

SHORT PRELIMINARY CONSIDERATIONS ON SOME FUNERAL ARRANGEMENTS IN THE LIGHT OF GOVERNMENT DECISION NO. 741/2016

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Abstract: *Nowadays, the new 'Technical and Health Rules regarding the funeral services, burial, cremation, transport, exhumation and reburial of human corpses, cemeteries, human crematoriums, and also the professional criteria that must be met by the providers of funeral services', govern some key aspects following one's death. For a better understanding of this new legislation concerning the death care industry, this short overview attempts, on the one hand, to highlight certain aspects of the present-day configuration of thanatopraxy, burial, cremation and funerals, and on the other hand, to examine the effectiveness of determining one's own funeral.*

Key words: *corpse care, thanatopraxy, modern embalming, funeral, burial, cremation, will, testament.*

1. Introduction

Although everybody dies and this is the one thing human beings can be certain of, the regulation of funeral arrangements represents a relatively recent concern of the Romanian legislator. The liberty to plan one's own funeral had not received an express regulation before the enforcement of the new Civil Code of 1 October 2011 and the performing of the undertaking of the thanatopraxy by the funeral services providers has recently been regulated by the Government Decision no. 741 of 12 October 2016.

2. Thanatopraxy and Modern Embalming

The concept of thanatopraxy was mentioned throughout time by some normative acts, but the extensive regulation of this new concept in the *death care industry* had not occurred before the approval through the Government Decision no. 741 of 12 October 2016 of the implementing rules of the *Law no. 102 of 8 July 2014 on cemeteries, human crematoriums and funeral services*, respectively *Technical and Health Rules regarding the funeral services, burial, cremation, transport, exhumation and reburial of human corpses, cemeteries, human crematoriums, and also the professional criteria that must be met by the funeral services providers*.

Previously, the Government Decision no. 826 of 22 July 2009 for the approval of the

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gradual inter-sectoral Framework plan to fight the effects of the pandemic virus A/H1N1 provisioned, among others, some *specific measures for the funeral services* such as immediate burial of the deceased persons, the suspension of the legal procedures which may delay the inhumation, the adjustment of the authorizations necessary for the operations succeeding death, the limitation of the system of monitoring the funeral operations and of the time established for the examination of the cause of death, the interdiction of the *thanatopraxy* services.

Another normative act that mentions thanatopraxy is the *Ministerial Order no. 1670 of 9 December 2011* (the Ministry of Health) and the *Ministerial Order no. 3106 of 25 January 2012* (Ministry of Education, Research, Youth and Sports) *completing the Order of the Ministry of Public Health and that of the Ministry of Education, Research, Youth and Sports no. 1.141/1.386/2007 on how to make the residency training in the specialities provided in the Nomenclature of Medical, Medical and Dental and Pharmaceutical Specialities for the healthcare network.*

This normative act establishes, in the section „Forensic Thanatology” from the „*Syllabuses of the internships of the residency training in forensic medicine and the appropriate scales of each internship*”, the content of this internship which also includes the study of the early and late cadaverous changes (the signs of real death), the natural phenomena of preserving the corpses, the artificial methods of preserving, as well as the techniques of thanatopraxy. Also, the list of scales related to the minimum requirements of technical executions established for the doctors during the speciality training (forensic medicine) provides the performing of 10 embalming procedures and corpse preservation techniques, as well as other thanatopraxy services.

The above mentioned normative acts did not provide a legal definition for thanatopraxy as that was included in the enforcement rules of the *Law on cemeteries, human crematoriums and funeral services*, which, according to art. 16, establishes that *thanatopraxy* represents a „set of methods and techniques which are applied to the human body after death through whereby the sanitation, the embalming, the restorations when necessary, the reconstruction and burial aesthetic care for the temporary preservation of the body, as well as the restoration of the deceased’s appearance as close as possible to the previously known one, so that he or she could be worthily introduced to the family and prepared for the funerals are performed”.

