OF DE FACTO SPOUSES IN UKRAINE

Bozhena Oliyarnyk

ABSTRACT

Background: *The military aggression of the russian federation[1] against Ukraine has led to a rise in inheritance disputes involving de facto spouses of deceased servicemen. The increasing prevalence of such partnerships in Ukrainian society, coupled with the lack of proper legislative regulation, creates legal uncertainty, compelling individuals to seek judicial recognition of the status and right to inherit. Judicial practice shows inconsistency in resolving such cases due to the absence of uniform criteria for assessing evidence and procedural mechanisms. Within this context, addressing the issue of one-time financial assistance to de facto spouses of deceased servicemen becomes significant. Given Ukraine's prolonged military involvement, comparative analysis with the legal frameworks of the United States and South Korea offers valuable insights to assessing Ukraine's domestic model. Thus, the premises of this study are shaped by wartime realities, the legal imperfections of existing inheritance law, and the urgent need to adapt Ukrainian legislation to emerging challenges.*

Methods: *The study employs various methods, including analysis and synthesis for studying legal norms, adjudications, and scientific works, as well as summarising the obtained results. Inductive and deductive reasoning support the development of general conclusions based on judicial practice. Abstraction is used to refine and generalise key concepts and legal categories related to inheritance law. The formal-legal method is applied to analyse norms of civil and family law of Ukraine, while the comparative-legal method facilitates the review of foreign experiences in common-law marriage inheritance issues (particularly focusing on the USA and South Korea. The historical-legal method provides insight into the evolution of Ukrainian inheritance legislation, and the teleological (purposive) method to analyse the objectives underlying legal norms and judicial precedents in this area.*

1 In this article the words "Russian Federation", "Russian", etc. are written in lowercase under the author's decision and should not be considered as a spelling error.

Results and conclusions: *The research identified the main issues regarding inheritance disputes involving the de facto spouses of deceased servicemen. Judicial practice demonstrates a standardised approach to the assessment of evidence, contributing to the uniform application of the law. An analysis of current legislation and case law showed that the main challenge remains the fact of common-law cohabitation, which often requires substantial evidentiary support. International experience confirms that Ukraine's model of financial assistance in the event of a servicemember's death aligns with global standards. The findings lead to the conclusion that domestic legislation needs to be amended.*

1 INTRODUCTION

"Say not you know another entirely till you have divided an inheritance with him"—Johann Kaspar Lavater.[1]

Succession is a fascinating field—essentially the story of how the richness and diversity of human life should be manifested in the devolution of property upon death. Succession law undoubtedly arouses strong emotions and is first encountered by many people at a very distressing time.[2]

In light of the aggressive and cynical war waged by the russian federation against Ukraine, the issue of inheritance has become acutely significant. With the rising number of common-law marriages, there is an increasing problem of legal uncertainty regarding such relationships in the context of inheritance disputes. The war not only claims lives but also compels a reassessment of the legal tools and mechanisms used to balance the interests of the deceased's family with the rights of de facto partners.

In 2023, trial courts adjudicated 37,455 cases related to inheritance disputes, with 8,676 cases concerning testamentary succession and 20,261 cases involving intestate succession.[3] The issue of inheritance rights for de facto spouses, and subsequent disputes following the death of a combatant, is not a sign of legal nihilism or pathology. Rather, it represents a necessary legal response to the challenges posed by the war. The judiciary, as the guarantor of justice, faces the critical task of ensuring the adequacy of the rights and interests of such vulnerable groups, including domestic partners, in these challenging times.

This issue is particularly pressing when legislation fails to fully account for current social realities and remains unadapted to contemporary circumstances. This raises the question:

1 Susan Ratcliffe (ed), *Oxford Essential Quotations* (4th edn, OUP 2016) 156.

2 Brian Sloan, *Borkowski's Law of Succession* (4 th edn, OUP 2020).

3 'Report of Trial Courts on the Consideration of Cases in the Order of Civil Judicial Proceedings in 2023 (Form no 1-c)' (*Ukrainian Judiciary*, 31 January 2024) <https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2023> accessed 7 October 2024.

can the state, through its judicial authority, effectively address legal vacuums and ensure the proper protection of residents' rights and interests under wartime conditions?

This article seeks to analyse the procedural peculiarities of inheritance cases involving de facto spouses in the event of a servicemember's death. It examines the legal status of domestic partnership in the context of inheritance and identifies the challenges associated with proving the existence of a family-like relationship between a man and a woman without a formal marriage license. Moreover, the article aims to shed light on foreign practices concerning the allocation of benefits in the event of a servicemember's decease.

2 RESEARCH METHODOLOGY

The methodology employed in this research integrates multiple approaches to comprehensively analyse inheritance disputes involving common-law partners in Ukraine. Initially, a comprehensive literature review focused on the legal regulation and judicial practice in inheritance disputes, with particular emphasis on Ukrainian legal norms and relevant international models. The descriptive-analytical method was applied to clarify concepts, legal status, and procedural aspects of inheritance by de facto spouses, which provided a detailed understanding of contemporary legislative and judicial practices.

Secondly, the case analysis method was utilised to examine specific judicial rulings of Ukrainian courts, with the aim of assessing judicial interpretation and application of inheritance law, particularly in cases involving the common-law partners of deceased servicemen. This analysis offered practical insights into the challenges associated with the application of current legislation.

Thirdly, historical and comparative methods were employed to trace the development of the model for awarding one-time financial assistance in the event of a servicemember's death in Ukraine, identifying key legal reforms and precedents. A comparative legal analysis was conducted to compare Ukraine's approach to the issue of financial assistance payments to common-law partners with corresponding legal models in other countries, particularly the United States and South Korea. This comparison allowed the identification of similar features and the conclusion that Ukrainian legislation in the area aligns with international standards.

This multifaceted approach provides a comprehensive understanding of the current legal environment and prospects for its improvement.

3 INHERITANCE IN UKRAINE

Inheritance law is an institution of private law.[4] The foundation of inheritance relations is established by the norms of the Civil Code of Ukraine,[5] specifically in Book 6. According to Article 1216 of the Civil Code of Ukraine, inheritance is defined as the transfer of rights and obligations (inheritance) from a deceased individual (the testator) to other persons (heirs).

