

## Death and legal family formats in Norway

by Thomas Eeg<sup>1</sup>

*The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 6 – Death)

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# FamiliesAndSocieties

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## The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

## Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu). There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

## About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), [www.familiesandsocieties.eu](http://www.familiesandsocieties.eu).

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

## About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

### The six papers about Norway

The answers concerning Norway can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)):

#### Formalisation of legal family formats in Norway by Thomas Eeg (Section 1)

#### Income, troubles and legal family formats in Norway by Halvor Frihagen (Section 2)

#### Parenting and legal family formats in Norway by Thomas Eeg (Section 3)

#### Migration and legal family formats in Norway by Halvor Frihagen (Section 4)

#### Splitting up and legal family formats in Norway by Thomas Eeg (Section 5)

#### Death and legal family formats in Norway by Thomas Eeg (Section 6)

So this paper is based on **Section 6 (Death)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

#### 6.1 Tenancy continuation

#### 6.2 Property at death

#### 6.3 Inheritance

#### 6.4 Inheritance tax

#### 6.5 Survivor’s pension

#### 6.6 Wrongful death

#### 6.7 General background regarding death

In the following pages of this paper, first the answer to question 6.7 is presented, followed by the answers to questions 6.1 to 6.6.

**6.07 - General background regarding death (Open question)**

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding death, then please do so here.

**In 2014 an expert committee appointed by the government put forward a proposal for a new inheritance act (NOU 2014: 1 Ny arvelov). Two main features regarding the intestate rules are the enhancement of the position of a surviving spouse (of both different and same sex couples) towards the deceased's heirs of kin, and to give surviving cohabitants equal status as spouses as far as possible. If the proposal is passed, a surviving spouse/cohabitant will be entitled to 1/2 of the deceased's estate if his or her next of kin are descendants, but not less than an amount which is subject to inflational adjustments, at present approximately EUR 57.000. If the deceased died without descendants, the surviving spouse or cohabitant will inherit the entire estate. See art. 6 and 9 of the proposal.**

Jurisdiction: **Norway**

Source: T. Eeg, "Death and legal family formats in Norway". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-NO-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.01 - Tenancy continuation**

When the partner who holds the rental contract dies, does the other partner then have a right to continue to rent the home?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1939	2015 Yes 2009	2015 N/A 0000	2015 Yes 1993	2015 Yes 1991	2015 Yes 1991
	N/A 0000		N/A 0000	No 0000	No 0000

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>References to legal sources:</b> Art. 8-2(1)(a) of lov om husleieavtaler [Tenancy Agreement Act] 26 March 1999 nr. 17 (in force 1 January 2000).</p> <p>Art. 31(3)(1) of Lov om husleie [Tenancy Act] 16 Juni 1939 nr. 6 (repealed by law 26 March 1999 nr. 17 from 1 January 2000).</p>		<p><b>References to legal sources:</b> Art. 95(1) and (2) of lov om ekteskap [Marriage Act] 4 July 1991 nr. 47 (added by law 27 June 2008 nr. 53, in force 1 January 2009).</p> <p>Art. 3 and 4 of lov om registrert partnerskap [Registered Partnership Act] 30 April 1993 (in force 1 August 1993, repealed by law 27 June 2008 nr. 53 from 1 January 2009).</p>		<p><b>References to legal sources:</b> Art. 8-2(1)(c) of lov om husleieavtaler [Tenancy Agreement Act] 26 March 1999 nr. 17.</p> <p>Art. 31(3)(2) of Lov om husleie [Tenancy Act] 16 Juni 1939 nr. 6 (amended by law 4 July 1991 nr. 45, in force 1 October 1991, repealed by law 26 March 1999 nr. 17 from 1 January 2000).</p> <p>Lov om rett til felles bolig og innbo når husstandsfellesskap opphører [Act relating to the Right to the joint Residence and Household Goods when a Household Community ceases to exist] 4 July 1991 nr. 45.</p>	
<p><b>Explanations and nuances:</b></p>		<p><b>Explanations and nuances:</b> The articles imply that rules applicable to spouses are/were also applicable to registered partners.</p>		<p><b>Explanations and nuances:</b> The Tenancy Act of 1939 was amended with the introduction of the Household Community Act in 1991.</p> <p>According to the amendment the Tenancy Act entitled persons who belonged to the tenant's household at his or her death to continue the rent, provided they met the conditions set in the Household Community Act art. 1: Two or more unmarried persons over 18 years that have lived together in a household for at least two years, or they have, have had or were expecting a child together. The same rule is stated in the provision of the Tenancy Agreement Act of 1999.</p>	