Furthermore, the Annex to the Government Decision no. 741 of 12 October 2016 defines *modern embalming* as a procedure regarding „techniques through which, after death certain chemical substances are vascularly or otherwise injected into the corpse, when the vascular system is not upright, with the purpose of stopping the action of bacteria and the process of natural destruction, as well as to attach the tissues in order to achieve the temporary or permanent preservation of the body”. Regarding the embalming, we have to mention that the enforcement rules of *Law no. 102/2014* expressly specify in the art. 17 paragraph (2) that the biocidal products used for embalming/thanatopraxy would be used only in amounts that could not lead to the permanent preservation of the body, to avoid soil contamination and to allow subsequent reburial.

In what concerns preparing of the deceased for the funeral, article 2 paragraph (1) from the Rules refers to the *mortuary care that is directly addressed to the deceased’s body*, and, to exemplify this, it mentions the undertakings of washing, sanitation, embalming and thanatopraxy. From the definition of thanatopraxy provided by art. 16, the content of the concept of thanatopraxy seems to include the whole set of methods and techniques

that are applied to the human body after death in order to prepare it for the funeral, while art. 2 paragraph (1) excludes from the content of the concept of thanatopraxy the undertakings of washing and sanitation or embalming.

This leads us to the conclusion that thanatopraxy has both a broad sense, and a restrictive one which does not include washing, sanitation or embalming, the last one being the most important procedure accomplished in thanatopraxy understood in its broad sense.

Thus, through thanatopraxy in its restrictive sense we understand only the undertakings of reconstruction and mortuary aesthetics.

The undertakings of thanatopraxy, in the light of the Government Decision no. 741/2016, are accomplished either by the pathological anatomy and morgue services of the hospitals and forensic medicine institutions, according to Law no. 104/2003 and the its enforcement rules (G.D. no. 451 of 1 April 2004 for the approval of the Methodological Rules of the enforcement of Law no. 104/2003 regarding the handling of human corpses and the removal of the organs and tissues for transplantation, published in the Official Gazette no. 340 of 19 April 2004), either by the thanatopractors hired through an employment contract by the funeral services providers according to the enforcement rules of *Law no. 102/2014*.

The purpose of accomplishing the thanatopraxy undertakings, according to the previously stated definition, is that of restoring the deceased's appearance as close as possible to the previously known one, so that he or she could be honourably introduced to the people attending the funerals. From this point of view, thanatopraxy seems to be an optional procedure.

However, there are certain situations that require mandatory embalming.

Thus, according to art. 5 of the enforcement rules of *Law no. 102/2014*, the embalming procedure is *mandatory* in the following cases: when the family chooses to display the deceased in public places, such as mortuary homes, funeral homes, chapels, with an open coffin lid; when the deceased is transported with the purpose of inhumation in another place than the one in which the death had occurred, at a distance of at least 30 kilometres; when, due to a medical cause of death that occurred outside a health unit, embalming is recommended as a measure of prevention and reduction of the biological risk [if death occurs in a health unit, the compulsoriness of the embalming is regulated by art. 3 paragraph (2) of Law no. 104 of 27 March 2003 regarding the handling of human corpses and the removal of the organs and tissues from the corpses for transplantation].

There are also circumstances in which embalming is completely *prohibited* due to objective reasons or due to public health reasons, respectively in case of infectious diseases with highly pathogenic biological agents [art. 5 paragraph (2) letter. b) from the Rules] and in the case of the persons deceased outside health units, who present an infectious risk and who, due to other objective or public health reasons, cannot be embalmed [art. 20 paragraph (1) from the Rules].

Performing the embalming may be *delayed* for the proper course of justice, when the criminal investigation body or the court is forced by law to order a forensic autopsy. In this situation, the embalming will only happen after the accomplishment of the legal investigation [art. 5 paragraph (2) letter. a) from the Rules], the performance of the embalming being delayed until the end of this procedure.

