Law Review • vol. XI, issue 2, July-December 2021, pp. 69-82

Family Relations in the Light of Romanian Funeral Laws

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Abstract

The passing away of loved ones is perhaps the most critical moment in everyone's life. Such moments can bring families together, but they can also poison the relationships between relatives. Although concord should characterize these relations, not infrequently the reality proves us that the legislator has the ingrate mission to find solutions to resolve conflicts between the relatives of the deceased regarding the organization of the funeral. The issue is all the more complicated as not only secular legislation has its say, but also canon law in the sense that the lack of community of faith is an element that cannot be neglected especially in the case of denominational cemeteries. Analyzing how funerals are regulated we find that each actor – the state, the cults and the territorial administrative units – has a somewhat different vision on family relations, more precisely each one is more or less intrusive in the sphere of the private life. Virtually every regulation with an impact on funerals shows a certain pattern of personal and family relationships, essentially a behavior conditioning that is rewarded with the possibility of benefiting from certain funeral services. Thus, although everyone has the right to a decent funeral, the rules governing funerals form a kaleidoscope which, depending on the actual situation of the deceased, may lead to different results in the sense that the deceased is offered or denied certain options regarding the establishment of the place of burial and the organization of funeral services. Without trying to exhaust this vast topic, the present short study aims to highlight from a legal perspective the impact of the family typology on funerals arrangements starting mainly from the options offered to the deceased by the Romanian legislation.

Keywords: *private law, family relations, secular law, canon law, funeral, burial, cemetery rules and regulations, persons obliged to dispose in relation to the funeral, funeral expenses.*

Preliminary considerations

The concept of family can be viewed from different angles. This is why family relationships do not fit into a unique model to be applied in all cases and, from a legal point of view, the notion of family member does not always have a common meaning both in European Union law and in the domestic law of the Member States. Moreover, secular legislation and canon law do not always

overlap. In this context the rules governing funerals form a kaleidoscope which, depending on the concrete situation of the deceased, can lead to very different results in that the deceased is offered or refused certain options regarding the establishment of the burial place and the organization of funeral services.

The situation is all the more complex as, according to tradition, in Romania the funeral takes place on the third day after death. Virtually all aspects of a funeral must be clarified within forty-eight hours of death. Unlike French law[1], Romanian legislation does not contain an express provision in the matter of contesting the conditions of the funeral. This aspect makes it impossible to reconcile litigations with the respect owed to our tradition regarding the time of burial. Moreover we could not identify any court decision on this topic.

The funeral litigation intervenes after the funeral, for example to obtain a decision authorizing the exhumation for a reburial in another cemetery in the event of *a posteriori* divergence in the family of the deceased[2]. As the *a priori* impact of family relations on the organization of funerals cannot be studied in the light of case law that precedes funerals, we are left only with the relevant legislation.

First of all, we have to consider who can decide on the organization of the funeral. Then we have to study who bears the funeral costs because it is possible that the person who organizes the funeral is not the only one to bear these expenses. Finally, we must also analyze the thorny question of the burial place choice, a question which is all the more complicated because not only secular

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All links were last accessed on 27 September 2021. An earlier draft of this article was published in French under the title *Les relations familiales a l'aune du droit funeraire roumain* in Jus et Civitas – A Journal of Social and Legal Studies vol. VII (LXXI), nr. 2/2020, p. 1-14. This English updated and revised version was presented at the International Law Conference "Current Issues within EU and EU Member States: Converging and Diverging Legal Trends", 4th edition, organized by the Faculty of Law – Transilvania University of Braşov on 19-20 November 2021.

[1] "In matters of dispute on the conditions of the funeral, the judicial tribunal is seized at the request of the most diligent party […]. The judicial court rules within twenty-four hours. Appeal can be lodged within twenty-four hours of the decision before the first president of the court of appeal. The latter or his delegate is seized without form and must take a decision immediately. The parties are not required to appoint a lawyer" – article 1061-1 of *Code de procédure civile* (French Code of Civil Procedure), version in force on 26 September 2021, available at https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070716/.

