

THE REPATRIATION OF MORTAL REMAINS WITHIN THE EU: AN INVENTORY OF THE QUESTIONS ADDRESSED BY THE MEMBERS OF THE EUROPEAN PARLIAMENT TO THE COMMISSION AND THE CORRELATIVE ANSWERS

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Abstract: *In the context that the European Commission has the right of initiative to propose new legislation, we identified a series of questions addressed to the Commission by MEPs between 1995 and 2015 on the repatriation of corpses within the EU. This inventory aims to provide an overview of the questions and their correlative answers in order to highlight the reasons why parliamentarians considered it necessary to address these questions and how the Commission justified its position of not initiating specific legislative measures on the conveyance of corpses within the EU. For the moment we find ourselves in the awkward situation that the freedom of movement applies only to the living and the free movement of funeral services did not really improve, nor truly simplified the repatriation of mortal remains. However, an increase in deaths outside the state where the burial should take place may tip the balance, sooner or later, in favour of EU legislative measures that will replace the current international agreements and harmonise the national provisions.*

Key words: *European Union, corpse, mortal remains, international transport.*

1. Introduction

In the context that the European Commission has the right of initiative to propose new legislation, we identified a series of questions addressed to the Commission by MEPs between 1995 and 2015 on the repatriation of corpses within the EU. This paper aims to provide an overview of the questions and their correlative answers in order to highlight the reasons why parliamentarians considered it necessary to address these questions and how the Commission justified its position of not initiating specific legislative measures on the conveyance of corpses within the EU. Hopefully the reader will better understand the difficulties faced by the next of kin when repatriating mortal remains.

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2. An Inventory of Q&A

The first answer that we could identify, dated 8 February 1995, dealt with two separate questions. Given the added distress of the bereaved due to the lack of a standard procedure within the EU for the repatriation of corpses from one Member State to another, one MEP asked the Commission whether there are being considered any proposals on such a procedure (E-144/95). Another MEP referred to the “preparatory work for the draft Directive on intra-Community transfer of mortal remains” while inquiring on the progress made since January 1993 (E-428/95).

The answer starts by mentioning that, at the European level, the international transfer of mortal remains is currently regulated by the International Agreement of Berlin of 1937 (Arrangement international concernant le transport des corps) and the Convention of Strasbourg of 1973 (Agreement on the Transfer of Corpses), but not all the Member States are parties to these agreements.

The Commission further recalled that “has examined in depth the *desirability* and *feasibility* of putting forward proposals for the harmonization of conditions attached to the transfer of mortal remains within the Community” and, in this examination, “was assisted by *national experts* appointed by Member States and consulted *health experts* and *associations of undertakers*”.

The Commission found that the *protection of public health* is the main aim pursued by national divergent rules. That’s why, considering the relatively *limited number of cases of transfers of mortal remains between Member States* and the fact that *very few complaints* about difficulties in effecting such transfers have been addressed to the Commission in the past, the latter was not convinced that detailed harmonization of national rules in such a *sensitive area* is desirable or necessary. Therefore the answer concludes “that legislative harmonization would not be justified from the point of view of *subsidiarity* and *proportionality*”.

This first answer that we identified contains some essential milestones: the repatriation of corpses is a sensitive matter; the protection of public health is at the core of the (divergent) national legislations; there are two international agreements although not all Member States ratified at least one of them; few complaints on this aspect reached the Commission. For these reasons, a legislative harmonization at that point was considered as not meeting the requirements imposed by the principles of subsidiarity and proportionality [for their current regulation see Article 5(3) and 5(4) of the Treaty on European Union and Protocol (No. 2) on the application of the principles of subsidiarity and proportionality].

Another question (E-2465/00) concerned not necessarily the transfer, but rather the embalming of human remains (a body arrived from Portugal to Ireland in such an advanced state of decay that the family were unable to view the body before the funeral). The only reason we mention it is because the correlative answer, dated 11 October 2000, after politely conveying the regrets of the Commission for the distress suffered by the family, expressly referred the MEP to the reply given to the Written Questions E-0144/95 and E-0428/95.

Two years later, an Oral Question (H-0125/02) on “Borders as impediments to the movement of mortal remains in Europe” was addressed to the Commission. The MEP asked if the Commission had any statistics which show the number of European citizens who die in EU countries other than their own, whether is aware of any difficulties that may be encountered by those who wish the mortal remains of family members to be repatriated for burial, and if the Commission had any plans to address such difficulties.