3. Funeral Arrangements

As we have seen, the thanatopraxy undertakings precede the deceased's funeral. Regarding funerals, art. 16 paragraph (1) of *Law no. 102/2014* provisions that the funeral can be religious or secular, preceded by cremation or not, and anybody has the right to express their will regarding the alternative of being buried or cremated, according art. 35 paragraph (1) from the *Technical and Health Rules regarding the funeral services, burial, cremation, transport, exhumation and reburial of human corpses, cemeteries, human crematoriums, and also the professional criteria that must be met by the funeral services providers and the guarantee fund.*

3.1. Religious Funeral vs. Secular Funeral

According to art. 2 paragraph (3) of *Law no. 102/2014*, the funeral can be religious or secular, the religious one taking place by respecting the canons, the local customs, the traditions and the regulations of the respective cult, in the case of the secular funeral, the proceedings of the funeral procession being established by the organisers.

Regarding the religious funeral, we must mention that the religious service officiated by the representatives of the cults at the funeral is not considered a provision of the funeral services, in the sense of art. 21 paragraph (1) which establishes that the funeral services consist of: receiving the order for the funeral, transporting the deceased person, preparing for the funeral, placing on the catafalque and organising the ceremony of the last farewell, lowering the coffin into the grave, opening and closing the grave, the exhumation and reburial, the cremation, the urn taking and its placement in a special niche, handing the urn.

Also, according to art. 24, during the accomplishment of their specific activities, the funeral services provider is bound, in the case of the secular funeral, to respect the provisions of the funeral petitioner related to the funeral process or, in the case of the religious funeral, the church canons.

The enforcement rules of *Law no. 102/2014*, stipulate in art. 21 paragraph (3) that the period of the religious ceremony constitutes an exception from the interdiction of displaying the deceased persons inside the cemeteries or in other places except for the especially arranged rooms, designated for this purpose, called funeral ceremony halls. Thus, as opposed to religious funerals, in the case of secular funerals it is not allowed to exhibit the deceased with the open coffin lid in other places but the funeral ceremony halls (such as mortuary homes, funeral homes, chapels).

Obviously, this provision is deeply discriminatory and mostly shows the legislator's preference for religious funerals.

In what concerns the funeral, if the deceased did not leave any instructions related to his/ her own funeral, according to art. 17 of *Law no. 102/2014*, the following persons have to arrange it: the person who committed himself or herself through contract that he or she would take care of the funeral; the person established through the deceased's will (Nicolae, 2016, p.230); in the absence of a will, the husband/the wife, who lived in the same house with the deceased in the last part of his/her life; another relative close to the deceased, up to the fourth degree (Matefi, 2014, p. 231).

If there is no person bound to dispose anything related to the funeral or the person bound to do that is in an unknown place or does not fulfil his/her obligation, the mayor of the administrative-territorial unit in whose jurisdiction the death occurred orders the

procedures related to the funeral. In all the cases, it must be taken into account the religious affiliation of the deceased. [art. 80 paragraph (2) the second sentence of the Civil Code].

3.2. Burial vs. Cremation

In what concerns the inhumation, this can take place in a cemetery belonging either to the state public property or to the administrative-territorial units, or to legally recognized religious cults, or to the local units of cult/churches in the case of confessional cemeteries, or to the economic operators, associations or foundations, or to another state, respecting the treaties to which Romania is a party. (art. 4 from the Law no. 102/2014).

In the localities where there are no communal cemeteries and some cults do not own a cemetery, the deceased persons who belong to those cults will be buried according to their own rite in the existing operational cemeteries, namely the cemeteries belonging to other religious cults, excepting the existing functional cemeteries belonging to the mosaic and Muslim cults. According to art. 5 paragraph (4) of Law no. 102/2014, the persons with no religious affiliation benefit from the same system of rights. Therefore, only the mosaic and Muslim cult could refuse the burial of a deceased person belonging to another cult when in that particular locality there is no public cemetery founded by the authorities of the local public administration.

The concept of inhumation does not only refer to the coffin that contains the deceased's body, but also, according to art. 40 point. b) from the application norms of Law no. 102/2014, to the urns containing ashes that can be buried in a cemetery, at a depth of 0,5 meters from the level of the ground or that can be deposited in a grave or a tomb. Also, the urns may be deposited in the specially designed places of the crematory/cemetery. The possible scattering of the ashes in the environment is considered to be a contravention and it is punished with a fine between 500 lei and 1000 lei. Thus, respecting the deceased's will that the ashes should be, for example, buried at the root of a tree that is not on a burial plot would turn the person entrusted to carry out the task into an offender.

