



The impact of the European Court of Human Rights jurisprudence on the Ukrainian survivor pension model*

EL IMPACTO DE LA JURISPRUDENCIA DEL TRIBUNAL EUROPEO DE DERECHOS HUMANOS EN EL MODELO UCRANIANO DE PENSIÓN DE SUPERVIVENCIA

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ABSTRACT

The European Court of Human Rights jurisprudence generally recognises that there is no violation of the Convention for the Protection of Human Rights and Fundamental Freedoms when the state grants the right to a survivor's pension to spouses and does not grant it to different-sex *de facto* couples. An analysis of cases Muñoz Díaz v. Spain, Serife Yigit v. Turkey, and four decisions against Spain from 2023 to 2025 (Domenech Aradilla and Rodríguez González, Valverde Digón, del Pino Ortiz and others, Mendieta Borrego) has established that the applicant's good faith, legitimate expectation and personal situation awareness may influence the recognition of a violation by the state. Ukraine, both in its legislation and in its administrative and judicial practice, has never provided *de facto* partners the right to a survivor's pension. Therefore, it did not create grounds for the existence of legitimate expectation. However, it should be noted that the Court additionally relies on current trends and the degree of consensus between member states. Given the prevalence of *de facto* couples, this provides a basis for initiating a discussion on granting them in Ukraine the right to a survivor's pension.

RESUMEN

La jurisprudencia del Tribunal Europeo de Derechos Humanos reconoce en general que no existe violación del Convenio para la Protección de los Derechos Humanos y de las Libertades Fundamentales cuando el Estado otorga el derecho a una pensión de supervivencia a los cónyuges y no la otorga a las parejas de hecho de distinto sexo. Un análisis de los casos Muñoz Díaz contra España, Serife Yigit contra Turquía y de cuatro decisiones contra España en el periodo 2023-2025 (Domenech Aradilla y Rodríguez González, Valverde Digón, del Pino Ortiz y otros, Mendieta Borrego), ha establecido que la buena fe, la expectativa legítima y el conocimiento de la situación personal

KEYWORDS

European Court of Human Rights
de facto partners
Survivor's pension
Legitimate expectation
Good faith

PALABRAS CLAVE

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del solicitante pueden influir en el reconocimiento de una violación por parte del Estado. Ucrania, tanto en su legislación como en su práctica administrativa y judicial, nunca ha otorgado a las parejas de hecho el derecho a una pensión de supervivencia. Por lo tanto, no creó motivos para la existencia de una expectativa legítima. Sin embargo, cabe señalar que el Tribunal se basa además en las tendencias actuales y el grado de consenso entre los Estados miembros. Dada la prevalencia de las parejas de hecho, esto constituye una base para iniciar un debate sobre concederles el derecho a una pensión de supervivencia.

CONTENTS

- I. INTRODUCTION
- II. LEGISLATIVE REGULATION AND JUDICIAL PRACTICE IN UKRAINE
- III. THE ECtHR JURISPRUDENCE: A SURVIVOR'S PENSION FOR SPOUSES
- IV. THE CASE OF MUÑOZ DÍAZ V. SPAIN: FROM GOOD FAITH TO NEW LITIGATIONS
- V. THE CASE OF SERIFE YIGIT V. TURKEY: CRITERIA FOR DISTINGUISHING FROM THE CASE OF MUÑOZ DIAZ
- VI. LEGITIMATE EXPECTATION OF GRANTING A PENSION: CASES AGAINST SPAIN AFTER STC 40/2014
- VII. ANALYSIS OF UKRAINIAN REGULATIONS FOR VIOLATIONS OF THE CONVENTION
- VIII. CONCLUSIONS
- Bibliography

I. INTRODUCTION

Survivor's pension provision is one of the pressing issues for every society. This is explained, in particular, by the need to care of those disabled family members of the deceased person who cannot fully ensure their existence on their own.

The purpose of this article is to examine the practice of the European Court of Human Rights (hereinafter referred to as the ECtHR) regarding persons who were in *de facto* marital relationships and the impact of this status on receiving a survivor's pension after the death of one of the partners. This article will only examine different-sex *de facto* partners.

Therefore, the ECtHR cases most relevant to the above topic will be analysed, in which the state's compliance with the requirements of Articles 8 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 (hereinafter referred to as the Convention) and Article 1 of Protocol No. 1, which accordingly enshrine the right to respect for private and family life, the prohibition of discrimination, and the protection of property.

As is well known, the Convention does not formally include a right to social security. However, the Court has effectively read this right by interpreting social benefits as property rights. This is based on Article 1 of Protocol No. 1, which protects the peaceful enjoyment of one's possessions. The pivotal moment for this doctrine was the case of *Gaygusuz v. Austria*, No. 17371/90, 16 September 1996.



Why is the chosen topic relevant for Ukraine today? Firstly, with the introduction of European human rights standards, the study of the ECtHR decisions has become particularly important. The Court's case law should be used at the national level, as, according to the requirements of Article 17 of the Law of Ukraine "On the Enforcement of Decisions and Application of the European Court of Human Rights Jurisprudence" dated 23 February 2006 No. 3477-IV, courts apply it as a source of law.

Secondly, the Convention serves the purpose of European integration and the case-law of the Court is a real instrument of the mentioned integration¹.

Thirdly, on 04 November 2025, the European Commission adopted its 2025 Enlargement Package, providing a detailed assessment of the state of play and the progress made by Ukraine on paths towards the European Union, with a focus on implementing fundamental reforms, as well as clear guidance on the reform priorities ahead. In particular, it notes a lack of progress in establishing civil partnerships².