Once again, in its answer dated 14 March 2002, the Commission admitted that the repatriation of mortal remains is “a sensitive and difficult issue which can cause great suffering for the family involved”. Further the answer states that, although the Commission was aware of some individual cases that raised difficulties, it lacks “any information or statistics which would provide an overview of a possible problem and its scope”. The answer continues by listing some Community policies, such as *transport, health and free movement*, which are in relation with the raised issue. Before mentioning again the two international agreements, the Commission came to the conclusion that “it does not appear that there would be a clear Community competence to cover all these various aspects” and “does not envisage any specific initiative for the moment”. However the Commission recalled that Member States must apply any requirements concerning the transport of deceased persons on a non-discriminatory basis, in conformity with the case law of the Court of Justice, and the latter’s case law must also be observed in the case of any derogation based on public health grounds.

On 25 March 2002 the same *ad litteram* answer, without mentioning the previous question (H-0125/02), was given as a reply to no less than seven other questions from the MEPs.

The first question (E-0073/02) recalled “the frequent delays, expenses and suffering for families involved attempting to repatriate a body” due to the differences in the approaches and regulations between Member States and asked the Commission if it is “prepared to investigate this issue and bring forward proposals for the adoption of a common policy”.

The second question (E-0087/02) – before inquiring if the Treaty authorises “the free transfer within the Community of the corpses of people who have died on EU territory” and what measures the Commission intends to take to ensure that the rules on such transfers are not more complex or more restrictive than those in force in a Member State – mentioned the fact that “a growing number of European citizens are established in a Member State other than their country of origin has led to an increase in the number of corpses needing to be repatriated from one Member State to another” and the two international agreements “are based on the assumption that border checks are carried out and are therefore becoming more difficult to apply as borders are abolished”.

The third question (E-0210/02) also brought up the growing number of Union citizens living for various reasons (work, tourism, retirement) in Member States other than their countries of origin, situation that leads to an increase of the number of citizens dying in parts of the EU outside their countries of origin. The MEP mentioned that, in contrast to the functioning of the EU’s single market area, “absurd difficulties arise when a corpse is sent home from one Member State to another, resulting in needless costs and distressing delays for the relatives of the deceased person”, for example the need for a

zinc coffin when the deceased is transported by road only 50 km from Strasbourg (France) to Baden-Baden (Germany) and the absence of such a requirement when the corpse goes from Strasbourg to Lyon (460 km inside France) or from Ivalo to Helsinki (1120 km inside Finland). The MEP saw no logical hygiene or safety reasons for these differences. Also, the MEP considered the two international agreements as being “out of date because they are based on border policing of a kind no longer carried out, least of all in the Schengen countries”. Therefore the MEP asked the Commission if it would be possible to have “rules to govern the return home of corpses in the EU whereby a journey from one Member State to another would be as simple as a journey within the same Member State”.

The fourth question (E-0344/02) reminds the fact that, “increasingly, EU citizens are dying elsewhere in the EU than in their home country”, and “absurd difficulties arise with the repatriation of a deceased person from one EU Member State to another” which leads to “needless cost and distressing delays”. Furthermore the MEP indicated that the two international agreements “are no longer in keeping with the times since they are based on the kind of border checks which no longer exist”. The MEP also put forward the same argument regarding the lack of “rational hygienic or safety grounds that would justify” the use of a zinc coffin when transporting by road a corpse from Strasbourg to Baden-Baden (50 km) while using such a coffin is not necessary when transporting a deceased person (by road) from Strasbourg to Lyon (460 km). In relation to the arguments presented, the MEP asked the Commission if the EU Treaty requires the European Union to guarantee the free repatriation of deceased persons within the EU where the person in question is an EU citizen, and (as in the case of the question E-0344/02) whether it would be possible to secure the adoption of rules on the repatriation of deceased persons within the EU that would make repatriation from one Member State to another as simple as transporting a deceased person within a Member State. The fifth question (E-0346/02) is essentially identical to the fourth one.

The sixth question (P-0407/02) doesn't add anything new to the previous ones, except that in the view of the MEP the two international agreements “*are no longer applicable*, since they were based on the presumption of border controls which no longer exist”.