Jurisdiction: **Norway**

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Section: **6 - Death**

Question: **6.02 - Property at death**

When one partner dies, do statutory rules consider as joint property any possessions acquired by either of them after they started this type of relationship? (In other words: would the surviving partner be deemed to own 50% of these possessions, while the other 50% are subject to relevant rules of inheritance law?)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 1927	2015 Yes, but 2009	2015 N/A 0000	2015 Yes, but 1993	2015 No, but 1978	2015 No, but 1978
Yes 1888	N/A 0000		N/A 0000	No, but 1972	No, but 1972
Doubt 0000				No, but 0000	No, but 0000
<p><b>References to legal sources:</b> Art. 58, 59, 61 and 77 of lov om ekteskap [Marriage Act] 4 July 1991 nr. 47 (in force 1 January 1993).</p> <p>Art. 9(1) and 26(1) of lov om arv m.m. [Inheritance Act] 3 March 1972 nr. 5.</p> <p>Art. 12(2) of lov om ektefellers formuesforhold [Spouses' Property Relations Act] 20 May 1927 nr. 1 (repealed 1 January 1993), cf. art. 47 of lov om skifte [Division Act] 21 February 1930, repealed 1 January 1993).</p>		<p><b>References to legal sources:</b> See question 6.01.</p>		<p><b>References to legal sources:</b> Art. 5(1)(2) of Kong Christian Den Femtis Norske Lov [King Christian V's Law of Norway] 15 April 1687.</p> <p>Rt. 1978 p. 1352 Høyesterett [Supreme Court] 17 November 1978.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      The concept of ownership related to spouses' property has been problematic over the years. A key question has in fact been whether property were jointly and equally owned during the marriage, or whether it was a mere division rule that led to an equal division after divorce and upon the death of a spouse.</p> <p>The current default property system is often referred to as a deferred community property system because contracting a marriage does not in itself imply that the spouses' assets as a whole or in terms of specific property are jointly owned, see the Marriage Act art. 31. At the dissolution of the marriage because of the death of a spouse, the surviving spouse is as a main rule entitled to retain in whole or in parts the spouses' unified estates undivided (according to an institute called 'uskifte' ['non-division'], which implies a usufruct-like right to dispose over the estate as an owner, with some restrictions).</p> <p>If the estates of the partners are to be divided upon the death of a partner, the starting point is that the net value of all property is to be divided equally, but there are several far reaching exceptions from this principle under the current community property system. For instance, a claim may be made to withhold from the division the value of assets that can clearly be traced back to means that the spouse had at the time the marriage was contracted or has later acquired by inheritance or by a gift from a person other than his/her spouse, but such a claim may lapse entirely or in parts if it will lead to an obvious unfair result. This exception does however not apply if the estate is to be divided after the surviving spouse has retained it undivided (in 'uskifte') for a period of time. Another exception is that the surviving spouse has certain priority rights, i.a. for pension scheme benefits, property for exclusive personal use or which are of a personal nature and similar. Some less practical exceptions may also be applicable, but with these clarifications, it is sufficiently accurate to say that the surviving spouse is "deemed to own 50% of these possessions, while the other 50% are subject to relevant rules of inheritance law".</p> <p>The exceptions from the principle of equal division were fewer and less far reaching before the Marriage Act of 1991.</p>		<p><b>Explanations and nuances:</b>                      See question 6.01.</p>		<p><b>Explanations and nuances:</b>                      There is no general act regarding the property relations between cohabitants. General principles of property law apply, including the principles of contract law. This implies that each cohabitant acquires his or her own property, but certain property may be jointly owned by the cohabitants if there is an agreement, which can also be non-explicit. Thus, if both parties have contributed to the acquisition of property which typically will serve a purpose of personal and common use, like a common dwelling and household goods, such property may be deemed to be owned jointly, and normally with 50 % each. However, the cohabitants may also draw up a contract that establishes their property relations. Hence, it is possible to agree within the general limits of the law that all property shall be co-owned with 50 % each.</p> <p>It is unclear whether or to what extent contracts between cohabitants regarding ownership of possessions would have been considered valid before 1978. This year the Supreme Court acknowledged that domestic work should be attached importance when considering the size of the shares in a joint ownership comprising i.a. the common dwelling, a leisure property (a cabin) and a car between two cohabitants. In my view this decision presupposes that the cohabitants could enter into agreement regarding ownership of possessions. However, it is unclear what the legal situation was regarding the validity of contracts between cohabitants before 1972, when concubinage and homosexual intercourse between men were decriminalised.</p>	