It should be noted that the relationships addressed in this article are referred to by different terms in the legal literature and practice, among them common-law partners, *de facto* couples, unmarried couples, cohabitants, and extramarital partners. Without prejudice to the possible legal distinctions between these concepts, which fall outside the scope of the present article, the term *de facto* marital relationship (and its cognate forms) is adopted throughout this article to encompass all of the aforementioned relationships.

Accordingly, the legislative establishment of a list of rights for such persons cannot be complete without defining their pension rights. Unfortunately, these subjects have been a matter of consideration predominantly in family law. However, I would like to emphasise once again that social security law cannot be left out. Undoubtedly, this does not contradict the other thesis that the issue of providing any payments to such persons is complex and is based on the definition of their status, including in family law.

Last but not least, the topicality of examining matters of survivor's pension provision of *de facto* partners is confirmed by the prevalence of this type of relationship³.

II. LEGISLATIVE REGULATION AND JUDICIAL PRACTICE IN UKRAINE

The Law of Ukraine "On Compulsory State Pension Insurance" dated 9 July 2003 (hereinafter referred to as Law No. 1058-IV) and the Law of Ukraine "On Pension Provision for Persons Discharged from Military Service and Certain Other Persons" dated 9 April 1992 (hereinafter referred to as Law No. 2262-XII) provide for the granting of a survivor's pension to a wife (husband). The recognition of pension rights exclusively for married persons has been permanent for decades. It is unquestioned both at the administrative level and in judicial practice.

1. Rozakis, Christos: "The European Convention on Human Rights as a Tool of European Integration", European Convention on Human Rights Law Review, vol. 1, issue 1, 2020, pp. 22-23.

2. Available from: https://enlargement.ec.europa.eu/document/download/17115494-8122-4d10-8a06-2cf275eecd7_en?filename=ukraine-report-2025.pdf [access 23/12/2025].

3. Dyer, W. Gibb; Kofford, Steven; Willoughby, Brian J.: "Cohabiting Couples: A Neglected Family Form that is Important for the Field of Family Business", European Journal of Family Business, vol. 13, issue 2, 2023, p. 139.



A notable example is the ruling of the Supreme Court of Ukraine dated 24 February 2025 in case No. 240/12904/23⁴. Refusing to satisfy the claim for the granting of a survivor's pension, the Supreme Court relied on the following reasoning: 1) no official marriage was concluded between the claimant and the deceased; 2) the legal fact established by another court that the claimant lived with the deceased as a family, as a woman and a man without registering their marriage, does not mean that the fact of an official marriage was established; 3) according to parts one and two of Article 21 of the Family Code of Ukraine, marriage is a family union of a woman and a man registered with the state civil registry office. Living together as a family without marriage does not give rise to the rights and obligations of spouses.

The court also cited another ruling of the Supreme Court of Ukraine dated 31 October 2019 (case No. 461/3169/17), which clearly states the position on the refusal of such a category of persons: "pension legislation imperatively stipulates that the right to a survivor's pension, among other categories of persons, is held by one of the spouses – husband or wife, to which a woman or man who live together as a family without registering their marriage do not belong. Establishing in court the fact that a man and a woman live together as a family without marriage and recognizing the status as family members does not legitimise the legal status of an unmarried couple as a married couple, since the status of "spouses" is acquired by a man and a woman only in the case of marriage registration with the state civil registry office".

Thus, it is clear that only persons who have registered their marriage are considered husband and wife (terms used in Law No. 1058-IV and Law No. 2262-XII). The existence of a court decision on cohabitation does not change anything in terms of legal qualification. In other words, *de facto* partners are not entitled to a survivor's pension.

III. THE ECTHR JURISPRUDENCE: A SURVIVOR'S PENSION FOR SPOUSES

After describing the current situation in Ukraine, we should proceed to an analysis of the ECtHR jurisprudence, presenting it in chronological order.

For a long time, the practice was characterised by a clear and unambiguous distinction between the legal status of married persons and persons in *de facto* relationships. It is important that the Court or the Commission did not find any violations in cases where the state granted certain rights only to spouses: "though in some fields, the *de facto* relationship of cohabitants is now recognised, there still exist differences between married and unmarried couples, in particular, differences in legal status and legal effects. Marriage continues to be characterised by a corpus of rights and obligations which differentiate it markedly from the situation of a man and woman who cohabit" (Lindsay v United Kingdom, Comm. Dec., No. 11089/84, 11 November 1986); the Court does not consider that it is possible to derive from Article 8 an obligation to establish

4. Available from: <https://reyestr.court.gov.ua/Review/125377829> [access 23/12/2025].



for unmarried couples a status analogous to that of married couples (Johnston and others v. Ireland, No. 9697/82, 18 December 1986, § 68); the differences of treatment between spouses and cohabitants pursue a legitimate aim and can be objectively and reasonably justified (Saucedo Gómez v. Spain, No. 37784/97, 26 January 1999).

In addition, the granting of the maximum level of discretion to the state in establishing different requirements for these two categories of persons and, accordingly, the court's self-restraint in assessing such issues is recognized: "it is not for the Court to dictate or indicate to states the measures that should be taken with regard to the existence of stable relationships between men and women who live together as a couple without being married. This is a question on which states enjoy a margin of discretion: they are free to decide what measures to take provided they meet the requirement of respect for family life" (Saucedo Gómez, cited above).

The Commission decision of 4 March 1998 on the admissibility of the application 34615/97, Fernanda Quintana Zapata v. Spain, is of greatest interest. The applicant had lived for 65 years with her husband. In this relationship, 5 children were born, and the deceased was listed as their father in the birth documents. The applicant indicated that she had married the deceased on 23 December 1928 in a civil ceremony in a village in Cordoba province but to have been unable to obtain the marriage certificate from the relevant office of the Registry of Births, Marriages and Deaths. The Spanish courts dismissed because the marriage should have been registered and the applicant had sufficient time to do so.