The seventh question (E-0679/02) also inquires on the measures that can be taken to ensure that the cross-border transport of corpses is not more difficult than transport within a Member State, in the view of the fact that “a lack of standard formalities and the obligatory use of certain products (inner coffin of zinc) continue to cause high costs when transporting corpses”. Also, the MEP stressed that the two international agreements “do not take into account the setting-up of the European Economic Area”. As an aside, the answer to two questions (E-0209/02 and E-0343/02) addressed (not to the Commission but) to the Council on the “Return home of corpses within the EU” and the “Carriage of deceased persons within the EU” clarified (if needed) that “Neither the Treaty on European Union nor the Community's secondary legislation contains any provisions on the subject”.

Going back to the questions addressed to the Commission, on 8 May 2002 the Commission expressly referred four other MEPs to the reply given to the previous seven written questions, *id est* to the answer given to the Oral Question (H-0125/02). *Inter*

alia, the first MEP (E-0923/02) wrote that “It is difficult to explain to the bereaved, for instance, that deceased persons may be transported right across Austria without a zinc-lined coffin whereas such coffins are mandatory for transport between Salzburg and Freilassing, which are only 10 km apart”, the second MEP (E-0935/02) stressed that “There is certainly no intention here of interfering with national rules governing burial arrangements but only of arriving at uniform rules for the repatriation of deceased persons within Europe”, the third MEP (E-1122/02) reminded that “The repatriation of mortal remains inside the EU constitutes an enormous administrative and financial burden for the next-of-kin” while the fourth MEP (E-1133/02) asked “What measures will the Commission take to ensure that the rules governing the cross-border transport of corpses are not more stringent and exacting than those applying to transport within a Member State?”. One again, on 1 July 2002, the Commission referred the MEP to its previous answer as a reply to another question (E-1573/02) on the transport of mortal remains within the European Communities. In this case the MEP also emphasized that the two international agreements, as “«pre-single market rules» create unnecessary problems for the next-of-kin and also do not appear very appropriate”.

Three years later the European Parliament issued a resolution on 4 December 2003 on *the adoption of measures concerning the repatriation of mortal remains*. The key points of this resolution are as follows: *a) the repatriation of mortal remains without excessive cost or bureaucracy in the event of the death of a Community citizen in a country other than the one in which either burial or cremation is to take place may be regarded as a corollary of the right of each EU citizen to move and reside freely within the territory of the Member States; b) the provisions of the Strasbourg Agreement, which impose strict rules on the cross-border transfer of mortal remains, are considered to be the source of indirect discrimination stemming from the fact that they apply essentially to 'non-nationals' and hence run counter to the Community scheme of things; c) the standards and the procedures applied in the cross-border transportation of corpses should be harmonized throughout the EU and Community citizens should be treated in the same way as nationals in their home country.*

Five years later, an MEP inquired the Commission on what action has been taken as a result of the European Parliament resolution of 4 December 2003 on the adoption of measures concerning the repatriation of human remains (E-1264/08). The answer given on behalf of the Commission starts by mentioning that the issues raised in the Parliament’s resolution of 4 December 2003 concerning repatriation of mortal remains potentially touch many questions in relation to different Community policies, such as *transport, health and free movement*, just like the answer to the Oral Question (H-0125/02). The Commission then advanced the thesis that “*some of the problems referred to in the resolution arise from specific restrictions on the activities of funeral directors and that Directive 2006/123/EC on Services in the Internal Market once implemented by the Member States will remove part of these restrictions and contribute to better cooperation between Member States*”.

However, the Commission itself admits that “the Services Directive does not cover issues such as requirements specifically related to transport of deceased persons since the directive explicitly excludes all services in the field of transport from its scope of

application". The solution proposed by the Commission actually concerns the accession of all Member States to the 1973 Council of Europe Convention on the transfer of corpses, a recommendation in this regard being included in its Green Paper: *Diplomatic and consular protection of Union citizens in third countries* [COM(2006)712 final] and its Action Plan 2007-2009: *Effective consular protection in third countries: the contribution of the European Union* [COM(2007) 767 final]. In the light of the above, the Commission said that it will continue to follow these issues, but does not envisage any specific regulatory initiative for the moment. In an answer dated 5 February 2010 to a question on the repatriation of corpses (E-6275/09), the Commission specified that "It is clear that the ratification by all EU Member States of this Convention could not in itself solve the problem of transfer of corpses [...]. However, it would be an *important first step to apply a uniform procedure laissez-passer between all EU Member States*".