[2] Craiova District Court, *Civil sentence no. 3752 of 9 March 2016*, published in summary in Revista română de jurisprudenţă no. 4/2017, p. 90-91: "Although the surviving spouse and the deceased's son, claiming that the moral thing is that the deceased should be close to their family, opposed to the demand of the deceased's mother, brother and daughter, efficiency was given to requests of the latter ones, who had proved that they were taking care more of the grave, of the necessary commemorations, of the memory of the mentioned deceased."

legislation has its say, but also canon law in the sense that the lack of community of faith is an element that cannot be neglected, especially in the case of denominational cemeteries.

Who decides on the organization of the funeral?

The Civil Code[3] in article 80 (1) regulated for the first time *expressis verbis* the right of everyone to determine the nature of their own funeral. So, ideally, while alive the deceased organized the funeral in great detail and also paid for it in advance. Obviously, this almost never happens in real life.

The deceased may have expressed wishes regarding the funeral, but it is highly likely that this will did not materialize in a legal act, such as a last will and testament. Besides, the person's desires on these aspects can be expressed in any other way, which results from the wording of the second paragraph, which refers to the express *option/choice* of the deceased, the legislator avoiding using the term *will*[4].

As death comes like a thief[5], at best the deceased may have left some more or less detailed instructions. In such a situation, article 2 (2) of Law no. 102 of 8 July 2014 on cemeteries, human crematoria and funeral services[6] says that this will must be taken into account when establishing the burial place and the organization of funeral services[7]. If the details are insufficient or the deceased has not expressed his wishes, the same law and article 80 (2) *in fine* of the Civil Code provide that one must take into account the religious affiliation of the deceased. But who are the persons called upon to supplement the will of the deceased?

Initially article 80 (2) of the Civil Code provided that, in the absence of an express choice of the deceased, it will be respected – in order – the will of the spouse, parents, descendants, relatives in collateral line up to and including the fourth degree, universal legatee or legatee under universal title, or the disposition of the mayor of the commune, city, municipality or sector of the Bucharest municipality in whose territorial area the death took place. As a result,

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[3] *Law no. 287/17 July 2009* regarding the Civil code, republished in the Official Journal of Romania, Part I, no. 505 from 15 July 2011.

[4] E. Chelaru in Fl.-A. Baias, E. Chelaru, R. Constantinovici, I. Macovei (coord.), *Noul Cod civil: comentariu pe articole*, Bucureşti: C.H. Beck, 2014, p. 101.

[5] See The Bible, 1 Thessalonians 5:2.

[6] Published in the Official Journal of Romania, Part I, no. 520 from 11 July 2014.

[7] According to article 21 (1) of Law no. 102/2014, "funeral services consist of: receiving the order for burial, transporting the deceased, preparing the deceased for burial, placing the coffin on the funeral bier and organizing the last farewell ceremony, the lowering of the coffin in the grave, the opening and closing of the tomb, the exhumation and re-burial, the incineration, taking the urn with ashes and placing it in a special niche, handing over the urn."

the will manifested by the surviving spouse leaves the will of the parents ineffective and so on[8].

This provision has been amended by article 17 (1) of the Law on cemeteries, human crematoria and funeral services. Today the order reads as follows: the person who has agreed by contract that will take care of the funeral[9], the person established by the testament of the deceased (not only a legatee, but also an executor), the spouse of the deceased, who lived in the same dwelling as the deceased in the last part of the deceased's life, the will of another close relative of the deceased up to and including the fourth degree, without distinguishing between relatives in direct line – descendants or ascendants – and collateral parents.

The Civil Code stipulates that the will of the persons listed in article 80 will be *respected*, in the order, while Law no. 102/2014 provides that they are *required* to decide on the funeral and, if none of the listed persons exists or if the obligated person is in an unknown place or does not fulfill this obligation, the mayor of the territorial administrative unit where the death took place decides on the funeral.

Practically almost no one is really forced to take care of funeral or rather the effectiveness of this obligation is doubtful to say the least since shame and public dishonor no longer have the past impact, with the exception of the mayor – for reasons of safety and public health – and the persons held under a contract or a testamentary charge, who risk the revocation of donations or bequests for non-performance of charges provided for in article 1027 (1) and 1068 (1) of the Civil Code.