During the proceedings, it was established that there is no record of her marriage on Peñarroya Registry of Births, Marriages and Deaths. On the contrary, the applicant "emphasises that she has always maintained that, although she was married in a civil ceremony, no record of this remained because of the serious social upheaval in that locality at the time of the Spanish Civil War".

After studying the arguments of the parties, the Commission established the existence of "family life" (this is indisputable and quite logical). But the most important thing is the following: "the Commission considers that differences in treatment with regard to widows' pensions as between spouses and persons who lived together outside marriage pursue a legitimate aim and are based on an objective and reasonable justification, that is, the protection of the traditional family (...) the alleged discrimination does not appear disproportionate and, in any event, can be considered as falling within the State's margin of appreciation". It must also be stressed that the Commission did not reject the Spanish courts' argument regarding the applicant's sufficient time to marry. Consequently, no violation of Article 14 of the Convention taken in conjunction with Article 8 has been found.

The circumstances of the case and the similarity between Spanish legislation at that time and modern Ukrainian legislation clearly determine the relevance and applicability of this decision more than 25 years after its adoption. Ukraine is exercising its right to protect the traditional family by granting the right to a survivor's pension only to spouses. In conclusion, there are no violations of the Convention in such actions. Therefore, further discussion seems pointless. However, as will be analysed below,



much has changed. It is now appropriate to examine the legal framework regarding the right of *de facto* partners to a pension.

Subsequently, the Court did not change its approach to *de facto* couples. For example, in the decision of 16 December 2003 on the admissibility of the application No. 44658/98, Van den Bouwhuijsen and Schuring v. the Netherlands, the applicant, who was living in a *de facto* relationship, did not even attempt to claim a survivor's pension. This fact was accepted by the Court with understanding.

However, attention should be drawn to the decision of 27 April 2000 on the admissibility of the application No. 45851/99, Shackell v. United Kingdom. Referring to the 1986 and the case of Lindsay v. United Kingdom cited above, the Court acknowledges that much has shifted in the 14 years since the decision was made. In doing so, it begins to recognise changes in social reality. However, in its conclusion, the Court does not depart from its position of supporting traditional marriage, stating that "marriage remains an institution which is widely accepted as conferring a particular status on those who enter it. The situation of the applicant is therefore not comparable to that of a widow". I would like to emphasise once again that the position remains unchanged regarding the state's ability to refuse social benefits to *de facto* couples and grant them only to married couples.

In the case of Manenc v. France, No. 66686/09, 21 September 2010, the ECtHR, despite considering a claim for payment related to the loss of a breadwinner to one of the partners who was in the same-sex partnership, formulated an important thesis for our research. So, "the survivor's pension had been refused to the applicant solely on the ground that he had been in a civil partnership. Consequently, the French legislation on survivors' benefits pursued a legitimate aim, namely the protection of the family based on the bonds of marriage; the limiting of the scope of the legislation to married couples, to the exclusion of partners in a civil partnership regardless of their sexual orientation, fell within the broad margin of appreciation accorded to the States by the Convention".

IV. THE CASE OF MUÑOZ DÍAZ V. SPAIN: FROM GOOD FAITH TO NEW LITIGATIONS

Investigating the evolution of the Court's practice, two important decisions should be considered separately: the case of Muñoz Díaz v. Spain, No. 49151/07, 8 December 2009; the case of Serife Yigit v. Turkey, No. 3976/05, 2 November 2010.

These cases are widely known and covered not only in legal publications, but also in many media outlets, in particular Spanish ones. Therefore, it is proposed not to provide a detailed description of the circumstances of each of them, but to focus on individual arguments.

The substance of the case of Muñoz Díaz v. Spain is as follows: the applicant and the partner married according to the Roma customs. They lived together and had 6 children. The applicant applied for a survivor's pension, but was refused, because she was not in an officially recognized state marriage. The ECtHR found by six votes to one that there has been a violation of Article 14 of the Convention taken in conjunction with



Article 1 of Protocol No. 1, based on “the applicant’s good faith as to the validity of her marriage, being confirmed by the authorities’ official recognition of her situation, gave her a legitimate expectation of being regarded as... married couple” (§ 63). The Court came to this conclusion because the applicant possessed from the civil registration authorities a family record book indicating the couple and their children; it was a registration document of “large family”, for which the parents had to be “spouses”. Moreover, the social security benefit card of her “husband” indicated that he supported the applicant, as his wife, and his six children.

However, as highlighted by Cristina Sánchez-Rodas Navarro, the ECtHR does not reproduce in any of the paragraphs of its judgment the fact recorded both in the Madrid High Court ruling of 7 November 2002 and in Constitutional Court ruling 69/2007: “on the previously mentioned card, next to the name of Ms Muñoz Díaz, in the box for relationship, there is a retouched letter which the ruling (of the Social Court) interprets as wife, although it should be noted that what appears is an initial letter and that such document would have been completed by the deceased, whose signature appears on the front, and not by the managing entity”. Furthermore, following the Spanish Constitution of 1978, “both the family record book and the large family record book were no longer contingent upon the existence of a previous marriage”⁵.

Undoubtedly, in the case of Muñoz Díaz, documents from the state determined the outcome. And if they had been given a more critical assessment, it would have been possible to draw certain parallels with the Quintana Zapata v. Spain decision (which for some reason is not even mentioned in this case). In it, the applicant also appealed to her subjective awareness of being married and the presence of a corresponding entry in the register. As it turned out, there was no entry in the register, and the Commission rejected an explanation of the “serious social upheaval in that locality at the time of the Spanish Civil War”. Therefore, a different approach could have been applied in the Muñoz Díaz case as well.