Modern inheritance law encompasses a system of interrelated institutions, united around the institution of general provisions on inheritance, which is structurally located in Chapter 84 of the Civil Code of Ukraine. These include the institution of inheritance by law, inheritance by will, the exercise of the right to inheritance, among others.[6]

During the Soviet era, the legal understanding of inheritance was coloured by the ideology of that time, which regarded inheritance by will as unjust—particularly when it enriched an unrelated person. From this standpoint, granting a testator the right to gratuitously transfer property to a single individual was denied, as it was seen as promoting unearned enrichment and social inequality.[7]

Despite the existence of legal provisions supporting testamentary freedom, the practice of making wills remains limited in Ukraine, as indicated by relatively low statistical data. For instance, in 2021, notaries registered 158,969 wills,[8] whereas the number of deceased individuals was 714,263—indicating that only approximately one in four individuals sought notarial services for the execution of a will.[9] In 2022, the number of registered wills decreased by almost half. However, in 2023, this figure increased again, with 122,329 wills registered, even as the overall mortality rate in Ukrainian-controlled territories approached almost half a million.[10]

Legal doctrine recognises that conditions can serve socially beneficial functions, especially when the conditions imposed aim to cease unlawful or immoral behaviour known in advance by the beneficiary.[11]

The issue of the precedence of inheritance by will has been extensively examined by scientists, including the preferential inheritance rights of individuals named in the will and

4 Svitlana Yaroslavivna Fursa (ed), *Inheritance law: Notary, Advocacy, Court* (KNT 2007).

5 Civil Code of Ukraine no 435-IV of 16 September 2003 (amended 3 September 2024) <https://zakon.rada.gov.ua/laws/show/435-14#Text> accessed 4 October 2024.

6 Yevhen Olehovych Kharytonov and Olena Ivanivna Kharytonova, *Updating (Codification and Recodification) of the Civil Legislation of Ukraine: Experience, Problems and Prospects* (Feniks 2020).

7 Oleksandr Yevhenovych Kukhariev, *Theoretical and Practical Problems of Dispositiveness in Inheritance Law* (Alerta 2019).

8 '15 % Increase in Notarial Inheritance Certificates this Year' (*Opendatabot*, 19 August 2024) <https://opendatabot.ua/en/analytics/wills-inheritances-2024> accessed 4 October 2024.

9 'Mortality in Ukraine' (*Minfin*, 21 March 2022) <https://index.minfin.com.ua/ua/reference/people/deaths/2021> accessed 4 October 2024.

10 'Notaries Registered over a Million Inheritance Rights in 2023' (*Opendatabot*, 19 January 2023) <https://opendatabot.ua/en/analytics/notary-forms-2023> accessed 4 October 2024.

11 Zoryslava Vasylivna Romovska, *Ukrainian Civil Law. Inheritance Law* (Alerta 2009).

the priority of the will as the testator's final expression of intent. Judicial practice has developed the following approaches to statutory inheritance: the first-order heir has preferential rights to the inheritance, while the fourth-order heir is given priority over the fifth-order heir in receiving the estate.[12]

The acceptance of inheritance is regarded as a legal act, namely a unilateral legal transaction performed by the heir, through which they express their consent or refusal to be recognised as the testator's successor.[13] Consequently, partial acceptance of patrimony is not permitted.

When the law regulates property inheritance after death, notions of individual autonomy and familial obligation readily come into conflict.[14] In inheritance disputes, claimants may be any individuals with a legitimate interest in the succession matter. The primary grounds for initiating legal proceedings typically involve the violation or contestation of such individuals' rights and interests. In most cases, such individuals are heirs by will and/or by law.

In cases of inheritance by will, heirs can be any physical or legal persons named in the will, whereas inheritance by law, as stipulated in Chapter 86 of the Civil Code of Ukraine, clearly defines the group of subjects of inheritance according to each of the five classes of heirs. From this, the following conclusions can be drawn: (1) heirs by law can only be natural persons, and (2) inheritance occurs in order of precedence. In the absence of or removal of heirs from a prior line, the order of inheritance may be altered based on an agreement or a court decision.

A complex and ambiguous category of claimants in inheritance disputes is the heirs of the fourth class. Article 1264 of the Civil Code of Ukraine includes persons who have lived with the testator as a family for at least five years prior to the opening of the inheritance in the fourth class of heirs. This class also encompasses cohabitation (so-called domestic partnership), where a man and woman live together in a de facto marital relationship without a marriage license.

Notwithstanding, the concept of fourth-class heirs should not be limited solely to this definition. According to the Resolution of the Plenary Supreme Court of Ukraine from 30 May 2008, heirs of the fourth class include not only women (or men) who lived with the testator as a family without marriage but also other individuals who cohabited with the testator, shared a common household, and had mutual rights and obligations. These may include stepparents, stepchildren, foster children, or other persons who assumed familial roles—such as taking a child into their care as a family member.[15]

12 Inna Valentynivna Spasybo-Fatieieva (ed), *Inheritance Law: Through the Prism of Judicial Practice* (ECUS 2022).

13 Iryna Holubenko, O Hrachova and M Maslova, 'Features of the Procedure for Receiving an Inheritance under the Conditions of Marital State' (2023) 2 Juridical Scientific and Electronic Journal 125, doi:10.32782/2524-0374/2023-2/26.

14 Suzanne Lenon and Daniel Monk (eds), *Inheritance Matters: Kinship, Property, Law* (Hart Publishing 2023).

15 Resolution of the Plenum of the Supreme Court of Ukraine no 7 of 30 May 2008 'On Judicial Practice in Inheritance Cases' (2008) 6 Bulletin of the Supreme Court of Ukraine 17.

4 LEGAL ISSUES IN INHERITANCE DISPUTES OF DE FACTO SPOUSES

The legal institution of cohabitation between a man and a woman without marriage can be traced back to the Roman Empire. The concept of *concubinage* (Latin *concubinatus* – cohabitation, from *concubo* – to lie together) in Ancient Rome was interpreted as a legalised (permitted) extramarital union, namely the prolonged cohabitation of a man and a woman who were free from marital obligations, based solely on a bare agreement (*nudus consensus*). This institution emerged during the Republican period as a response to the prohibition under Roman law of legal marriages between different social categories within the state. However, concubinage lacked key characteristics of the traditional Roman marriage, such as "complete lifelong companionship between a man and a woman" (*affection maritalis*) and "marks of respect for the marital partner" (*honor martimonii*). Within such unions, no proprietary or personal non-proprietary rights arose between the man and the woman, including the right to inheritance. As a result, concubinage was considered an inferior form of marriage (*inaequale coniugium*).[16]

Nowadays, individuals in common-law marriage may encounter significant legal challenges when crossing jurisdictions, particularly where their relationships are not formally recognised. Upon entering a foreign legal system that does not necessarily recognise their status, they may face difficulties in asserting their rights and obligations—both between partners and in relation to third parties.

Recognising these challenges, the Hague Conference on Private International Law added the topic to its agenda in 1987, initiating the study of private international law issues related to "unmarried couples" (later referred to more broadly as "cohabitation outside marriage, including registered partnerships").[17] While initial research focused on applicable law, by 1995, the scope expanded to include "jurisdiction, applicable law, and recognition and enforcement of judgments in respect to unmarried couples."[18]

It should be emphasised that the international law term "cohabitation outside marriage" encompasses "unmarried cohabitation" and "registered partnerships". The former refers to *concubinage* or *de facto union* without a union registered with an authority—formed through the parties' actual cohabitation.[19]

16 Olena Nadiienko and Olha Voronova, 'Inheritance Right of a Man and a Woman, Living as a Family Without Marriage' (2021) 8 Juridical Scientific and Electronic Journal 90, doi:10.32782/2524-0374/2021-8/19.