Article 17 (2) of Law no. 102/2014 admits that the persons referred to in article 17 (1) may not fulfill their obligation, another normative act provides for a rather low penalty for breach, knowing that the maximum fine incurred in this case is 10,000 lei (approximately 2,000 euros)[10], and judicial coercion is out of the question if the funeral is to take place on the third day after death. In essence, the fate of the funeral remains deeply influenced by the piety of those close to the deceased.

Leaving aside the situation of the deceased who concluded legal acts *inter vivos* or *mortis causa* on the organization of the funeral, habitually the first person

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[8] E. Chelaru, *op. cit.*, p. 101.

[9] In Romania it is usually a *lifetime maintenance contract*. To this end, article 2257 (3) of the Civil Code provides that "if the maintenance is for life or when the creditor dies during the term of the contract, the debtor has the obligation to provide the funeral", in the sense of organizing it and bearing the costs.

[10] Article 43 (1) (c) combined with article 21 (1) of the annex to the *Government Decision no. 741/12 October 2016* for the approval of the Technical and Health Rules regarding the funeral services, burial, cremation, transport, exhumation and reburial of human corpses, cemeteries, human crematoriums […], published in the Official Journal of Romania, Part I, no. 843 from 24 October 2016. The sanction should be applied by the Directorates of Public Health, but these do not exert a control *a priori* over burials.

called to decide is the surviving spouse, but – according to article 17 (1) (c) of the Law on cemeteries, human crematoria and funeral services – only if the spouse lived under the same roof with the deceased during the latter part of the deceased's life. An *ad litteram* interpretation of this provision would prevent the spouse from organizing the funeral, when, for some reason, the spouse did not live in the same house with the deceased – a factual situation[11]. The condition of cohabitation illustrates a perspective rooted in tradition which does not take into account the realities of the 21st century, such as the increasing mobility of citizens within the European Union.

It may happen that, for professional or economic reasons, one of the spouses has gone to live in another state to work there, sometimes for a long time, but the couple remains united and stable despite the distance[12]. If one of them dies, should the will of the parents of the deceased prevail, with the exclusion of the surviving spouse? The answer cannot be affirmative because such an interpretation would negate the affection between the spouses. Moreover, the Civil Code says in article 309 that spouses owe each other respect, loyalty and moral support, but – for good reasons – they can choose to live separately. It is obvious that these justifying reasons must include at least professional or economic ones.

Therefore, *de lege ferenda*, it is necessary to reformulate the law, because a simple lack of cohabitation – without a deterioration of the marital relationship or the severing the marital ties – cannot justify the exclusion of the surviving spouse from decision-making regarding funeral arrangements.

The situation of the spouse who files for divorce and dies during the procedure must also be taken into account, because the heirs are entitled to continue the divorce action and, if the action is accepted, the marriage is considered dissolved on the date of death[13], that is to say, from a civil law point of view, the surviving spouse no longer had the status of wife or husband[14] at the time of the funeral. On the other hand, it is out of the question to wait for the

[11] Contrary to other legislations such as the French one (see article 296 et seq. of the Civil code, version in force on 26 September 2021, available at https://www.legifrance.gouv.fr/codes/id/LEGISCTA000006150007), the *separation from bed and board* – not divorce, but legal separation – does not exist in Romanian law, so the state of not living under the same roof does not correspond to a legal situation.

[12] *Mutatis mutandis* see recitals (23) and (24) of *Regulation (EU) no 650/2012* of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, published in the Official Journal of the European Union L 201/107 from 27 July 2012.

[13] In such a situation, according to article 382 (2) of the Civil Code, the divorce judgement has retroactive effect, the effects do not occur when the judgment is final – the rule in this matter – but has an earlier date, that of the introduction of the divorce petition.

[14] E. Florian, *Héritiers et hérésies juridiques*, Studia Universitatis Babes Bolyai – Iurisprudentia no. 2/2013, p. 102-103.

outcome of the trial to organize the funeral given that the funeral should take place on the third day after death.

Another, more delicate question concerns the notion of "spouse"[15]. Romanian law recognizes this quality exclusively for the person who has entered into a heterosexual marriage. In this sense, in order to protect national "legal traditions"[16], article 277 (3) of the Civil Code provides that "(t)he civil partnerships between persons of the opposite sex or of the same sex concluded or contracted abroad by Romanian citizens or by foreign citizens are not recognized in Romania" and according to article 259 (1) of the same code "(a) marriage is the voluntary union between a man and a woman, concluded in accordance with the law".