Lorenzo Martín-Retortillo very harshly criticizes the Court’s position in an article in which he meticulously analyzes each paragraph of the case, expressing the following opinion: “such a conclusion has no legal basis whatsoever under Spanish law, which is clear and categorical on this point. It is worth recalling the Court’s practice of requiring clarity in the determining law: the law was clear and intelligible, understandable to anyone, clear to María Luisa Muñoz as it was to the hundreds of Roma couples who did enter into a legal marriage, in addition to the Roma rite”⁶.

The researcher also supports the dissenting opinion of judge Myjer. The latter clearly states: “I am not convinced that the attitude of the Spanish authorities justifies the view that the applicant was entitled to assume that her marriage was valid as a matter

5. Sánchez-Rodas Navarro, Cristina: “Parejas de hecho y pensión de viudedad española en la jurisprudencia del Tribunal de Justicia de la Unión Europea y en el Tribunal Europeo de Derechos Humanos”, Cuadernos de Derecho Transnacional, vol. 16, núm. 2, 2024, p. 1400.

6. Martín-Retortillo, Lorenzo: “Pero ¿no estuve casada? (Asuntos Serife Yigit c. Turquía y Muñoz Díaz c. España, sentencias del Tribunal Europeo de Derechos Humanos, 20.I.2009, 8.XII.2009 y 2.XI.2010)”, Revista de Administración Pública, núm. 190, 2013, p. 53.



of Spanish law. I am prepared to assume that she was unaware of the legal position when she was married according to Roma rites at the age of 15 (...) unreasonable to impute the equal treatment, in certain respects, of the applicant and her family as compared to marriage-based families to the Spanish authorities as a fault”.

The above arguments are aimed at refuting the existence of both the applicant’s good faith and legitimate expectation. It was these two categories that were used by the Court as the basis for making a positive decision for the applicant.

It is crucial that the ECtHR did not equate a marriage contracted pursuant to Roma customs with a marriage registered by the state authorities. Accordingly, the non-recognition of a Roma marriage does not constitute discrimination prohibited by Article 14 (§ 81). In other words, the fact that Spain did not enshrine the right to a survivor’s pension for *de facto* couples in the General Social Security Act, as in force at the time of the application, cannot be considered discrimination.

In 2010, Iván Antonio Rodríguez Cardo quite predictably stated that “the precautions with which the Court rules will probably allow the Spanish State to maintain that marriage according to the Roma rite is not a suitable link to gain the widow’s pension”⁷. As will be discussed below, there were attempts in Spain, citing this case, to have the courts recognize a Roma marriage as grounds for survivor’s pension. These claims were based on the mere existence of the Roma union, absent the additional qualifying factors (such as specific documentation) that were central to the ECtHR’s original ruling.

However, both at the level of the Supreme Court of Spain (judgement No. 58/2018, 25 January 2018) and the Constitutional Court (judgement 1/2021, 25 January 2021), these attempts were unsuccessful. The thesis of automatic extension of legal effects for Roma marriage based on the Muñoz case has been rejected by the courts.

In the legal literature, these decisions were described in detail (in particular, by Manuel Martín Hernández-Carrillo, Yolanda Cano Galán, Laura Hernández Llinás, Antonio Folgoso Olmo⁸. Therefore, it makes sense to examine the certain positions of the courts, focusing on why the claimant’s references to the case of Muñoz Díaz were rejected.

Thus, the decision of the Supreme Court of Spain indicated that in the case considered by it, unlike the case examined by the ECtHR, good faith regarding the existence of marriage could not be established, since in the official documents the parents were recognized as “single persons” and children who are born out of wedlock. In addition, as the Supreme Court stated, this case concerns the status of *de facto* partners, not spouses. The Constitutional Court agreed with the arguments of the Supreme Court above.

7. Rodríguez Cardo, Iván Antonio: “El rito gitano como vínculo apto para disfrutar de la pensión de viudedad (Comentario de urgencia a la STEDH Muñoz Díaz vs. España de 8 de diciembre de 2009)”, *Actualidad Laboral*, núm. 3, 2010, p. 5.

8. Hernández-Carrillo, Manuel Martín: “Pensión de viudedad, matrimonio gitano y parejas de hecho”, *Revista de Estudios Jurídico Laborales y de Seguridad Social (REJLSS)*, núm. 3, 2021, pp. 291-297. <https://doi.org/10.24310/rejls.vi3.13543>; Cano Galán, Yolanda: “Pensión de viudedad y unión por el rito gitano”, *Diario La Ley*, núm. 9182 (20 abr. 2018), 2018, pp. 1-6; Hernández Llinás, Laura: “Sentencia del Tribunal Constitucional 1/2021, de 25 de enero”, *AIS: Ars Iuris Salmanticensis*, vol. 9, núm. 2, 2022, pp. 446-449; Folgoso Olmo, Antonio: “Análisis sobre la existencia de discriminación (directa e indirecta) en la denegación de la prestación de viudedad tras matrimonio gitano”, *Revista española de derecho del trabajo*, núm. 242, 2021, pp. 269-278.



Accordingly, it is quite reasonable to conclude that the second fundamental element of the case of Muñoz Díaz, namely the legitimate expectation, could not be established without good faith. In other words, the fundamental difference between the two cases is the presence of different statuses that the applicants received from the State. In addition, this also indicates that even based on a certain similarity of the circumstances of the cases (Roma marriage, cohabitation and children), proving the applicant's good faith and the legitimate expectation is a separate and difficult task.

