

LEGAL STATUS OF THE GRAVE AS A SITE OF MEMORY: A HUMAN DIGNITY PERSPECTIVE

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Abstract: *The grave serves two functions: it is a physical resting place and it is a symbolic site where funerary monuments preserve the deceased's memory. Viewing the grave through the lens of human dignity, the paper explores the rights of the dead and the living by addressing whether the deceased enjoy a post-mortem right to preservation of their memory through their grave, and whether the living possess a continuing right to maintain and curate the grave as an act of care and remembrance. It concludes by calling for statutory frameworks that treat the grave as a protected space where human dignity persists through memory conveyed by the funeral monument and the interrelated rights of the dead and the living are upheld.*

Key words: *personality rights, post-mortem dignity, cemeteries, graves, memory of the deceased.*

1. Introduction

As debate has turned to the fate of digital remains (Harbinja et al., 2025), headstones in graveyards bearing the names of the dead seem to have faded from view. Even so, the grave serves two functions: a physical resting place housing the deceased's remains and a symbolic site where funerary monuments preserve their memory. Unlike online memorials that drift across screens and servers, the grave's stone and soil can be touched, weathered and returned to – a weighty locus of memory rather than an ephemeral feed. Against this backdrop, this brief analysis explores the interrelated rights of the dead and the living. It asks whether the deceased have a post-mortem right to the preservation of their memory through their grave, and whether the living possess an ongoing right to maintain and curate the grave as an act of care and remembrance.

To explore these questions, the discussion considers two illustrative case studies – an interfaith heterosexual couple and a same-sex couple – and examines (i) the possibility of *joint burial* and (ii) the *surviving partner's retention of the grave concession*. These cases are particularly revealing, as they expose tensions between personal autonomy, equality, and traditional conceptions of burial rights.

Taken together, these case studies highlight situations in which established legal and cultural norms, often rooted in religious tradition, come into conflict with the partners'

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wishes, thereby raising broader questions about how the law accommodates diversity in family forms and belief systems.

In this context, the Parliamentary Assembly of the Council of Europe (2012, p. 1), specifically when addressing the protection of Jewish cemeteries, has considered ‘that there is a responsibility to protect human dignity in a broader sense by ensuring that deceased persons are preserved in their place of burial in a manner compatible with their religion’. By parity of reasoning, that responsibility extends to ensuring that the deceased are interred in accordance with their expressed wishes alongside their loved ones, without discrimination on grounds of religion or sexual orientation.

Accordingly, the discussion situates claims to joint burial and the preservation of grave concessions within a broader framework of human dignity, understood as protecting both the deceased’s memory and the continuing bonds maintained by the living. This framing is all the more compelling, since the right to dignity endures after death alongside the imperative to respect the peace of the dead, and the protection of the deceased is grounded in that right (Jugastru, 2013, p. 86). Moreover, infringement of a person’s dignity can lead, to a greater or lesser extent, to exclusion from everyday social life, (Ungureanu & Munteanu, 2015, p. 66), a concern that likewise extends into the afterlife, particularly in the treatment of the dead.

2. The Shared Grave as a Post-mortem Right of the Deceased

Romanian law – specifically Law No. 102 of 8 July 2014 on cemeteries, human crematoria and funeral services – does not expressly regulate joint burial. However, the statute requires those entitled and funeral service providers, when determining the final resting place, to take into account any wishes expressed by the deceased during their lifetime. It also obliges cemetery owners to draw up regulations governing the organisation and operation of their cemeteries. Accordingly, any answer regarding joint burial must be sought in the relevant cemetery regulations.

Given that about 90% of Romanian cemeteries are owned by recognised religious denominations – most of them belonging to the Romanian Orthodox Church (Tilkin, 2013, p. 71) – and that there are even municipality-status towns (whether of national importance with potential influence at the European level / inter-county or county importance / serving a balancing role in the settlement network) that do not have a public cemetery (Şchiopu, 2025, p. 135), it is necessary first to examine the 2020 Cemeteries Regulation within the Romanian Orthodox Church.