17 'Cohabitation Outside Marriage' (*HCCH - Hague Conference on Private International Law*, 2016) <https://www.hcch.net/en/publications-and-studies/details4/?pid=8997> accessed 5 October 2024.

18 ibid, Private International Law Aspects of Cohabitation Outside Marriage and Registered Partnership (Prel Doc no 9 of May 2000).

19 ibid, Questionnaire on Private International Law Issues Relating to cohabitation Outside Marriage (Including Registered Partnerships).

Ukrainian legislation does not currently define the terms "concubinage" or "de facto spouses," nor does it provide a comprehensive legal framework to regulate such relationships. Nevertheless, Article 74 of the Family Code of Ukraine establishes the legal regime of property relations between a man and a woman who live as a family but are not married. Thus, the provisions on joint property ownership apply to the joint property of de facto spouses, thereby creating legal consequences for common-law partners.

However, the development of Ukrainian legal doctrine in this area should not aim to equate the rights and obligations of de facto spouses with those of married couples. Instead, it should afford such partners rights and obligations as individuals living together as a family unit. While these rights may be substantively identical in content, the legal grounds for their establishment remain fundamentally distinct.[20] By framing cohabitation within the context of family unity instead of official marital status, the law elucidates the conceptual distinction between registered marriage and de facto unions, thereby excluding the possibility of legal uncertainty.

In this case, the legislator seeks to preserve a delicate balance of interests between the rights of a lawful spouse and those of a partner in a de facto marriage. A balance of interests refers to a legal relationship characterised by the proportionality of the parties' rights and obligations, thereby ensuring a state of equilibrium between the subjects. However, this concept should not be understood as an absolute equality, identical rights, or a mandatory equivalence of interests. In certain cases, it is both reasonable and necessary to prioritise one interest over another.[21]

Notably, Ukrainian legal regulation does not equate common-law partners with first-order heirs. As affirmed by the Supreme Court, living together as a family without formal marriage registration does not entitle a partner to inheritance rights as a first-order heir under Article 1261 of the Civil Code of Ukraine.[22]

According to data published by the Ukrainian Ministry of Justice for the first half of 2024, over 72,000 marriages were registered—representing a 15% decrease compared to the previous year, and more than one-third less than in 2022. Statistics indicate that one in ten couples in Ukraine are in common-law marriage.[23] The growing number of cohabitations is leading to further contentious inheritance relations, particularly in cases involving the deaths of servicemen.

20 Zoryslava Vasylivna Romovska, *Family Code of Ukraine: Scientific and Practical Commentary* (2nd edn, In Yure 2006).

21 Kukhariev (n 7).

22 Case no 401/2614/17 (Civil Court of Cassation of the Supreme Court of Ukraine, 21 October 2021) <https://reyestr.court.gov.ua/Review/100456741> accessed 5 October 2024.

23 'In the Second Year of the Full-Scale War, the Number of Marriages in Ukraine has Decteased' (*Opendatabot*, 11 August 2023) <https://opendatabot.ua/analytics/marriages-divorces-half-2023> accesed 6 October 2024.

Judicial practice reveals several recurring categories of cases concerning the inheritance rights of common-law partners in the event of a servicemember's decease. These can be classified as follows:

1. Establishing the fact of cohabitation as a family without formal marriage registration typically resolved through separate proceedings.
2. Recognition of ownership of property as a share of the joint property of a man and a woman who lived together without marriage registration through adversary proceedings.
3. Recognition of the right of ownership to real estate as part of the inheritance through claim proceedings.

The legislator establishes a mandatory rule stipulating that disputes concerning inheritance must be considered exclusively under the rules of general action proceedings. The Supreme Court has repeatedly underscored the inadmissibility of resolving such cases through summary proceedings. In one case, the claimant filed a lawsuit seeking the recognition of ownership rights through inheritance. The trial court dismissed the claim, and the court of appeals upheld the decision, reasoning that the case was insignificant under the applicable legal provisions and thus could be resolved through summary proceedings. The claimant's cassation appeal was grounded in the assertion that the appellate court improperly examined the case under summary proceedings, despite its mandatory consideration under general action proceedings. The Supreme Court ultimately agreed, holding that under current civil procedural law, inheritance-related disputes cannot be resolved through summary proceedings solely on the basis of the case file, and must involve notifying and hearing the parties involved.[24]

In inheritance disputes, establishing the claimant's legal standing (in this context, as a de facto spouse) significantly depends on the formal recognition of cohabitation between a man and a woman as a family, absent any illicit relationship. This recognition is typically pursued through separate proceedings, whereas any associated legal disputes—particularly those involving property rights—must be resolved under the rules of general action proceedings.

According to official judicial statistics for 2023, Ukrainian trial courts received 48,668 applications in separate proceedings aimed at establishing legally significant facts. Of these, 33,163 cases concerned various legal facts, including cohabitation as a family.[25] Although precise data on applications related to cohabitation determination remain unknown, these figures provide insight into the approximate scale of applications in this legal category.

24 Case no 278/2797/19 (Civil Court of Cassation of the Supreme Court of Ukraine, 19 May 2021) <https://reyestr.court.gov.ua/Review/97393665> accessed 7 October 2024.

25 Report of Trial Courts (n 3).

In the adjudication of inheritance disputes involving a common-law spouse, a crucial issue arises concerning the appropriate procedural route: whether to file an application under separate proceedings or to initiate a claim under general claim proceedings. The Supreme Court has clarified that if the right to inheritance depends on establishing certain facts, an individual may file a claim to recognise the facts. In the absence of a legal dispute, such a claim should proceed under the rules of separate proceedings.[26]

This procedural guideline has been consistently applied in judicial practice. For instance, the Ivano-Frankivsk City Court of Ivano-Frankivsk Oblast considered an application for the recognition of cohabitation as a family for at least five years prior to the opening of the inheritance following the death of a military servicemember. The application was grounded on the necessity of establishing the fact to confirm cohabitation as a family unit, specifically as a man and a woman living together without marriage, to acquire the status of a fourth-line heir. The court held that recognising such status was necessary not only for inheritance rights but also for access to related entitlements, including a one-time financial aid. Given that the recognition of the applicant's right would directly affect the composition of eligible heirs, the court determined that such circumstances indicate the existence of a legal dispute, thereby requiring the case to be considered under the rules of general action proceedings.[27]

The determining factor for considering an application in separate proceedings concerning the recognition of cohabitation as a family between a man and a woman without marriage is the absence of any subsequent civil-law dispute arising from the establishment of the fact. If the court determines that recognising such a fact would infringe upon the rights and interests of other persons involved in the case, the application is subject to dismissal without consideration. Under the general claim proceedings framework, the applicant is informed of their right to file a claim.

In these cases, the subject matter of proof is defined not by the legal relationship itself, but by the factual circumstance to be established—namely, the cohabitation as a family. The recognition of this fact may, in turn, influence the emergence, alteration, or termination of the applicant's rights. To define the legal nature of the fact in question, it is essential to ascertain the purpose of its establishment. The applicant outlines the subject of proof through the content of the submitted application, while its scope is determined by applicable legislation. Various evaluations, contingent conditions, and interests significantly influence the formation of the subject of proof. Consequently, the specific subject of proof is established individually based on the circumstances of each application.