In this context, one can imagine a funeral with an element of extraneity, such as a marriage concluded by a Romanian citizen with a person of the same sex in France or a civil solidarity pact concluded between persons of the opposite sex. In the eyes of Romanian law in both cases we have a common-law couple, that is to say cohabiting relationships, without any impact on the organization of funerals in Romania in the absence of express designation of the other by the deceased or in the absence of goodwill of the family of origin of the deceased.

The Romanian legislative solution, consisting in creating an order of preference with regard to people called upon to replace the will of the deceased, establishes the presumption that these people know best the intention of the deceased, even if the departed did not express it while alive. Unfortunately, the Romanian legislator did not have the foresight to realize the full correlation between the right to decide on the organization of the funeral and the quality of heir or successors of the deceased[17]. Such a solution, although imperfect, in our view is more logical and coherent because they are also the beneficiaries of the inheritance from which the funeral expenses are borne.

The French legislator has not provided for such an order of preference.

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[15] More precisely the notion of "spouse" provided for in article 2 (2) (a) of *Directive 2004/38/EC* of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States […], published in the Official Journal of the European Union L 158 from 30 April 2004. See also the Court of Justice of the European Union (Grand Chamber), *Judgment of 5 June 2018*, Coman and Others, C-673/16, ECLI:EU:C:2018:385, published in the electronic Reports of Cases (Court Reports - general), paragraph 36: "a Member State cannot rely on its national law as justification for refusing to recognise in its territory, for the sole purpose of granting a derived right of residence to a third-country national, a *marriage concluded by that national with a Union citizen of the same sex in another Member State in accordance with the law of that state* [emphasis added]".

[16] Article 1 (II) (5) of the *Senate Decision no. 76/9 May 2016* on the Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships COM(2016) 107 final, published in the Official Journal of Romania, Part I, no. 359 from 11 May 2016.

[17] Article 42 of the *Civil Code of Québec*, updated to 1 June 2021, available at http://legisquebec.gouv.qc.ca/en/showdoc/cs/ccq-1991.

According to a jurisprudential interpretation of Loi sur la liberté des funérailles (Freedom of Funeral Act)[18], it should be "investigated by all means what had been the intentions of the deceased with regard to the organization of his funeral and, failing that, to designate the best qualified person to decide on their terms"[19].

As in Romania it is impossible to reconcile the judicial search for the person best placed to decide on the funeral with the respect for the tradition concerning the time of burial, less diligent deceased will be at risk of having the funeral they did not want. That is why it is never too early to settle the terms of your own funeral, in particular with regard to the civil (secular) or religious character to be given and whether or not the burial will be preceded by cremation, all the more so as, in the absence of an express option, both their opulence and their modesty may be tempered usually at the discretion of those who will bear the costs.

Funeral expenses

It has already been mentioned that the Romanian legislator did not have the foresight to realize the full correlation between the right to decide on the organization of the funeral and the quality of heir or successors of the deceased, legislative solution provided for by the Civil Code of Quebec[20] according to which, in the absence of wishes expressed by the deceased, prevail the wishes of the heirs or successors who are bound to act and the expenses are charged to the succession.

Due to the lack of such a correlation in Romanian law, the person who arranges the funeral may not be an heir or a successor. It is also not excluded that, although there are several heirs or successors called by law at the same time to decide on the funeral, only some of them involve themselves in the organization of the funeral.

Since in Romanian law funeral expenses are also part of the liabilities[21] and are charged to the succession, such situations can lead to a fracture between funeral decisions and the bearing of costs, particularly with regard to respect for local

[18] *Loi du 15 novembre 1887* sur la liberté des funérailles, version in force on 26 September 2021, available at https://www.legifrance.gouv.fr/loda/id/JORFTEXT000021810111/.

[19] Cour de cassation, Première chambre civile, *Arrêt n° 956 du 19 septembre 2018* (n° de pourvoi 18-20.693), ECLI:FR:CCASS:2018:C100956, published in Bulletin numérique des arrêts publiés des chambres civiles, available at https://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/956_19_40154.html.

[20] See *supra* n. 17.