Thus, it is necessary to clearly understand the reasons for the Court's upholding the claims: the State, by providing the applicant with certain documents, allowed her to legitimately expect that the marriage according to Roma traditions is recognized by the State. This allows us to draw another important conclusion: the case of Muñoz Díaz has the specific circumstances (as stated by the Court itself) and cannot be considered an unconditional basis for the legalization of extramarital relations.

If Spain had not provided such documents to the applicant, both the applicant's good faith and legitimate expectation would have disappeared. If we also remove the special attention to the Roma community as a particularly disadvantaged and vulnerable minority from the analysis, the question will narrow down to whether the absence of the right to a survivor's pension for *de facto* partners violates the Convention.

Viewed from this angle, the ECtHR did not rebut the position of the Madrid Higher Court of Justice ("a couple living together *de facto* as husband and wife and many others who, in reality, are not married under the applicable law, are excluded from the benefit of that pension") and the Constitutional Court ("to limit the survivor's pension to cases of institutionalised cohabitation as husband and wife, excluding other forms of partnership or cohabitation, did not constitute discrimination").

So, in the context of our research on the application of the ECtHR jurisprudence to reform Ukrainian legislation, we should point out such an important intermediate conclusion: it would be wrong and simplistic to perceive the Court's position in the case of Muñoz Díaz v. Spain as equating rights in extramarital relations with the rights granted by marriage. At the same time, the question should be raised as to whether persons in *de facto* relationships in Ukraine have good faith and legitimate expectations. As already emphasized, they open the way for recognition of violations of the Convention and the possibility of awarding a survivor's pension.

V. THE CASE OF SERIFE YIGIT V. TURKEY: TO FIND A DIFFERENCE CRITERIA FOR DISTINGUISHING FROM THE CASE OF MUÑOZ DIAZ

The case of Muñoz Díaz v. Spain also raised some expectations among part of the scientific community regarding the case of Serife Yigit v. Turkey, which was to be considered by the Grand Chamber. In particular, Saila Ouald-Chaib, following a positive decision for the applicant in the first case, cautiously raised the question if

the current judgment represents a new wind⁹. However, after the Court refused to recognise violations of the Convention by Turkey, it became clear that they had not been justified.

Briefly, the essence of the case of *Serife Yigit v. Turkey* can be stated as follows: the applicant had the partner with whom she married in a religious ceremony in 1976 and had six children. After the death of the partner she brought proceedings before the Turkish Courts seeking rectification of the entry concerning her in the civil status register. She requested that her religious marriage be recognised. The domestic courts had rejected her claim for survivor's pension, because the legislature does not recognise any form of union other than civil marriage and she had not contracted it.

The researchers point out that there are significant similarities between the two cases and, accordingly, contradictions in the Court's practice (although they differ in their final conclusions, which should be the same in both cases)¹⁰.

Without delving into a detailed discussion, two key objective distinctions are evident: the case of *Muñoz Díaz* related to marriage under Roma rules, in the case of *Serife Yigit v. Turkey* there was a religious marriage; the first case concerned a minority recognized at the European level, in the second, the applicant did not belong to any minority. But it is also difficult to reject the significant similarity between the cases, because we are talking about actual proven and long-term cohabitation in relations (Roma marriage and religious marriage) that were not recognized by the state. In the *Serife Yigit* case, the Court of course outlined the differences that it believes exist between them. Main argument —“the applicant in the present case could not argue that she had a legitimate expectation of obtaining a survivor's pension and social security benefits on the basis of her partner's entitlement (§ 86)”. The ECtHR arrives at this conclusion based on the facts that “the applicant was aware of her situation and knew that she needed to regularise her relationship in accordance with the Civil Code in order to be entitled to benefits on her partner's death” (§ 84) and that “the Spanish authorities had recognised the applicant—a member of the Roma community who had married in accordance with Roma rites— as her partner's “spouse” (§ 85). In doing so, it reiterates the familiar thesis of the applicant's good faith as to the validity of her marriage and legitimate expectation.

Therefore, in addition to the actions of the state, one of the important criteria is the applicant's awareness of the content of her status and the need to obtain another. That is, if the applicant had the opportunity and understood that a religious marriage does not give her the right to a pension, respectively, it is her choice and responsibility to enter into a civil marriage or not, and, accordingly, to obtain the right to a survivor's pension or not.

9. Ouald Chaib, Saïla: “Is a more inclusive wind blowing through the Court?”, 2010, available from: <https://strasbourgothers.com/2010/04/12/is-a-more-inclusive-wind-blowing-through-the-court/> [access 18/12/2025].

10. Ouald Chaib, Saïla: “Şerife Yiğit v. Turkey: The Court did it again!”, 2010, available from: <https://strasbourgothers.com/2010/11/10/serife-yigit-v-turkey-the-court-did-it-again/> [access 18/12/2025]. Martín-Retortillo, Lorenzo: “Pero ¿no estuve casada? (Asuntos *Serife Yigit c. Turquía* y *Muñoz Díaz c. España*, sentencias del Tribunal Europeo de Derechos Humanos, 20.I.2009, 8.XII.2009 y 2.XI.2010)”, ob. cit., p. 41.

In this case, the ECtHR, adheres to a rather restrained position regarding the assessment of family relations. Thus, with reference to the previously cited Johnston and Others decision, it is indicated that the Convention “does not require the State to establish a special regime for a particular category of unmarried couples” (§ 102). It is worth emphasizing that in the case of Muñoz Díaz, the Court for some reason does not make a similar reference to an unmarried couple in the context of Roma marriage.

Of particular note are some positions outlined in the concurring opinion of judge Rozakis. According to his view, the real comparators to be taken into account should have been a long-standing cohabitation and marriage, rather than religious marriage and civil marriage. In the subsequent part, the judge admits that “in the circumstances of the case the absence of social security benefits to the detriment of our applicant’s interests is not contrary either to Article 14 (read in conjunction with Article 1 of Protocol No. 1) or to Article 8 of the Convention”.