In this category of cases, the burden of proof lies with the applicant, who must demonstrate the existence of characteristics typically associated with a marital relationship—as

26 Case no 200/14136/17 (Civil Court of Cassation of the Supreme Court of Ukraine, 22 April 2020) <https://reyestr.court.gov.ua/Review/88909705> accessed 7 October 2024

27 Case no 344/10217/23 (Ivano-Frankivsk City Court of Ivano-Frankivsk Oblast, 7 August 2023) <https://reyestr.court.gov.ua/Review/111370053> accessed 7 October 2024.

understood within the social and legal institution of the family. The recognition of such a fact must entail certain legal consequences for the claimant in the future. The court will not consider evidence that falls outside the established subject of proof.

The Constitutional Court of Ukraine has established that, in addition to the fact of cohabitation, the recognition of individuals as family members requires the actual establishment of a shared household. This includes joint expenses, a common budget, shared meals, purchasing property for mutual use, contributing to housing maintenance and repairs, providing mutual assistance, and other concrete circumstances evidencing the reality of family relationships.[28] The Supreme Court further stresses that what must be proven is a set of established circumstances and relationships. The mere existence of a close personal relationship between a man and a woman, their joint attendance at social events, money transfers, occasional vacations together, living at the same address, or being officially registered at that address, in the absence of other indicative factors, cannot be considered sufficient proof of a marital-type relationship.[29]

For example, in one case, an application was submitted to the court requesting the recognition of cohabitation as a family between a man and a woman without marriage. The applicant claimed that from December 1999 until the death of her partner on 1 May 2022, who had participated in Ukraine's defence efforts, they lived together at the same residence. In support of the application, the following evidence was provided regarding cohabitation with the deceased: an extract from the Unified Register of Pre-trial Investigations, an extract from the order of the military unit commander, an extract from the list of irrecoverable losses of the personnel, and a certificate from a village council deputy confirming their cohabitation. However, the court found this evidence insufficient to establish the fact of shared domestic life, and thus rejected the application.[30]

It is important to recall that, under the regulations of the Civil Procedure Code of Ukraine, valid means of evidence include explanations by the parties and third parties, witness testimony, documentary and material evidence, electronic evidence, and expert conclusions. Therefore, when evaluating evidence, courts apply the criteria of relevance, admissibility, and credibility and assess their sufficiency and interconnection collectively.

Ukrainian law does not specifically define which specific pieces of evidence are considered indisputable grounds for confirming cohabitation as a family. Therefore, the assessment of the relevance and admissibility of such evidence is entrusted to the court, which conducts a direct and contextual evaluation of each item of evidence.

28 Case no 1-8/99, decision no 5-рп/99 (Constitutional Court of Ukraine, 3 June 1999) <https://zakon.rada.gov.ua/laws/show/v005p710-99#Text> accessed 8 October 2024.

29 Case no 759/14906/18 (Civil Court of Cassation of the Supreme Court of Ukraine, 17 January 2024) <https://reyestr.court.gov.ua/Review/116606829> accessed 8 October 2024.

30 Case no 481/289/24 (Novobuzkyi Raion Court of Mykolayiv Oblast, 11 July 2024) <https://reyestr.court.gov.ua/Review/120480429> accessed 9 October 2024.

In particular, a letter from the Supreme Court of Ukraine provides interpretative guidance on this matter. It affirms that relevant and admissible forms of evidence may include, but are not limited to: children's birth certificates, certificates of residence, witness testimony, personal and business correspondence, and so on. Additional evidentiary materials may include death certificates of one of the partners, birth certificates of children where the man is voluntarily listed as the father; extracts from household registration books regarding registration or residence; evidence of joint property acquisition, both movable and immovable (receipts, certificates of ownership); statements, questionnaires, receipts, wills, personal and business correspondence that demonstrate the couple considered themselves husband and wife and cared for one another; certificates from housing authorities, village councils regarding cohabitation and joint management of a household.[31]

Thus, the evidence submitted must not only address the factual nature of the alleged relationship but also fully substantiate the claim for establishing the legal fact.

As evidenced in judicial practice, in this category of cases, a frequently used method of evidence is witness testimony, for example, from relatives, friends, colleagues, or neighbours. However, this gives rise to an important question: Can the fact of cohabitation as a family be established solely on the basis of witness testimony, or must such testimony be considered in conjunction with other presented evidence? The Supreme Court has pointed out that witness testimony cannot serve as the only purpose for establishing the fact of cohabitation as a family without marriage.[32] The Supreme Court maintains the same position regarding the claimant's submission of joint photos of the cohabiting couple as evidence.

Another critical factor in establishing cohabitation between a man and a woman without marriage is the duration of the relationship. Ukrainian courts have established that the fact of cohabitation must be long-term; however, the specific duration of such cohabitation to be proven by the claimant is not explicitly defined. In light of the military mobilisation of Ukrainian citizens, an apparent question arises: how should the duration of cohabitation be calculated if one of the de facto spouses is serving in the military?

In a notable case, the Khmelnytskyi Court of Appeal considered the appeal against the decision of the city district court regarding the establishment of the fact of cohabitation between a man and a woman as a family. The claimant, the deceased servicemember's partner, stated that from 10 January 2018 until his death during combat operations in Bakhmut, they had lived together as de facto spouses. This fact was necessary to gain inheritance rights under the fourth line of succession. In her appeal, the deceased soldier's mother requested the reverse of the trial court's decision. She claimed that from February

31 Letter from the Supreme Court of Ukraine of 1 January 2012 'Judicial Practice in Cases Concerning the Establishment of Facts with Legal Significance (Excerpt)' <https://wiki.legalaid.gov.ua> accessed 9 October 2024.

32 Case no 129/2115/15-ц (Civil Court of Cassation of the Supreme Court of Ukraine, 14 February 2018) <https://reyestr.court.gov.ua/Review/72269217> accessed 12 October 2024.

2022 until September 2022, he had been under the command of a military unit. Although he returned and lived with the claimant from September 2022 until his death in January 2023, the appellant contended that the court's conclusion that they had lived as a family for at least five years was erroneous.[33]

In response, the Supreme Court clarified that the husband's military service, registration, and permanent residence in the military unit cannot be construed as evidence that the parties were not in actual family relations, as such a fact merely indicates the fulfilment of the individual's military duty.[34] The Supreme Court has repeatedly emphasised the distinct legal nature of property and inheritance relations in its legal positions. In cases involving the establishment of the fact of cohabitation as spouses without marriage, in inheritance disputes, there is a need to prove that the parties have lived together for at least 5 years in accordance with Article 1264 of the Civil Code of Ukraine. However, in cases concerning property rights, the law does not impose such an obligation.