The regulation adopted by the Holy Synod of the Romanian Orthodox Church (Decision No. 11,943 of 9 - 11 December 2020) provides, for *parish cemeteries*, that:

a) Applications for the concession of a burial plot may be submitted by no more than two persons, both of whom must jointly meet all of the following conditions: they must be members of the Romanian Orthodox Church and must be either spouses or blood relatives of each other up to and including the fourth degree. Exceptions may be granted under Article 7. [Article 20(3)];

b) In special cases, with the *approval of the Parish Council*, persons of other faiths may, by way of exception, be buried in the parish cemetery, subject to the conditions

laid down in Article 47. [Article 7(2)];

c) In Orthodox parish cemeteries, deceased non-Orthodox believers may only be buried where the denomination to which they belonged has no cemetery of its own in that locality and there is no communal or municipal cemetery. Such burials must take place in *separate plots* designated by the Parish Council. [Article 47(1)–(2)].

In light of the foregoing, the prospects for an interfaith couple to be buried together in the same grave or plot within an Orthodox parish cemetery are minimal. Under the applicable regulation, the interment of a non-Orthodox spouse is permissible, if at all, only by way of exception (Articles 7 and 47) and is contingent upon the approval of the Parish Council; even where authorised, such interment is confined to separate plots or sections designated by the Council. Accordingly, joint burial in a single plot is, as a practical and regulatory matter, largely ruled out in Orthodox parish cemeteries.

Other non-Orthodox cemetery regulations allow such burials. For example, the Regulations governing the administration of the cemeteries of the Roman Catholic Parish of Saint Michael in Săcele - Turcheș (2013) provide that, in the case of a mixed marriage, a deceased family member who belonged to another denomination may also be interred in the family grave (Article 4.3).

As Romanian law does not recognise a general post-mortem right to a shared grave for interfaith couples, any such entitlement depends on the regulations of the cemetery in question. Because most cemeteries are owned by recognised religious denominations – predominantly the Romanian Orthodox Church – the governing rules are typically confessional. The result is a patchwork in which the feasibility of a shared grave turns on cemetery ownership and local regulation rather than any uniform statutory guarantee.

An interfaith heterosexual couple may still find a confessional cemetery willing to accept them, although in Orthodox parish cemeteries this means separate plots. By contrast, the position of a same-sex couple is markedly worse: Romanian law recognises neither same-sex marriage nor civil unions. This leaves them unable to prove spousal status and thus undermines any prospect of coordinated burial – even though coordinated burial and funeral arrangements in general are core rights relevant to any couple in a stable and committed relationship (Șchiopu, 2023, p. 58).

From a human-dignity perspective, the grave as a site of memory should secure the deceased's relational identity by honouring wishes for a shared resting place; yet, in Romania, this interest lacks any general legal guarantee and remains contingent on confessional regulations and local discretion.

3. The Grave as a Relational Right of the Living

Having considered the shared grave as a post-mortem right of the deceased, the analysis now turns to the position of the living: whether – and on what legal basis – the surviving spouse or partner may retain the grave concession.

In cemeteries belonging to the Romanian Orthodox Church, the relevant provisions are as follows:

a) Article 48(2): Where the sole concession-holder, or all concession-holders, of a burial plot renounce their membership of the Romanian Orthodox Church, the

concession right ceases;

b) Article 23: (1) The concession right over burial plots allocated for unlimited use may be transferred only by donation or by legal or testamentary succession (Annex No. 5). (2) The donation of burial plots allocated for unlimited use may be made only between spouses or to blood relatives up to and including the fourth degree.

c) Annex No. 5: Persons who are not of the Orthodox Christian faith may not acquire a burial plot for unlimited (perpetual) use.

Accordingly, a non-Orthodox surviving spouse cannot succeed to the perpetual concession over the deceased's grave: Annex No. 5 bars non-Orthodox acquirers altogether, and Article 48(2) conditions the concession on continued Orthodox membership. Even if the surviving partner in a same-sex couple were Orthodox, they could obtain the concession only by testamentary succession – not by donation – because Article 23(2) permits donations of perpetual burial plots solely between spouses or blood relatives up to and including the fourth degree, and Romanian law does not recognise same-sex spouses; by contrast, Article 23(1) allows transfer by will, provided the legatee is Orthodox.