[21] The correct interpretation and application of the provisions of the law include in the estate liabilities, among others, *funeral expenses*, as well as those carried out with *memorial services* at different time intervals, *according to religious customs* – High Court of Cassation and Justice of Romania, United Sections, *decision no. 6 from 19 January 2009* (appeal in the interest of the law), published in the Official Journal of Romania, Part I, no. 321 from 14 May 2009.

traditions[22], which can poison the relations between kinfolk. In addition, the organization of the funeral is often considered not so much as putting into practice the wishes of the deceased, but rather to meet the expectations of those who will participate in the funeral to see if and how the local traditions are carried out.

The current Civil Code, unlike its predecessor, mentions the funeral expenses in article 1392 not in relation to the charges of the succession, but in relation to the compensation of the damage in the event of tort liability. Such an oversight was not present in the legislation of historic provinces united more than a century ago with the Kingdom of Romania. Before the legislative unification achieved during the first half of last century in Transylvania and Banat reigned the Hungarian customary law and the Austrian Civil Code[23], the latter also being applied in Bucovina.

Article 549 of the Austrian Civil Code provided that „the expenses for the funeral suitable to the customs of the place, the station in life and the wealth of the deceased" were charges of the succession – burdens incumbent on the inheritance, because a rapid burial of the deceased is necessary for sanitary reasons, while custom and morality require a dignified funeral[24]. The funeral expenses also included the cost of the funeral monument and memorial services, called *parastase* in Romanian[25]. These *parastase* are religious services performed to commemorate the dead and also (large) meals – funeral banquets – given after a funeral or after a memorial service or to commemorate a deceased person. Orthodox tradition requires that after burial religious services and commemorative celebrations be held every 3 days, 9 days, 40 days, 3 months, 6 months and one year after death[26]. During the memorial services, various gifts are also offered for the soul of the deceased.

According to Hungarian customary law, funeral expenses, those related to the transport of the corpse, the grave, the funeral monument, as well as the memorial services were included in the charges of the succession, but all these

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[22] For details, see S. Mahieu, *La Pomana et autres objets de l'au-delà. Les offrandes funéraires roumaines au défi des migrations*, 11 July 2011, available at http://strabic.fr/La-Pomana-Roumanie.

[23] See I. Corjescu, *Codul civil general austriac cuprinzând textul oficial, legile, novelele şi ordonanţele publicate pentru completarea şi modificarea acestuia sau privitoare la materiile cuprinse în el, aplicabile unele în Bucovina, altele în Transilvania*, Bucureşti: Imprimeria Statului, 1921.

[24] C. Bardoşi, *Lichidarea datoriilor şi sarcinilor succesiunei în dreptul român, austriac şi maghiar: teză de doctorat*, [Oradea]: Editura Revistei Notarilor Publici, [1930], p. 10. In the same sense, article 2 (1) of Law No. 102/2014 stipulates that „(e)veryone has the right to a decent funeral".

[25] C. Bardoşi, *op. cit.*, p. 10.

[26] See High Court of Cassation and Justice of Romania, United Sections, *decision no. 6 from 19 January 2009* (appeal in the interest of the law), published in the Official Journal of Romania, Part I, no. 321 from 14 May 2009, and also G. P. Gheorghiu, *Obiceiul pământului şi legea. Puterea derogatorie a obiceiului*, Bucureşti: Tipografia Federaţiei Naţionale Cooperative de Librărie, 1943, apud F. Pavel, *Partea sufletului. Un vechi obicei de sorginte romană, încorporat în conţinutul desemnat prin noţiunea de „sarcină a moştenirii"*, Revista română de jurisprudenţă no. 4/2016, p. 182–183.

expenses could be reduced by the court "to an extent appropriate to the material condition and the social position which *de cuius* had"[27]. The correlation between funeral expenses, on the one hand, and the fortune and social status of the deceased, on the other hand, has no modern origin, this rule appearing in the writings of the jurisconsult Ulpian: *sumtus funeris arbitrantur pro facultatibus, vel dignitate defuncti*[28] (the funeral expenses are to be regulated in accordance with the means or dignity and rank of the deceased).