In examining the establishment of cohabitation as a family without marriage within the framework of contentious proceedings, an important distinction emerges in Ukrainian law between inheritance rights and property claims. As previously mentioned, inheritance under national law follows a sequential order, with common-law partners falling under the fourth line of heirs. In cases where there is an interest in the deceased's estate and the presence of heirs from the preceding queues, protecting an individual's lawful interest by establishing a fact in separate proceedings or recognising a fourth-line heir will not produce any legal consequences for the claimant. However, based on the provisions of Article 74 of the Family Code of Ukraine, an individual may file a claim in contentious proceedings to establish the fact of cohabitation as a family, to recognise the claimant's ownership of the deceased's property as part of the joint ownership rights of a man and woman who cohabited without formal marriage registration, with the subsequent exclusion of such property from the inheritance.

A compelling illustration of this principle is the decision of the Vinnytsia Court of Appeal. In this case, the claimant—a woman who had lived with a deceased servicemember—filed a lawsuit requesting the court to: (1) establish the fact of her and the deceased servicemember's cohabitation as a family without formal marriage registration, (2) recognise her ownership of part of a residential building, and (3) recognise her ownership of part of a cargo truck. The trial court dismissed her claim, citing an insufficient evidentiary basis for establishing cohabitation. However, the Court of Appeal overturned this decision, not on the grounds that cohabitation had been sufficiently proven, but rather because the legal remedy sought—establishing a legal fact—did not provide effective protection of the claimant's rights.

33 Case no 688/4944/23 (Khmelnytskyi Court of Appeal, 5 September 2024) <https://reyestr.court.gov.ua/Review/121424739> accessed 12 October 2024.

34 Case no 279/2014/15-ц (Civil Court of Cassation of the Supreme Court of Ukraine, 23 September 2019) <https://reyestr.court.gov.ua/Review/84545086> accessed 13 October 2024.

Citing a ruling of the Grand Chamber of the Supreme Court, the court indicated the following: granting the claim for the establishment of cohabitation as a family without marriage registration in a property division case involving spouses is erroneous, and the claim in this part should be dismissed. The reasoning for the court's position regarding the confirmation or refutation of the fact of cohabitation without formal marriage in property division cases must be provided in the reasoning section of the decision. This section should include the factual circumstances established by the court, the content of the disputed legal relations, and a reference to the evidence on which the relevant facts were established. Importantly, in the dispositive part of the ruling, the court must explicitly state whether each claim has been granted or denied, either in full or in part. The court stressed that claims for establishing a legal fact are not claims that provide effective protection of rights in property division cases between spouses, but merely serve as a basis for resolving such cases.[35]

5 GRANTING OF ONE-TIME FINANCIAL ASSISTANCE IN THE EVENT OF THE DEATH OF DEFENDERS OF UKRAINE

A key legal distinction between a de facto marriage in a civilian context and cohabitation with a combatant lies in the entitlement to one-time financial assistance in the event of the service member's death. Specifically, the surviving de facto spouse of a deceased military personnel may be eligible to receive a lump-sum benefit, a right that does not extend to partners in ordinary common-law marriage. This distinction underscores the unique legal considerations applicable to relationships involving members of the armed forces, particularly in matters of financial support and survivor benefits.

The establishment of the fact of cohabitation as a family—between a man and a woman without formal marriage registration—thus assumes significant legal importance in the context of granting one-time financial assistance (hereinafter OFA) in the event of death. However, it should be noted that such payments do not form part of the inheritance. The disbursements are made in accordance with the Law of Ukraine "On Social and Legal Protection of Military Personnel and Their Families",[36] the Resolution of the Cabinet of Ministers of Ukraine No. 168 dated 28 February 2022, and the Order of the Ministry of Defence of Ukraine No. 45 dated 25 January 2023.

Further legal refinement came with the adoptionof Resolution No. 714 of the Cabinet of Ministers of Ukraine, dated 18 June 2024, which amended both Resolutions No. 975 (25 December 2013) and No. 168 (28 February 2022) concerning the payment of OFA. The

35 Case no 134/64/24 (Vinnytsia Court of Appeal, 3 October 2024) <https://reyestr.court.gov.ua/Review/122151156> accessed 13 October 2024.

36 Law of Ukraine no 2011-XII of 20 December 1991 'On Social and Legal Prptection of Military Personnel and Their Families' (amended 25 August 2024) <https://zakon.rada.gov.ua/laws/show/2011-12#Text> accesed 14 October 2024.

Cabinet of Ministers standardised regulatory acts in line with the Law of Ukraine "On Social and Legal Protection of Military Personnel and Members of Their Families." The right to receive OFA, including the maximum amount payable—UAH 15,000,000—as stipulated in Resolution No. 168.

Under Resolution No. 975, a service member may prepare a written personal directive regarding the OFA in the event of their death, specifying beneficiaries and indicating the percentage share each person is entitled to receive. However, regardless of the contents of such a personal directive, the right to receive and be granted OFA is guaranteed to minor, underage, or legally incapacitated adult children, a legally incapacitated spouse, and legally incapacitated parents of the deceased. Each of whom is entitled to 50% of the share they would have received in the absence of a personal directive.

Where no personal directive exists, or where a percentage of the OFA remains undistributed, the remaining sum is allocated in equal parts among the following legally recognised categories:

- children, including adopted children, children conceived during the deceased's lifetime and born after their death, and children whose deceased parent had been deprived of parental rights;
- a widow or widower;
- the deceased's parents or adoptive parents, provided they were not deprived of parental rights or had their parental rights restored before the date of death;
- grandchildren of the deceased, if their parents had died before the service member's death;
- a partner with whom the deceased lived as a family without marriage registration, provided this fact has been established by a court ruling; and dependents as defined by the Law of Ukraine "On Pension Provision for Persons Discharged from Military Service and Certain Other Persons".[37]

Notably, the Resolution establishes a prohibition against refusing the appointment and receipt of OFA on behalf of legally incapacitated persons, persons with limited legal capacity, as well as minor and underage children of the deceased servicemember.

In light of this framework, a common-law spouse may claim OFA assistance in the event of a service member's death only if the fact of cohabitation as a family is established through a court ruling. Since the OFA payment is made based on a decision by the Social Security Department Commission of the Ministry of Defence of Ukraine, courts sometimes misinterpret the jurisdiction of the cases.

37 Resolution of the Cabinet of Ministers of Ukraine no 714 of 18 June 2024 'On Amendments to the Resolutions of the Cabinet of Ministers of Ukraine dated 25 December 2013 no 975 and 28 February 2022 no 168' [2024] Official Gazette of Ukraine 60/3565.