The next question (E-2731/10) is important because the MEP raised the core issue that is not solved by the accession to the Convention of Strasbourg of 1973. The MEP evoked the fact that transport of human remains is governed by the two international agreements "which introduced *strict rules* on the cross-border transport of corpses *in the absence of bilateral agreements between States*". In the absence of such agreement between two countries the bodies of the dead have to be transported in *sealed and impervious coffins* and the distress caused to families by the fact that *the coffin cannot be opened* to enable them to pay their last respects to their loved ones could be regarded as causing unnecessary additional suffering. In view of these facts the MEP asked the Commission what measures intends to take to harmonise the rules on the transport of corpses within the Union and within Member States. In its answer dated 5 July 2010, the Commission expressly referred the MEP to the reply given to the Written Question E- 1264/08, while also pointing out that, in the absence of harmonisation, the *Member States are competent to conclude bilateral agreements* in conformity with the European Union Law.

For instance such an agreement was concluded between France and Spain: *Accord de coopération technique entre le Gouvernement de la République française et le Gouvernement du Royaume d'Espagne en matière de transfert des corps par voie terrestre des personnes décédées* (Technical cooperation agreement between the Government of the French Republic and the Government of the Kingdom of Spain on the transfer of corpses by land), signed in Malaga on 20 February 2017. According to article 3(4), the corpse must be placed in a transfer coffin fulfilling the conditions provided for in article 6(1) of the Strasbourg agreement (the so-called "zinc coffin"), *only* when the arrival of the deceased at its final destination cannot occur within 72 hours.

In another answer dated 17 March 2011 to a question on the free movement of mortal remains (E-010619/2010), the Commission mentioned that "the use of such coffins is set down by the Council of Europe Convention dating to 26 October 1973 under very specific circumstances (notably death caused by contagious diseases). An efficient application of this Convention would therefore rarely require the use of such coffins within the EU". Also the Commission reiterated that, in order to simplify the procedures required for transfer of corpses within the EU, the Action Plan 2007- 2009 on consular protection recommended that the remaining Member States that have not acceded to the Convention should do so,

and, in the absence of harmonization, Member States are competent to conclude bilateral agreements in this field in conformity with European Union Law.

During the following years, other questions were also addressed to the Commission regarding various aspects of the repatriation of mortal remains. In the following we will only mention some relevant fragments from the answers given.

In an answer dated 2 March 2012 to a question on the transfer of corpses in Europe (E-000338/2012), the Commission reminded that “all EU Member States must act in conformity with applicable European law for instance in regard to free movement of services and have to apply all requirements in a non-discriminatory and proportionate manner”. In another answer dated 14 April 2014 to a question addressed by an MEP (E-001742-14), the Commission explained that “Member States can only impose requirements on services providers from other Member States if such requirements are non-discriminatory, based on overriding reasons of general interest (public policy, public safety, public health and protection of the environment) and proportionate”. On another occasion (Question E-010066-14) the Commission mentioned that: “Nevertheless, when imposing requirements in the area of funeral services (such as those concerning technical standards for coffins) Member States may also pursue public interest objectives like the protection of public health, in which Member States enjoy a certain margin of discretion under EC law”. Last but not least, the Commission (when answering Question E-012703-15) recalled that “the transport of human remains [...] falls outside the scope of the Services Directive [...]. Other funeral services, i.e. excluding transport of bodies, are covered by the Services Directive. Therefore, any national requirement needs to be proportionate and non-discriminatory to comply with the rules of the directive”.

3. Conclusions

For the moment we find ourselves in the awkward situation that the freedom of movement applies only to the living and the free movement of funeral services did not really improve, nor truly simplified the repatriation of mortal remains. It seems that, as Theophrastus said, a thing that happens once or twice (once in a while) is passed over by the lawgivers. However, an increase in deaths outside the state where the burial should take place may tip the balance, sooner or later, in favour of EU legislative measures that will replace the current international agreements and harmonise the national provisions.

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