Jurisdiction: **Norway**

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Section: **6 - Death**

Question: **6.03 - Inheritance**

When one partner dies without testament, is the other partner then an inheritor?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1937	2015 Yes 2009	2015 N/A 0000	2015 Yes 1993	2015 No, but 2009	2015 No, but 2009
	N/A 0000		N/A 0000	No 0000	No 0000
<p><b>References to legal sources:</b> Art. 6(1) and (2) of lov om arv m.m. (Inheritance etc. Act) 3. March 1972 nr. 5 (in force 1 January 1973).</p> <p>Art. 28 of Lov om arv [Inheritance Act] 31 July 1854 (amended by law 25 June 1937 nr. 12, repealed by law 3. March 1972 nr. 5).</p>		<p><b>References to legal sources:</b> See question 6.01.</p>		<p><b>References to legal sources:</b> Art. 28(b) of lov om arv m.m. (Inheritance etc. Act) 3. March 1972 nr. 5 (added by law of 19 December 2008, in force 1 July 2009).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<b>Explanations and nuances:</b>		<b>Explanations and nuances:</b> See under marriage and see question 6.1.		<b>Explanations and nuances:</b> The statutory inheritance right is contingent of the cohabitants having, having had or expecting a child together.	

Jurisdiction: **Norway**

Source: T. Eeg, "Death and legal family formats in Norway". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-NO-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.04 - Inheritance tax**

Is the surviving partner exempted from paying inheritance tax (or required to pay less than a mere friend would have to pay)?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 2014	2015 Yes, but 2014	2015 N/A 0000	2015 Yes, but 2014	2015 Yes, but 2014	2015 Yes, but 2014
Yes 1965	Yes 2009		Yes 1993	Yes 2002	Yes 2002
Yes 0000	N/A 0000		N/A 0000	No 0000	No 0000
<p><b>References to legal sources:</b> Lov om avgift på arv og visse gaver [Inheritance etc. Tax Act] of 19. June 1964 (repealed by law 13 December 2013, in force 1 January 2014).</p> <p>Art. 4(4) of the Inheritance etc. Tax Act (in force 1 January 1965).</p>		<p><b>References to legal sources:</b> See question 6.01.</p>		<p><b>References to legal sources:</b> See under Marriage.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      The Inheritance etc. Tax Act was repealed from 2014. This act had as a starting point that anybody who received inheritance over a certain amount had to pay tax, but a surviving spouse was exempted from Inheritance Tax at least from 1 January 1965.</p>		<p><b>Explanations and nuances:</b>                      See under marriage and see question 6.1.</p>		<p><b>Explanations and nuances:</b>                      See under Marriage.                       A surviving cohabitant was exempted from inheritance tax by an amendment of art. 4(4) by law 28 June 2002 nr. 49, in force the same day.</p>	

Jurisdiction: **Norway**

Source: **T. Eeg**, "Death and legal family formats in Norway". In: **K. Waaldijk et al. (eds.)**, *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu), [LawsAndFamilies-NO-Section6.pdf](#) (please use this full citation when citing any information from this table).

Section: **6 - Death**

Question: **6.05 - Survivor's pension**

When one partner dies while being employed, is the surviving partner then normally entitled to a survivor's pension?