Currently, only the Code of Civil Procedure mentions "the debtor's funeral expenses, in relation to his social situation and his material circumstances"[29], without explicitly taking into account local customs. However, this condition is implicit because "it is well known that at present the religious practice of the custom has a different content in various towns of Romania, in particular in the villages and small towns, where the non-respect of the rules of the community is sanctioned by public disgrace"[30].

Virtually any discrepancy between those who are called to tend to the funeral should be resolved amicably taking into account the above criteria to assess the appropriate funeral pomp and circumstance. Even if some heirs ask for a limitation of expenses, in our view such a request can be ignored by the person responsible for organizing the funeral, as long as the local customs are respected.

It may also happen that the deceased does not have the desired funeral due to the avarice of the heirs. In a recent case[31], a woman belonging to the Greek Catholic faith expressed the desire to be buried according to the Orthodox cult alongside her predeceased son, the grave being in an Orthodox cemetery. Because the deceased's daughter decided to have the funeral officiated by Jehovah's Witnesses, as this cult does not charge fees for the funeral religious service, the deceased was relegated to the section where people of a religion other than Orthodox could be buried.

Perhaps the situation would have been different if our Penal Code had also provided that: "(a)ny person who gives the funeral a character contrary to the wishes of the deceased […], wishes […] of which that person is aware, will be punished by six months imprisonment and a fine of 7,500 euros"[32]. Since our national law does not contain any such provision, the daughter and the priest

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[27] C. Bardoşi, *op. cit.*, p. 12.

[28] D.11.7.12.5 *(Ulpianus lib. 25 ad Edictum)* in Kriegel, A, Kriegel, M. (ed.), *Corpus Iuris Civilis*, pars prior, impressio septima, Lipsiae: sumtibus Baumgaertneri, 1865.

[29] Article 865 (1) (b) of *Law no. 134/1 July 2010* regarding the Code of civil procedure, republished in the Official Journal of Romania, Part I, no. 247 from 10 April 2015.

[30] F. Pavel, *op. cit.*, p. 183.

[31] Piteşti Court of Appeal, Civil Section I, *Decision no. 237 of 11 June 2019*, available at http://rolii.ro/hotarari/5d12d074e49009201d000044.

[32] Article 433-21-1 of *Code penal* (French Penal Code), version in force on 26 September 2021, available at https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070719/.

were able to ignore the wishes of the deceased in total impunity. The daughter by choosing a free (non-Orthodox) religious service sanctioned by burial in a section of the cemetery other than that desired by the deceased, the priest in applying this sanction even though he knew that the deceased had prepared her burial place next to her beloved son.

The attorney of the parish pointed out that the deceased, of Greek Catholic religion, in order to be buried next to her son, asked to be converted to Orthodoxy, but she died before realizing her intention. The Piteşti Court of Appeal found that the deceased had acquired rights by expressing her choice during her lifetime (the right to be buried next to her son in the section reserved for Orthodox believers), but these rights were annihilated by the choice of the daughter who, for personal reasons, decided to submit the person of her mother to the funeral officiated by a cult to which she did not belong. This is why we already mentioned that the fate of the funeral remains deeply influenced by the piety of the next of kin of the deceased. Regrettably, in funeral matters a pride war is not always favorable to those who can no longer defend their own cause.

Difficulties in choosing the last resting place

Following the case presented above to illustrate the sanction of non-payment of certain fees, we will analyze in particular the difficulties of maintaining after death – by burial in the same grave – the family relationships established during life. The question is all the more complicated since not only secular legislation has its say, but also canon law, in the sense that the lack of community of faith is an element which, as we have shown, cannot be neglected, especially in the case of denominational cemeteries.

The Orthodox Church, in order to preserve the spiritual unity of Orthodox faith of the families, does not recommend mixed Christian marriages and opposes the marriage of an Orthodox person with a person of a Christian religion different from the Orthodox one, but at the same time these mixed marriages are blessed by the Church in the hope that the children born from these marriages will become members of the Orthodox Church[33]. This perspective on family relations is also found in the recently adopted Regulation of cemeteries in the Romanian Orthodox Church[34] as will be seen below.

Unlike France, we did not have any revolution that would have had the

[33] Sfântul Sinod al Bisericii Ortodoxe Române, *Despre Sfântul şi Marele Sinod din Creta: 16-26 iunie 2016. Întrebări şi răspunsuri*, Bucureşti: Basilica, 2017, p. 24-25.