Consequently, it can be concluded that as of 2010, the Court’s case-law provided a fairly clear answer: granting the right to a survivor’s pension only to spouses registered with state authorities and depriving extramarital partners of this right does not violate the Convention, except in specific circumstances, in particular those set out in the case of Muñoz Díaz.

However, it was already clear at that time that the institution of traditional marriage had changed, because the number of extramarital relationships had significantly increased. This issue was aptly highlighted by the judge Rozakis in the above-cited concurring opinion: “I wonder whether this Court should not begin to reconsider its stance as to the justifiable distinction that it accepts, in certain matters, between marriage on the one hand and other forms of family life on the other, even when it comes to social security and related benefits”.

It has been 15 years since that quote, yet it is evident that the question raised not only remains relevant but has become even more crucial, given the further spread and diversity of extramarital relationships¹¹. In addition, *de facto* relationships have begun to be actively recognized in Europe in the context of the provision of social benefits¹².

VI. LEGITIMATE EXPECTATION OF GRANTING A PENSION: CASES AGAINST SPAIN AFTER STC 40/2014

It is not surprising that the next stage of the ECtHR jurisprudence is characterized by an analysis of situations regarding the implementation of the right to a survivor’s

11. Lesthaeghe, Ron: “The second demographic transition, 1986–2020: sub-replacement fertility and rising cohabitation – a global update”, *Genus*, vol. 76(1):10, 2020, p. 35, <https://doi.org/10.1186/s41118-020-00077-4>.

12. Sánchez Gassen, Nora; Perelli-Harris, Brienna: “The increase in cohabitation and the role of union status in family policies: A comparison of 12 European countries”. *Journal of European Social Policy*, vol. 25(4), 2015, p. 445, <https://doi.org/10.1177/0958928715594561>; Waaldijk, Kees (ed.); Damonzé, Daniel; Digoix, Marie et al.: “More and more together: legal family formats for same-sex and different-sex couples in European countries. Comparative analysis of data in the LawsAndFamilies database”, *FamiliesAndSocieties Working Paper series*, nº 75, Families and Societies, 2017, available from: <http://hdl.handle.net/20.500.12204/AWRHxjC8gpz89Adag4VF> [access 27/03/2026].



pension already enshrined in national legislation for women who were in a *de facto* relationship.

All cases belong to a group of similar applications against Spain (Domenech Aradilla and Rodríguez González, nos. 32667/19 and 30807/20, 19 January 2023; Valverde Digón, No. 22386/19, 26 January 2023; del Pino Ortiz and others, No. 20942/19 and 3 others, 20 July 2023; Mendieta Borrego, No. 3958/24, 16 October 2025). Of course, they have their own characteristics, but they all have one thing in common: the Constitutional Court's ruling STC 40/2014 fundamentally changed the requirements for survivor's pensions for *de facto* partners (*parejas de hecho*). From its publication, formal registration of the partnership at least two years prior to a partner's death became mandatory across Spain, including Catalonia. The decision surprised many people, as it replaced the prior legal regime in Catalonia, where no such registration was required as long as they fulfilled other criteria.

These decisions are interesting in many aspects, starting from the justification of the need to introduce a transitional period for *de facto* couples, ending with further clarification of such principles as legal certainty, non-retroactivity and *ad impossibilia nemo tenetur* (no one may be obliged to do the impossible).

In the context of our research on the introduction of survivor's pension provision in Ukraine for *de facto* partners, the most important is the Court's analysis of the legitimate expectation and its significance in competition with the general interest.

The Court, in granting the applicants' claims, recognised that they had a legitimate expectation of receiving a pension. Also, in the case of Valverde Digón, it stated that changes in regulation that have a reasonable cause and represent the general interest "cannot prevail automatically in a situation where the individual concerned is required to bear an excessive burden as a result of a measure divesting him or her of a legitimate expectation" (§ 75).

As regards the disclosure of the meaning of "legitimate expectation", the Court referred to the previously formulated provisions in the cases of *Béláné Nagy v. Hungary* and *Kopecký v. Slovakia*. Thus, in the case of Domenech Aradilla and Rodríguez González in § 81 and in the case of Valverde Digón in § 49 the ECtHR used identical explanation: "a legitimate expectation must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision. No "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts".

The judges Ravarani, Ranzoni and Guyomar in the case of Valverde Digón in the joint dissenting opinion also rely on an understanding of what constitutes legitimate expectation. However, unlike most judges, they consider that the applicant had no legitimate expectation, because the applicant's partner died after the new requirement had been introduced by the Constitutional Court's ruling. Accordingly, even though she met all the requirements for a survivor's pension during her partner's lifetime, the applicant had hope and not a "legitimate expectation" of obtaining an asset, which must be more concrete. Therefore, they deny the applicability of Article 1 of Protocol No. 1.



In any case, it is clearly recognized that there must be a specific legal basis for establishing a legitimate expectation, filling this category with objective content. This makes it possible to dismiss the arbitrary wishes and aspirations of applicants as if they were their legitimate expectations.

VII. ANALYSIS OF UKRAINIAN REGULATIONS FOR VIOLATIONS OF THE CONVENTION

Ukraine, without granting the right to a survivor's pension, at the same time gradually establishes a broader list of rights, including social ones, for *de facto* partners.

The Family Code of Ukraine, which came into force in 2004, recognizes for the first time certain rights, including property rights, of a woman and a man living together as a family without being married to each other or to any other person (this is exactly the rather long wording that the Ukrainian legislator chose and continues to use in other regulatory acts to designate *de facto* relationships). This code became the impetus for the very slow, but nevertheless, steady consolidation of the rights of such persons in various areas of law.