A recent case received by the Supreme Court of Ukraine illustrates these complications. The applicant sought the establishment of cohabitation as a family without marriage, and the fact of being financially dependent, asserting that these facts were essential to secure OFA after the death of her common-law partner, a fallen service member. However, both the courts of first instance and appellate instance mistakenly refused to open proceedings, concluding that the case did not fall under the jurisdiction of civil proceedings. They reasoned that, based on its subject matter and possible legal implications, the dispute pertained to public-law relations and should be resolved through administrative court proceedings.[38]

In its landmark decision, the Grand Chamber of the Supreme Court emphasised that the lower courts failed to consider that cases concerning the establishment of legally significant facts are subject to consideration and resolution by civil jurisdiction courts under the provisions of the Civil Procedure Code of Ukraine. Accordingly, the lower courts erroneously concluded that the case was not subject to judicial review and denied initiating proceedings based on Article 186(1)(1) of the Civil Procedural Code of Ukraine.

In its ruling, the Grand Chamber of the Supreme Court definitively resolved the jurisdictional issue concerning the relevant category of applications. It disagreed with the conclusion reached by the Civil Cassation Court, which had held that the applicant's claims related to proving grounds for acquiring a certain socio-legal status, unconnected to any civil rights or obligations, their creation, existence, or termination. Therefore, the Civil Cassation Court concluded that, due to the subject matter and potential legal consequences, such claims fell within the scope of public-law relations between the applicant and the state and were thus not subject to consideration under civil proceedings.

However, in its decision, the Great Chamber emphasised the following: according to Part 1 of Article 293 of the Civil Procedure Code of Ukraine, separate proceedings constitute a type of non-contentious civil procedure through which civil cases are examined to confirm the existence or absence of legally significant facts essential for protecting individual rights, freedoms, and interests, or for enabling the exercise of personal non-property or property rights, or confirming the existence or absence of undisputed rights. Pursuant to Clause 5 of Part 2 of Article 293 of the Code, the court considers cases concerning the establishment of legally significant facts in separate proceedings. The list of such facts under Article 315 of the Code is not exhaustive. Specifically, Clause 5 of Part 1 of Article 315 provides that the court hears cases concerning the establishment of the fact of cohabitation between a man and a woman without marriage.

An analysis of these legal provisions indicates that there are two procedures for establishing legally significant facts: extrajudicial and judicial. The Supreme Court stressed that if an individual's request for recognition of a legal fact—intended to be established through an

38 Case no 212/5550/23 (Civil Court of Cassation of the Supreme Court of Ukraine, 7 February 2024) <https://reyestr.court.gov.ua/Review/117015428> accessed 15 October 2024.

extrajudicial procedure—is denied by the relevant authority and subsequently appealed in court, such disputes fall under the jurisdiction of administrative proceedings. In these cases, courts primarily review whether the challenged decision of the public authority complies with the criteria specified in Part 2 of Article 2 of the Code of Administrative Procedure of Ukraine. Moreover, according to Part 2 of Article 77 of the Code, the respondent in administrative cases involving the illegality of a public authority's decisions, actions, or inaction must prove the legality of its decision, action, or inaction.[39]

An analysis of proceedings involving the Ministry of Defence of Ukraine (MoD) as an interested party in cases concerning the establishment of the fact of cohabitation with a deceased servicemember reveals instances of procedural abuse by MoD representatives. For instance, the Chornobai District Court of Cherkasy Region received an application seeking to establish cohabitation between a man and a woman without marriage. In response, a representative of the MoD submitted a written statement asserting that, given the presence of other individuals potentially entitled to receive the OFA, establishing such a fact would involve resolving a contested right. Therefore, the representative argued that the application should not be considered under separate proceedings and should be dismissed without consideration. The court rejected this assertion, emphasising that the establishment of the fact in such cases is not inherently linked to resolving a contested right. The Supreme Court, through its legal opinions, has explicitly clarified the proper approach to handling such cases. Thus, the court proceeded with the application in accordance with the procedural norms established by law.[40]

6 FOREIGN PRACTICES IN LUMP-SUM PAYMENTS IN THE EVENT OF A SERVICEMEMBER'S DEATH

The global trend of rising cohabitation without formal marriage registration is becoming increasingly evident. For instance, in the USA, premarital cohabitation has increased from 10% in 1970 to over 60% after 2000.[41] According to scientific predictions, in 2031, one in every four couples will cohabit as a family without officially registering their marriage.[42]

39 Case no 560/17953/21 (Grand Chamber of the Supreme Court of Ukraine, 18 January 2024) <https://reyestr.court.gov.ua/Review/116512563> accessed 15 October 2024.

40 Case no 709/806/24 (Chornobaivskyi Raion Court of Cherkasy Oblast, 4 July 2024) <https://reyestr.court.gov.ua/Review/120195612> accessed 15 October 2024.

41 Michael J Rosenfeld and Katharina Roesler, 'Cohabitation Experince and Cohabitation's Association with Marital Dissolution'(2019) 81(1) Journal of Marriage and Family 42, doi:10.1111/jomf.12530.

42 Permanent Bureau of the Hague Conference on Private International Law, 'Update on the Developments in Internal Law and Private International Law Concerning Cohabitation Outside Marriage, Including Registered Partnerships (Prel Doc no 5 of March 2015)' (*HCCH - Hague Conference on Private International Law*, March 2015) <https://www.hcch.net/en/publications-and-studies/details4/?pid=8997> accessed 16 October 2024.

The legal regulation of de facto marriages develops in accordance with specific features of each state's legal system and cultural factors. Some countries have established a comprehensive legal framework that governs common-law marriages, whereas others do not formally recognise or address such unions within their national legal provision. As an example, in the UK, married couples and de facto spouses have certain legal rights and obligations. However, common-law marriages are significantly more limited within the legal framework. Upon death, cohabitants do not automatically inherit from their partner.[43] Notwithstanding the legal reality, many people continue to believe in the so-called "common law marriage myth"—the erroneous belief that after living together, the law treats cohabitants as if they were married.[44]

Contrary to this, in Finland, there are over 70 statutes across all administrative sectors that include references to cohabiting couples.[45] State recognition of de facto marriage not only affects inheritance rights but also eligibility for certain social security benefits, such as a lump-sum payment in the event of the death of a servicemember.

Given this context, the focus is placed on countries that have developed robust legal frameworks for addressing military-related inheritance disputes, largely due to prolonged histories of military engagement and the subsequent need to regulate the distribution of financial benefits to servicemembers' families—such as the United States and South Korea.

In the United States, the law provides a tax-free death gratuity program for military personnel, amounting to $100,000 for family members of a deceased servicemember who dies during active duty or in certain reserve statuses. The death gratuity payment is not dependent on the cause of death. This ensures that family members can meet their financial needs immediately following the servicemember's death, prior to receiving further benefits or entitlements.[46]

Regarding common-law partnerships, U.S. law generally recognises that death gratuity payments are made to the deceased's spouse. However, as civil unions and domestic partnerships are not always treated the same way as marriage, eligibility for such benefits depends on the specific recognition of the partnership by the relevant state or military regulation. In some cases, partners in legally recognised civil unions may be

43 UK Law Commission, 'Intestacy and Family Provision Claims on Death: Executive Summary Law Com no 331' (*GOV.UK*, 14 December 2011 <https://www.gov.uk/government/publications/intestacy-and-family-provision-claims-on-death> accessed 28 October 2024.