[34] Sfântul Sinod al Bisericii Ortodoxe Române, *Regulamentul cimitirelor din Biserica Ortodoxă Română* (aprobat prin hotărârea nr. 11.943 din 9-11 decembrie 2020), Bucureşti: Institutul Biblic şi de Misiune Ortodoxă, 2020.

impact of that of 1789[35], so that denominational cemeteries remained the property of cults and the state declared itself (not secular, but) neutral with regard to any religious belief or atheistic ideology[36]. In this context, the only limitation to the denominational sovereignty of cults over their own cemeteries is that provided for in article 5 (3) of Law no. 102/2014 which stipulates that in towns where there are no communal cemeteries and some cults do not have their own cemetery, the deceased persons who belonged to those cults will be buried according to their own rite in the existing cemeteries in operation, except for the existing cemeteries in operation belonging to the Mosaic and Muslim cults[37]. So, with the exceptions mentioned, in the absence of a communal cemetery the cults are obliged to receive in their cemeteries the deceased of another denomination and even those without religious affiliation.

The issue of denominational cemeteries is all the more important as – in 2010 – 90% of cemeteries in Romania did not belong to municipalities, but to various cults[38]. Although article 28 (4) of Law no. 489/2006, as well as article 5 (2) of Law no. 102/2014 provide that local public administration authorities have the obligation to create public (communal) cemeteries in each town, no direct sanction is provided for municipalities not creating public cemeteries where there are none, but nevertheless this obligation requires municipalities to ensure that everyone can be buried[39]. As a last resort, the mayor of the town where the death took place must ensure the effectiveness of the rule provided for in article 5 (3) of Law no. 102/2014.

Before moving on to the analysis of the denominational cemeteries issue, we need to make some clarifications regarding the burial in a communal cemetery. Currently, there are no general regulations, but each local council adopts its own regulations for the organization and operation of communal cemeteries.

For example, in 2003 the General Council of Bucharest adopted such a regulation[40] which specifies that a person can have in concession only one place

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[35] See D. Ligou, *L'Evolution des cimetières*, Archives de Sciences Sociales des Religions no. 39/1975, p. 72-73.

[36] Article 9 (1) of *Law no. 489/28 December 2006* on religious freedom and the general regime of cults, republished in the Official Journal of Romania, Part I, no. 201 from 21 March 2014.

[37] This text reiterates imperatively – "shall be buried" instead of "may be buried" – the provisions of article 28 (2) of Law no. 489/2006. Unlike Law no. 489/2006, article 5 (4) of Law no. 102/2014 specifies that even people without religious affiliation benefit from the provisions of article (5), that is, if necessary, they can and will be buried in a denominational cemetery.

[38] *Government Opinion* regarding the Bill on cemeteries, human crematoriums and funeral services (Pl-x. 592/2009), 8 March 2020, p. 2, available at http://www.cdep.ro/proiecte/2009/500/90/2/pvg592.pdf.

[39] G. Tilkin, *Quelles confessionnalités pour les cimetières en Roumanie?*, TEOLOGIA no. 2/2013, p. 66 and 68.

[40] Consiliul General al Municipiului Bucureşti, *Regulamentul pentru organizarea şi funcţionarea cimitirelor şi a crematoriilor umane aflate sub autoritatea Consiliului Local al Municipiului Bucureşti*, available at http://accu.ro/formulare/regulament%20functionare.pdf.

of burial, with the recommendation to execute 2 or 3 crypts, obviously to maximize the use of the cemetery surface. A concession can receive the bodies of the holder of the concession, his spouse, as well as their ascendants and descendants. Any other person can be buried but only with the consent of the holder and with the reservation of a place for the holder. Funeral concessions can only be transferred by inheritance or by donation.

Practically, as long as the rules mentioned are respected, there is no other obstacle to the burial of the deceased in such a cemetery, as these can accommodate any family model. The only difficulty in maintaining lifelong family relationships by burial in the same tomb can come only from the lack of available crypts.

Communal cemeteries admit denominational pluralism because municipalities must take into account the freedom of thought, conscience and religion recognized by article 9 of the European Convention on Human Rights. Thus, these cemeteries are open to all without any discrimination based on belonging to a religion or belief, the potential division into denominational sectors being purely formal. This is why the law requires that the local public administration authorities create public (communal) cemeteries in each town.