However, Article 82¹(1) of Law No. 71 of 3 June 2011, implementing Law No. 287/2009 on the Civil Code, provides that rights over burial plots/graves in cemeteries, acquired in accordance with the law, are transferable, regardless of their legal nature, by succession and by gratuitous *inter vivos* acts. In addition, other non-Orthodox cemetery regulations permit transfers irrespective of membership in the faith community. For example, the Regulations governing the administration of the cemeteries of the Roman Catholic Parish of Saint Michael in Săcele - Turcheş (2013) provide that, where the family's Roman Catholic line of descent is broken, the relatives may continue to hold the concession of the burial plot solely for the purpose of honouring the deceased, but they may not use the grave for the interment of any other persons (Article 4.5).

Viewed through the lens of the grave as a relational right of the living, Article 82¹(1) of Law No. 71/2011 affirms the survivor's interest in retaining or receiving the grave concession by succession or gratuitous *inter vivos* acts, whereas the Orthodox cemetery regulation subordinates that interest to confessional membership and kinship filters – thereby curtailing survivors' stewardship of the site, especially non-Orthodox and same-sex partners.

4. Towards a Dignity-Centred Legal Framework

As the community's reverence for the departed is not intrinsically linked to any one religion or belief system (Manea, 2021, p. 62), that reverent regard should likewise be afforded to those who did not belong to, or fully conform to, such precepts. The shortcomings of the current legal framework become particularly apparent when set against the case-law of the European Court of Human Rights – most notably the judgment of 14 December 1999 in *Serif v Greece* (no. 38178/97), in which the Court held that '[t]he role of the authorities ... is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other'.

Just as the post-mortem control of user data by social media platforms is a matter for

legislators, who must strike a delicate balance between the competing interests of deceased users, their heirs and the platforms (Conti, 2022, p. 41), so too, in funeral matters, it falls to legislators to design a pluralism-respecting framework that ensures mutual tolerance between church authorities and individuals.

Having regard to Article 5(2) of the Framework Convention for the Protection of National Minorities (ratified by Romania through Law No. 33 of 29 April 1995, published in the Official Gazette No. 82 of 4 May 1995), the new framework should expressly prohibit, in funeral matters, any policy or practice that seeks to assimilate, against their will, persons belonging to confessional or sexual minorities, and should protect them from indirect forms of coerced assimilation (e.g. pressure to convert to Orthodoxy or to conform to heterosexual norms).

One author has asked whether it is legitimate that the burden of ensuring pluralism in funerary practices should rest to such an extent on the initiative of private individuals, potentially only after lengthy litigation (Christians, 2019, p. 46). From a human-dignity perspective, it is not: the state bears positive obligations to secure pluralism proactively through clear, general and non-discriminatory rules and effective administrative remedies, rather than leaving individuals to vindicate their rights only after protracted litigation; nor should families be compelled to relocate the deceased outside their town merely because local public authorities have failed to discharge their obligation to establish and maintain public cemeteries.

Ultimately, a dignity-centred framework would give binding effect to the deceased's choices, guarantee non-discriminatory access to burial and concession rights, and place the duty to realise pluralism on the state—not on grieving families.

5. Conclusions

If human dignity requires leaving the dead undisturbed in a manner compatible with their religion, it likewise – by parity of reasoning – requires respect for the deceased's expressed wish to lie with loved ones and, at least where this honours those wishes, for the surviving partner's retention of the grave concession. This is not a shift from religion to preference but from one facet of dignity to the full set at death – autonomy, identity and relational life – so religion should not be privileged over other protected characteristics. Equal concern and respect demand that interment be arranged without discrimination, including on grounds of religion or sexual orientation, even where the only burial places are church-owned cemeteries.

Graves are repositories of remains and durable sites of memory; safeguarding place, monument and access for the bereaved sustains the 'continuing bonds' the law should recognise and enable. Digital memorials may complement these practices but cannot substitute for the tactile, place-based functions of headstones and plots.

For interfaith and same-sex couples, this entails equal access to joint burial and to the transfer or renewal of grave concessions, and – where a *de facto* partnership is shown – regardless of marital status. What is at stake is the dignity of the dead and the bonds of the living; the law should honour both.

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