44 UK Law Commission, 'Cohabitation: The Financial Consequences of Relationship Breakdown, Law Com no 307' (*GOV.UK*, 31 July 2007) <https://www.gov.uk/government/publications/cohabitation-the-financial-consequences-of-relationship-breakdown> accessed 28 October 2024.

45 Salla Silvola, 'Informal Relationships – Finland: Nartional Report' (*Commision on European Family Law*, January 2015) <https://ceflonline.net/informal-relationships-reports-by-jurisdiction/>accessed 28 October 2024.

46 USA Department of Defense, 'Death Gratuity' (*Military Compensation*, 2024) <https://militarypay.defense.gov/benefits/death-gratuity/> accessed 29 October 2024.

eligible for death gratuity, though this is subject to state-level recognition and the military's policies on dependents.

According to Subsection (a) of Section 1477, Title 10 of the United States Code, death benefits—outlined in Sections 1475 and 1476—are paid to the closest surviving relative in the following order of priority:

1. The lawful spouse of the deceased;
2. The children of the deceased, in equal shares, as provided in subsection (b);
3. If specified by the deceased, any of the following individuals:

   (a) The parents of the deceased, or individuals fulfilling parental duties as outlined in subsection (c);
   (b) The deceased's brothers;
   (c) The deceased's sisters.[47]

Given the federal nature of the United States' governmental structure, the interpretation of the term "lawful spouse" is determined by the individual laws of each state. Common-law partners are recognised as lawful spouses only if the state in which they reside recognises such relationships—examples include Colorado or Texas. It is important to note that the circumstances that confirm the fact of cohabitation are not universal and are determined on a legislative level by each state individually. If partners reside in a state that does not recognise de facto spouses, such as Florida, individuals will not be eligible for the benefits.

Nonetheless, due to the principles governing interstate recognition, common-law marriages carry legal significance across all US states. The majority of these rules recognise common law marriages that have been established, which is of great practical significance, given how many people move from state to state.[48]

In the case *Burden v. Shinseki*, Mr Burden, a Vietnam War veteran, served in the U.S. Army for 20 years. He officially married Mrs Burden on 27 April 2004, but passed away two months later. In August of that same year, Mrs Burden applied for death benefits from the Department of Veterans Affairs. However, her claim was denied because she had not been married to the deceased for at least a year before his death, as required by law. Mrs Burden argued they had lived together as de facto spouses for five years. She provided witness testimony and a church wedding invitation from 2001, listing their names and confirming their cohabitation as a couple. The federal court concluded that for death benefits, the validity of the marriage is determined according to the laws of the place where the parties resided at the time of marriage or when the right to the benefit arose. Since the Burdens lived in Alabama, the Department of Veterans Affairs was required to apply the laws of that

47 10 US Code Subtitle A - General Military Law (1948) § 75 <https://www.law.cornell.edu/uscode/text/10/subtitle-A> accessed 1 November 2024.

48 Goran Lind, *Common Law Marriage: A legal Institution of Cohabitation* (OUP 2008).

state to determine the existence of a civil marriage. Ultimately, the court approved the benefits for Mrs Burden as the civil spouse.[49]

A somewhat similar approach to the issue of providing financial assistance to deceased de facto spouses can be found in the hands-on practice of South Korea. Under Subparagraph (e) of Paragraph 4, Part 1, Article 3 of the Military Pensions Act, eligible family members of a deceased military servicemember include the spouse—including a person in a de facto marriage—provided the servicemember was not legally married at the time of military service.[50] Of particular interest is the provision regarding individuals claiming the right to financial assistance, stipulating that there must be no official spouse or other common-law partner of the deceased service member.

In its ruling No. 9631 dated 30 September 2010, the Supreme Court of South Korea affirmed that, in light of the principles of lawful marriage and the prohibition of polygamy under Korean law, the provision in question encompasses individuals who have been in de facto marital relationships as persons entitled to benefits. This applies to those who have effectively lived as spouses and exhibited all the characteristics of a marital relationship but did not register their union and are therefore not recognised as spouses by the court. The Court highlights that a de facto marriage cannot compete with a legally registered marriage.[51] However, it is important to note that even if the sui iuris marriage (de facto) is illegal (for example, due to polygamy), it will be considered valid until it is annulled by a court decision.

7 CONCLUSION

The findings of the study highlight the existence of certain issues regarding the inheritance rights of de facto spouses in the event of the death of a combatant. The lack of legislative recognition of common-law partners necessitates judicial proceedings to establish cohabitation between a man and a woman as a familial unit. Clearly defining the subject matter jurisdiction between different procedural types—namely, separate and general claim procedures—ensures a more effective mechanism for protecting the claimant's rights. As the body responsible for maintaining consistency and unity in case law, the Supreme Court bears the duty of developing unified standards of proof in cases involving the establishment of the fact of cohabitation between a man and a woman as a family. An evidentiary threshold that is unpredictable or unreasonably high undermines the proper protection of individual rights and interests in such cases.

49 *Burden v Shinseki* App no 12-7096 [2013] Court of Appeal for the Federal Circuit <https://law.justia.com/cases/federal/appellate-courts/cafc/12-7096/12-7096-2013-07-16.html> accessed 1 November 2024.

50 Militare Pension Act (1994) 4705 <https://www.law.go.kr/법령/군인연> accessed 1 November 2024.

51 Case no 9631 (Supreme Court of South Korea, 30 September 2010) <https://legalengine.co.kr/cases/2aqfMrSOoJWI8gBcmN5Hrg> accessed 2 November 2024.

In its legal positions, the Supreme Court has not only determined the standard of proof but also established that claims concerning the establishment of legal facts do not constitute a direct mechanism for property division. Rather, they serve as a legal basis for resolving such cases. However, establishing the fact of cohabitation is essential for the allocation of a one-time financial assistance in the event of a combatant's death.

Ukraine's approach to providing financial assistance to the relatives of deceased servicemembers is not new in international practice. An analysis of the models adopted in the United States and South Korea illustrates a shared recognition of the importance of financial assistance for surviving family members. However, the recognition of de facto spouses differs somewhat between the two jurisdictions, indicating a difference in how such relations are viewed by the law. It should be noted that the Ukrainian legislative approach to the procedure for providing assistance in the event of a servicemember's death aligns with the global standards, as it ensures social assistance rights even for the common-law partners.

While domestic legislation in Ukraine contains both positive and negative sides in safeguarding the rights of de facto spouses, the need for legislative reform to adapt to contemporary conditions remains open. Despite the flexibility of the judicial system in Ukraine, it is not feasible to place the function of norm-setting on the courts.