The situation is not the same in the case of denominational cemeteries. As the state is neutral, but not secular, article 28 (1) of Law no. 489/2006 provides that "(c)onfessional cemeteries are administered according to the regulations of the holding cult". Also, we should keep in mind that, in most small towns and villages, denominational cemeteries have a monopoly status due to the lack of a municipal cemetery.

In accordance with the Regulation of cemeteries in the Romanian Orthodox Church, being the holder of a funeral concession poses no problem as long as the community of faith exists and the deceased was a member of the parish. As in the case of communal cemeteries, funeral concessions may be passed on by inheritance or donation, but the beneficiaries of an *inter vivos* donation can only be the spouse (wife/husband) or blood relatives up to the fourth degree [article 23 (2)], that is, traditional family members.

The situation becomes really complicated in the case of an interfaith (mixed) marriage. Pursuant to article 5 (3) of Law no. 102/2014, the Romanian Orthodox Church accepts the burial of the deceased who are not Orthodox… but in separate plots [article 47 (2)], as we have already seen in the case presented to illustrate the sanction of non-payment of fees for the Orthodox religious funeral service. The fact of changing religion is also sanctioned with the loss of the funeral concession [article 42 (1) (b)], the consequence being the impossibility of being buried alongside your loved ones.

The situation becomes even dramatic when a child born out of an interfaith marriage, for lack of community of faith, is refused the funeral concession of the

plot where the grandparents or one of the parents are buried, for example the daughter, an only child, is Catholic and her mother and maternal grandparents were Orthodox.

It is undeniable that the Church comes into contact with the families of the deceased at the most vulnerable moments, when they have lost a loved one and the relatives are usually in shock. In such circumstances the Romanian Orthodox Church can invoke its right to take back the concession and cede it to a new Orthodox concessionaire as a means of pressure encouraging the conversion[41] of the child born out of the interfaith marriage and this explains why the Greek Catholic mother in the mentioned example[42] asked to be converted to Orthodoxy.

Regarding the latter aspect, the regulation of a Romanian Catholic cemetery is a little more generous in that, if the Catholic lineage is interrupted in the family, the parents can withhold the funeral grant only to pay homage to the deceased, but they can no longer use the grave to bury other deceased. In addition, in the case of a mixed marriage, the tomb can accommodate even the spouse who belonged to another denomination, as well as unmarried sons and daughters who belonged to other denominations.[43] Hence the fact that Catholic canon law seems more open to interfaith dialogue carried out through mixed marriages.

Conclusions

In the light of Romanian funeral laws, we find family relations at the confluence of secular legislation and canon law. While secular legislation ensures respect for the personal choices of each member of the family without depriving them of eternal rest among their loved ones, canon law conditions their behavior according to a model specific to each religion.

Common-law unions do not give the partner the right to organize the funeral, nor does, in all cases, the marriage concluded in another state of the European Union. Moreover, neither the civil marriage concluded in Romania guarantees to the spouses that they will be able to share the same grave. Likewise, filiation relationships are not sufficient to ensure that descendants have the right to keep the funeral concession which shelters their ancestors.

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[41] G. Tilkin, *op. cit.*, p. 64. The author also mentions the European Court of Human Rights, *Judgment of 25 May 1993*, Case of Kokkinakis v. Greece (Application no. 14307/88), ECLI:CE:ECHR:1993:0525JUD001430788, § 48 where, citing a report drawn up in 1956 within the framework of the World Council of Churches, "improper proselytism" is defined as "activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need" (available at http://hudoc.echr.coe.int/eng?i=001-57827).

[42] See *supra* n. 31.

[43] Article 4.5 and 4.3 of *Statutul de administrare a cimitirelor Parohiei Sfântul Mihai Săcele-Turcheş*, available at http://www.ntpleb.ro/ro/page-49-regulamentul_cimitirelor.html.

Last but not least, the difference in the legal regime of burial sites and the shortage of communal cemeteries seem almost anachronistic in today's society, but all this indicates the fact that – for the moment and at least formally – Romanian society stands essentially in the lines of tradition.