For example, in the Criminal Procedure Code of Ukraine, close relatives and family members are considered to be persons, among others, who live together, but are not married.

In social security law, in particular, the Procedure for the assigning and paying state social assistance to low-income families, approved by the Resolution of the Cabinet of Ministers of Ukraine of 24 February 2003, No. 250, as amended on 22 July 2020, No. 632, provides for state social assistance to low-income families consisting of a woman and a man who live as a family, are not married, but have common children.

Living together as a family without being married and having children together is taken into account when determining the composition of the family of persons applying for assistance for children to single mothers (the Procedure for the assigning and paying state assistance to families with children, approved by the Resolution of the Cabinet of Ministers of Ukraine of 27 December 2001, No. 1751).

The Law of Ukraine "On the establishment of state assistance to injured participants of mass public protest actions and members of their families" of 21 February 2014, No. 745-VII, grants the right to this state assistance to family members of deceased participants of mass public protest actions in Ukraine, which began on November 21, 2013. Such family members include, among others, persons who live in the same family, but are not married to each other.

It should be recalled that the same family members of the deceased participants of mass public protest actions in Ukraine who lived without official registration of their relations, in accordance with Law No. 1058-IV, will not be entitled to a survivor's pension.

A similar situation is observed with payments for the military. The right to a lump-sum cash benefit in the event of death, disability or reduced work capacity not amounting to a recognized disability of military personnel, conscripts and reservists is



granted to a woman (man) with whom the deceased person lived as a family, but were not married to each other or in any other marriage. This fact must be established by a court decision that has entered into legal force (Law of Ukraine “On Social and Legal Protection of Military Personnel and Members of Their Families” of 20 December 1991, No. 2011-XII). However, these persons, in accordance with the requirements of Law No. 2262-XII, will not receive a survivor’s pension.

Thus, the Ukrainian legislator grants social rights to *de facto* partners in a rather limited and possibly inconsistent manner. Of course, as the ECtHR has repeatedly pointed out, every State has a certain margin of appreciation to treat differently married and unmarried couples, particularly in matters falling within the realm of social policy such as pensions and social security, which are closely linked to the State’s financial resources (*Serife Yigit v. Turkey*, §§ 70, 72).

So, the Court, on the one hand, reserves for each state the opportunity to refuse pension provision to persons living in the same family, but not in a registered marriage. As Juan Manuel Herreros López observes when analyzing granting the socio-economic benefits in the case law of the Court, “it falls to the States to regulate through their national laws existing benefits, as well as the conditions that beneficiaries must meet in order to access them”¹³.

On the other hand, the recognition by the authorized state bodies of the status of such persons, as was in the case of *Muñoz Díaz*, entails, in the opinion of the Court, the creation of a legitimate expectation on the applicant’s part regarding the grant and payment of a survivor’s pension.

Can we assume that Ukrainian *de facto* couples, taking into account their recognition at the level of many regulatory acts, have a legitimate expectation of a survivor’s pension?

Based on the case-law of the Court analyzed above, such persons have only hope. As the Court noted in the case of *Maltzan and others v. Germany*, nos. 71916/01, 71917/01 and 10260/02, 02 March 2005, “the belief that the laws then in force would be changed to the applicants’ advantage cannot be regarded as a form of legitimate expectation for the purposes of Article 1 of Protocol No. 1” (§ 112). In addition, Law No. 1058-IV, Law No. 2262-XII and Ukrainian judicial practice are clear and do not give them a legitimate expectation.

This subsection should also comment on the existence of good faith in Ukrainian *de facto* couples (the case of *Muñoz Díaz*, where this became a key argument in recognizing the applicant’s claims¹⁴) and the awareness of the need to settle their relationship in order to receive a social payment (one of the grounds for refusing to satisfy the claims in the case of *Serife Yigit*). To answer these questions, we should make a brief historical excursion.

13. Herreros López, Juan Manuel: “La protección de las prestaciones sociales de carácter económico en la jurisprudencia del TEDH a través del artículo 1 del Protocolo núm. 1 CEDH”, *Revista Española de Derecho Europeo*, núm. 86, 2023, p. 51.

14. Rivas Vallejo, Pilar: “La sentencia Muñoz Díaz y la penetración de la jurisprudencia sobre derechos humanos en las pensiones de viudedad”, *Consell obert: Recull informatiu del Consell General de Col·legis de Graduats Socials de Catalunya*, núm. 247, 2010, p. 22.



First, during the Soviet period, civil marriage registered by the state was always welcome, because religious marriage was not recognized and an anti-religious policy was implemented. Secondly, from 1944 to 2004, that is, for 60 consecutive years, the *de facto* partners were outside the legal regulation. Third, other specific forms (such as Roma marriage) are rare in Ukrainian society.

In describing the legal statuses of the different-sex couples (marriage and a *de facto* family union), the ECtHR in the case of Maymulakhin and Markiv v. Ukraine, No. 75135/14, 01 June 2023, emphasized that “while the level of legal protection differs considerably depending on which of the two abovementioned legal statuses a couple has, it is noteworthy that having one legal status or the other is neither imposed by the State nor stems from any objective reality but is purely the couple’s own choice” (§ 67).

De facto relations in Ukraine are becoming increasingly popular, especially among young people. However, the population treats such relationships more negatively than marriage¹⁵.