REFERENCES

1. Fursa SYa (ed), *Inheritance Law: Notary, Advocacy, Court* (KNT 2007).
2. Holubenko I, Hrachova O and Maslova M, 'Features of the Procedure for Receiving an Inheritance under the Conditions of Marital State' (2023) 2 Juridical Scientific and Electronic Journal 125, doi:10.32782/2524-0374/2023-2/26.
3. Kharytonov YeO and Kharytonova OI, *Updating (Codification and Recodification) of the Civil Legislation of Ukraine: Experience, Problems and Prospects* (Feniks 2020).
4. Kukhariev OYe, *Theoretical and Practical Problems of Dispositiveness in Inheritance Law* (Alerta 2019).
5. Lenon S and Monk D (eds), *Inheritance Matters: Kinship, Property, Law* (Hart Publishing 2023).
6. Lind G, *Common Law Marriage: A Legal Institution of Cohabitation* (OUP 2008).
7. Nadiienko O and Voronova O, 'Inheritance Right of a Man and a Woman, Living as a Family Without Marriage' (2021) 8 Juridical Scientific and Electronic Journal 90, doi:10.32782/2524-0374/2021-8/19.
8. Ratcliffe S (ed), *Oxford Essential Quotations* (4th edn, OUP 2016).
9. Romovska ZV, *Family Code of Ukraine: Scientific and Practical Commentary* (2nd edn, In Yure 2006).

10. Romovska ZV, *Ukrainian Civil Law. Inheritance Law* (Alerta 2009).

11. Rosenfeld MJ and Roesler K, 'Cohabitation Experince and Cohabitation's Association with Marital Dissolution'(2019) 81(1) Journal of Marriage and Family 42, doi:10.1111/jomf.12530.

12. Silvola S, 'Informal Relationships – Finland: Nartional Report' (*Commision on European Family Law*, January 2015) <https://ceflonline.net/informal-relationships-reports-by-jurisdiction/>accessed 28 October 2024.

13. Sloan B, *Borkowski's Law of Succession* (4 th edn, OUP 2020).

14. Spasybo-Fatieieva IV (ed), *Inheritance Law: Through the Prism of Judicial Practice* (ECUS 2022).

AUTHORS INFORMATION

Bozhena Oliyarnyk*
Bachelor of Law, Master's student, Ivan Franko National University of Lviv, Ukraine
bozhena.oliyarnyk@lnu.edu.ua
https://orcid.org/0009-0005-6054-184X
Corresponding author, responsible for methodology, data curation, investigation, writing-original draft.

Competing interests: No competing interests were disclosed.

Disclaimer: The author declare that her opinion and views expressed in this manuscript are free of any impact of any organizations.

ABOUT THIS ARTICLE

Cite this article
Oliyarnyk B, 'Inheritance and One-Time Financial Assistance Following the Death of a Servicemember: Legal Status Issues of De Facto Spouses in Ukraine' (2025) 8(2) Access to Justice in Eastern Europe 155-78 <https://doi.org/10.33327/AJEE-18-8.2-a000114>

DOI https://doi.org/10.33327/AJEE-18-8.2-a000114

Managing editor – Mag. Bohdana Zahrebelna.
Section editor: Assoc. Prof. Oksana Uhrynovska. **English Editor** – Julie Bold.
Ukrainian language Editor – Liliia Hartman.

Keywords: *Inheritance disputes, common-law marriage, de facto spouse, death of servicemen, subject of proof, death gratuity, one-time financial assistance.*

DETAILS FOR PUBLICATION

Date of submission: 17 Dec 2024
Date of acceptance: 27 Mar 2025
Whether the manuscript was fast tracked? - No
Date of publication: 14 May 2025
Number of reviewer report submitted in first round: 2 reports
Number of revision rounds: 1 round with minor revisions

Technical tools were used in the editorial process:
Plagiarism checks - Turnitin from iThenticate https://www.turnitin.com/products/ithenticate/
Scholastica for Peer Review https://scholasticahq.com/law-reviews

RIGHTS AND PERMISSIONS

АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

СПАДКУВАННЯ ТА ОДНОРАЗОВА ГРОШОВА ДОПОМОГА ПІСЛЯ ЗАГИБЕЛІ (СМЕРТІ) ВІЙСЬКОВОСЛУЖБОВЦЯ: ПИТАННЯ ПРАВОВОГО СТАТУСУ ФАКТИЧНОГО ПОДРУЖЖЯ В УКРАЇНІ

Божена Оліярник

АНОТАЦІЯ

Вступ. *Військова агресія російської федерації проти України призвела до зростання кількості спадкових спорів за участю одного з фактичного подружжя загиблих (померлих) військовослужбовців. Поширення таких партнерств в українському суспільстві, на тлі відсутності належного законодавчого врегулювання, створює правову невизначеність, що змушує людей звертатися до суду за визнанням статусу та права на спадкування. Судова практика демонструє непослідовність у вирішенні таких справ через відсутність єдиних критеріїв оцінки доказів та процесуальних механізмів. У цьому контексті вирішення питання одноразової грошової допомоги фактичному подружжю у разі загибелі (смерті) військовослужбовця набуває важливого значення. З огляду на тривалу війну проти України, порівняльний аналіз із правовими системами Сполучених Штатів та Південної Кореї пропонує цінні знання для оцінки внутрішньої моделі України. Таким чином, передумови цього дослідження ґрунтуються на реаліях воєнного часу, недосконалості правового регулювання спадкових відносин та нагальній потребі адаптації українського законодавства до нових викликів.*

Методи. *У дослідженні використовуються різні методи, зокрема аналіз та синтез, для вивчення правових норм, судових рішень та наукових праць, а також метод узагальнення отриманих результатів. Індуктивні та дедуктивні міркування задіяні у розробці загальних висновків на основі судової практики. Абстрагування застосовується для уточнення та узагальнення ключових понять та правових категорій, пов'язаних зі спадковим правом. Формально-правовий метод використовується для аналізу норм цивільного та сімейного права України, тоді як порівняльно-правовий метод сприяє огляду зарубіжного досвіду у питаннях спадкування у цивільному шлюбі (зокрема у США та Південній Кореї). Історико-правовий метод задіюється для вивчення еволюції законодавства України у сфері спадкування, а телеологічний (цільовий) метод – для аналізу цілей, що є джерелом правових норм та судових прецедентів у цій сфері.*

Результати та висновки. *У дослідженні було визначено основні проблеми щодо спадкових спорів за участю одного з фактичного подружжя загиблих (померлих) військовослужбовців. Судова практика демонструє уніфікований підхід до оцінки доказів, що забезпечує*

однакове застосування права. Аналіз чинного законодавства та судової практики показав, що основною проблемою залишається доведення факту проживання чоловіка та жінки однією сім'єю без шлюбу, які часто потребують значної доказової бази. Міжнародний досвід, зокрема приклади США та Південної Кореї, підтверджує, що українська модель виплат грошової допомоги у разі загибелі (смерті) військовослужбовця відповідає світовим стандартам, адже забезпечує права одного з фактичного подружжя на отримання допомоги. Результати дослідження дозволяють зробити висновок про необхідність внесення змін до національного законодавства.

Ключові слова: *спадкові спори, цивільний шлюб, один з фактичного подружжя, загибель (смерть) військовослужбовця, предмет доказування, виплата у разі загибелі (смерті), одноразова грошова допомога.*