(For example on the basis of statutory law, and/or on the basis of a collective labour agreement or arrangements of the employer.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes 1967	2015 Yes 2009	2015 N/A 0000	2015 Yes 1993	2015 No, but 1994	2015 No, but 2009
No, but 1965	N/A 0000		N/A 0000	No, but 0000	No 0000
<p><b>References to legal sources:</b> Art. 17-5 of lov om Folketrygd [The National Insurance Scheme Act] 28 February 1997 nr. 19 (in force 1 May 1997).  Art. 10-1 of lov om Folketrygd [The National Insurance Scheme Act] 17 June 1966 nr. 12, in force 1 January 1967, repealed 1 May 1997).  Lov om enkje- og morstrygd [Act regarding social Insurance for Widows and Mothers] of 20 June 1964 (in force 1 January 1965).  <a href="http://www.nav.no/rettskildene/Rundskriv/kapittel-17-generell-del">www.nav.no/rettskildene/Rundskriv/kapittel-17-generell-del</a>.</p>		<p><b>References to legal sources:</b> See under 6.01.  Art. 1-5(2) and 17-2(3) of lov om Folketrygd [The National Insurance Scheme Act] 28 February 1997 nr. 19 (in force 1 May 1997).</p>		<p><b>References to legal sources:</b> Art. 17-2(3), cf. 1-5(3) and (4) of lov om Folketrygd [The National Insurance Scheme Act] 28 February 1997 nr. 19 (in force 1 May 1997).  Art. 18-15 of lov om Folketrygd [The National Insurance Scheme Act] 17 June 1966 nr. 12, added by law 17 December 1993 nr. 130, in force 1 January 1994, repealed 1 May 1997).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      A surviving spouse will normally be entitled to a pension, contingent to criteria in art. 17-5. Other civil service or occupational pension schemes may also entitle a pension for the surviving spouse after the death of the member of the pension scheme. A pension for the survivor from such schemes is however normally just a supplement to the pension he or she receives from the National Insurance Scheme.</p> <p>According to the Act regarding social Insurance for Widows and Mothers of 1964, only widows - not widowers - were entitled to contributions. Until this act came into force, there were entitlements for widows in a number of special insurance- and pension schemes, but probably seldom for widowers.</p>		<p><b>Explanations and nuances:</b>                      Although the legal sources mentioned under question 6.01 as a general rule make/made any statutory provision etc. concerning spouses applicable for registered partners, some acts contain their own provision stating the same principle for that act, like art. 1-5(2) of the National Insurance Scheme Act. Furthermore, art. 17-2(3) specifies the same for contributions to a surviving partner according to chapter 17.</p>		<p><b>Explanations and nuances:</b>                      Art. 1-5(3) makes the entitlements according to the act concerning spouses applicable for cohabitants, contingent of the cohabitants having or having had a child together, or that they earlier had been married to each other. Furthermore, art. 17-2(3) specifies the same for contributions to a surviving cohabitant according to chapter 17. It follows from these criteria that a surviving cohabitant of the same sex as the deceased could not be entitled to a survivor's pension until it was legally possible to contract a marriage between persons of the same sex, or to become parents together via assisted reproduction treatment. See "1.01 Marriage" and "3.01 Cohabitation" for further explanations.</p> <p>Art. 18-15 of the act of 1966 had the same function as art. 1-5(3) of the present act. It is unknown to what extent other pension schemes entitled pension rights for surviving cohabitants prior to 1994.</p>	

Jurisdiction: **Norway**

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Section: **6 - Death**

Question: **6.06 - Wrongful death**

In case of wrongful death of one partner, is the other partner then entitled to compensation from the wrongdoer?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2015 Yes, but 0000	2015 Yes, but 2009	2015 N/A 0000	2015 Yes, but 1993	2015 Yes, but 1995	2015 Yes, but 1995
	N/A 0000		N/A 0000	No, but 1972	No, but 1972
				Doubt 0000	Doubt 0000

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>References to legal sources:</b>            Art. 3-4 and 3-5(2) of lov om skadeserstatning [Compensatory Damages Act] 13 June 1969 nr. 26 (added by law 25 May 1973, in force 1 January 1974).</p> <p>Art. 19(2) and 21(2) of Lov om den almindelige borgerlige Straffelovs Ikrafttræden [Act regarding the Commencement of the Criminal Act] 22 May 1902 nr. 11 (repealed by law 25 May 1973, in force 1 January 1974).</p>		<p><b>References to legal sources:</b>            See question 6.01.</p>		<p><b>References to legal sources:</b>            See under "marriage". Art. 3-5(2) amended by law 1 July 1994, in force 1 January 1995).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p><b>Explanations and nuances:</b>                      Art. 3-4 of the Compensatory Damages Act is mainly a codification of the legal situation developed mainly through case law. Even though a wrongdoer is responsible for the death of a person, it is a criterion for compensation that the deceased was providing for the person claiming compensation at the time of death.</p> <p>According to art. 3-5(2) it is possible for i.a. a spouse of the deceased to obtain "compensation" for a non-economic damage (i.e. not the loss of provision), however only if the death was caused intentionally or by severe negligence.</p> <p>Before 1974 the legal source were the provisions in the act of 1902.</p>		<p><b>Explanations and nuances:</b>                      See under marriage and see question 6.1.</p>		<p><b>Explanations and nuances:</b>                      See under "marriage".</p> <p>Spouses are obliged according to art. 38 of the Marriage Act of 1991 to provide for one another, in contrast to cohabitants.</p> <p>However, the criterion for compensation in art. 3-4 of the Compensatory damage Act is actual provision, which indicates that also cohabitants may be entitled to compensation.</p> <p>I do not know of any instances, and it is in my opinion not likely that a cohabitant could claim compensation for provision before 1972, given that concubinage and homosexual intercourse between men were criminal offences. See further explanations and nuances under "1.01 Cohabitation".</p> <p>According to art. 3-5(2) it is from 1 January 1995 possible also for a cohabitant of the deceased to obtain "compensation" for a non-economic damage (i.e. not the loss of provision), however only if the death was caused intentionally or by severe negligence.</p>	