4. The Funeral Planning Process

The New Civil Code regulated within art. 80 regarding the *respect due to the deceased person's will*, and the persons' right to plan their own funerals as a form of exercising the right to dispose of one's self (Baias, 2014, p.100). In this regard, art. 2 paragraph (2) of *Law no. 102/2014* provisions that when establishing the burial place and organising the funeral services, the persons entitled (meaning the persons/authority designated in art. 17 of *Law no. 102/2014*) and the funeral services providers must collaborate with each other, to take into consideration the will expressed by the deceased during life or, in its absence, they will take into consideration the deceased's religious affiliation. Thus, at least theoretically, the deceased's will would be respected.

According to art. 35 paragraph (1) from the enforcement rules of *Law no. 102/2014*, anyone has the right to express his or her will related to the alternative of being buried or cremated and in this regard he/she can express his/her will in writing, respectively the organising of the cremation through a notarial deed or by designating a person according to the provisions of art. 17 paragraph (1) of *Law no. 102/2014*. However, the *Technical*

and Health Rules regarding the funeral services, burial, cremation, transport, exhumation and reburial of human corpses, cemeteries, human crematoriums, and also the professional criteria that must be met by the funeral services providers do not establish that the violation of the provisions of art. 35, paragraph (1) would represent a contravention, so that the obligation to respect the deceased's will in relation to one's own funeral planning process seems to be practically devoid of any legal punishment.

5. Instead of a Conclusion

Even though the Romanian legislator expressly established the person's right to plan the process of one's own funeral, however, at least for now, the effectiveness of this right is being questioned due to the absence of a real punishment, other than that of public opprobrium in the case of a breach of the deceased's will.

References

- Baias, F.-A., Constantinovici, R., Chelaru, E., Macovei I. (2014). *Noul Cod civil: comentariu pe articole* [The New Civil Code: Commentaries on articles]. Bucureşti: C.H. Beck.
- Matefi, R. (2014). The Respect Due to Individuals after their Death under The Regulation of the New Civil Code. In *The International Scientific Conference: Globalization, Intercultural Dialogue and National Identity, Târgu- Mureş: Arhipelag XXI Press*.
- Nicolae, I. (2016). *Devoluţiunea legală şi testamentară a moştenirii* [Devolution of inheritance by law and by will]. Bucureşti: Hamangiu.
- *** *Hotărârea nr. 451 din 1 aprilie 2004 pentru aprobarea Normelor metodologice de aplicare a Legii nr. 104/2003 privind manipularea cadavrelor umane şi prelevarea organelor şi ţesuturilor de la cadavre în vederea transplantului* [Decision no. 451 from 1st of April 2004 on the approval of the methodological norms for the application of Law no. 104/2003 on the manipulation of human cadavers and on the collection of organs and tissues from cadavers for transplants], published in The Official Journal of Romania, Part I, no. 340 from 19th of April 2004.
- *** *Hotărârea nr. 741 din 12 octombrie 2016 pentru aprobarea Normelor tehnice şi sanitare privind serviciile funerare, înhumarea, incinerarea, transportul, deshumarea şi reînhumarea cadavrelor umane, cimitirele, crematoriile umane* [Decision no. 741 of 12th of 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 24th of October 2016.
- *** *Legea nr. 102 din 8 iulie 2014 privind cimitirele, crematoriile umane şi serviciile funerare* [Law no. 102 from 8th of July 2014 on cemeteries, human crematoriums and funeral services], published in The Official Journal of Romania, Part I, no. 520 from 11th of July 2014.
- *** *Legea nr. 104 din 27 martie 2003 privind manipularea cadavrelor umane şi prelevarea organelor şi ţesuturilor de la cadavre în vederea transplantului* [Law no. 104 from 27th of March 2003 on the manipulation of human cadavers and on the collection of organs and tissues from cadavers for transplants], republished in The Official Journal of Romania, Part I, no. 213 from 25th of March 2014.