So, it is quite logical that in Ukraine *de facto* partners with or without children, clearly understand their real status –marriage or living as one family without marriage– and its legal implications. Accordingly, they make their choice consciously, in fact refusing to receive certain payments that can only belong to married couples. The only exception is if they can prove the existence of some objective special circumstances (for example, situations that did not allow marriage, etc.). This determines the conclusion that the current legal framework for the survivor’s pension in Ukraine does not violate the requirements of the Convention.

At the same time, this does not exempt from another question: is it worth granting the right to a survivor’s pension to *de facto* partners in Ukraine, adopting a broader perspective on the Court’s jurisprudence and the development of the institution of the family over the past decades?

As is well known, the ECtHR pays great attention to comparative law, trends and the degree of consensus, studying how the member States of the Council of Europe regulate various issues. The Court uses this data to justify its decisions, in particular those regulating family relations (Fedotova and Others v. Russia, nos. 40792/10, 30538/14 and 43439/14, 17 January 2023, §§ 174, 175 and 186). This, as noted by the Court, turns the existence or non-existence of a European consensus to an additional factor relevant for determining the extent to which the respondent State should be afforded a margin of appreciation (Maymulakhin and Markiv, § 61).

The case of Serife Yigit in §§ 42-44 provides a detailed analysis of the issue regarding recognition of *de facto* couples and their rights in different states. It is indicated in § 43 that only 6 countries (Austria, Belgium, France, Hungary, the Netherlands and Spain) have enshrined the right to a survivor’s pension for cohabitants, subject to certain conditions. In other words, most countries did not provide payments to such couples as of 2010. Evidently, much has changed in States’ perception of such relations since that decision.

15. Lavrynenko, Nataliia: “Transformation of the forms of the family institution in modern Ukraine”, Ukrainian Society: Monitoring of Social Changes, issue 7 (21), 2020, pp. 250-251 (in Ukrainian).



However, as already mentioned, this merely provides an additional argument for the position that Ukraine's regulatory framework for pension to *de facto* couples must be revised to meet the Convention requirements. To put it another way, the existence of this factor does not negate the necessity for the existence of core arguments that would allow for establishing a violation by the State in the absence of a right to a survivor's pension for common-law partners. These primary arguments that have already been discussed above may consist of demonstrating the good faith, legitimate expectation and personal situation awareness.

Nevertheless, in light of the aspiration for EU accession, the increase in the number of *de facto* couples and the general liberalization of family relations, Ukraine should seriously think about granting a survivor's pension to such persons. The process of developing clear requirements for this should certainly be based primarily on the existing experience of legal regulation of European countries.

VIII. CONCLUSIONS

At present, Ukraine does not recognize the right of *de facto* partners to a survivor's pension for either civilians or military personnel. Considering the recognition of the ECtHR jurisprudence as a source of law in Ukraine, the question arises regarding its impact on the process of granting the right to a survivor's pension to *de facto* couples. It is emphasized that since 1986, in the case of *Lindsay v. United Kingdom*, the Commission and the Court adhered to a rather unambiguous position regarding the distinction between marriage and unmarried relationship.

In the context of providing a survivor's pension to a partner with whom the applicant was not in a registered marriage, the situation from the Commission's decision in *Quintana Zapata v. Spain* is illustrative. No violation of the Convention requirements by the State has been established. It was considered justified to grant such payments to the spouses while excluding those in *de facto* partnership.

Of the matters examined, the cases of *Muñoz Diaz v. Spain* and *Serife Yigit v. Turkey* are likely the most discussed and widely debated. In the first case, the ECtHR, in satisfying the applicant's claims, relied on her good faith and legitimate expectation. At the same time, the Court did not equate the legal effects of a Roma marriage with those of a civil marriage; it did not find discrimination prohibited by Article 14 in Spain's actions in this context.

Inspired by that precedent, although the Court recognized the special circumstances of the case of *Muñoz Diaz*, an attempt was made in Spanish courts to obtain a survivor's pension while being in Roma marriage. The Supreme Court and the Constitutional Court, quite reasonably did not satisfy the requirements. The claimant did not have documents from the state similar to the case of *Muñoz Díaz*, so there was no legitimate expectation.

In the case of *Serife Yigit*, the ECtHR did not recognise the applicant's right to a survivor's pension, arguing primarily that she understood her rights during religious marriage. Therefore, she did not have a legitimate expectation.



The identification of legitimate expectation also became a defining issue in cases against Spain from 2023 to 2025, specifically in Domenech Aradilla and Rodríguez González, Valverde Digón, del Pino Ortiz and others, Mendieta Borrego, which pertained to changes in the regulations for *de facto* couples following the Constitutional Court's ruling STC 40/2014.

In Ukraine, *de facto* "family" relations have historically been excluded from any legal regulation for decades. Since 2004, when the *de facto* partners of different sexes received their recognition in the Family Code of Ukraine, the list of rights for such persons has gradually expanded. Now we observe a situation where a person who was in a stable relationship with the deceased is entitled to specific monetary benefits.

However, the state does not grant the same persons the right to a survivor's pension. This cannot serve as a basis for pension claimants to establish the presence of three key components: good faith, legitimate expectation and personal situation awareness.

De facto couples in Ukraine are aware of their status and cannot assert to be married. Legislation, administrative and judicial practice also deny their right to a survivor's pension. In such circumstances, without a legal foundation, it is difficult to recognize the existence of legitimate expectation. In addition, the state has a certain margin of appreciation, particularly within pensions. This gives grounds to conclude that the current legal regulation in Ukraine comply with the Convention.

Nevertheless, it is observed that contemporary trends regarding the prevalence of *de facto* partnership and the degree of consensus between the member States of the Council of Europe (which the ECtHR, inter alia, draws attention to) as well as Ukraine's aspirations to join European Union create a basis for initiating discussion on granting the right to a survivor's pension to the aforementioned persons.

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