

# THE IMPACT OF INTERNATIONAL CONVENTIONS ON DETERMINING THE MANNER OF FUNERALS

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**Abstract:** *This article surveys the impact of some international conventions and agreements on the manner of cross-border funerals. Nowadays it is common that the deceased had gone to live abroad to work or study there while maintaining a close connection with the country of origin where the funeral should take place. Thus, the topicality of this article's theme emerges from the foregoing. Because of the increasing mobility of citizens, it is necessary to analyse the international legal framework to see how the context can limit in certain cases the manner of funerals. The main conclusion is that cross-border funerals are affected by some specific constraints that must be taken into account by the families of the dearly departed.*

**Key words:** *international conventions, manner of funeral, burial, cremation, international transport.*

## 1. Introduction

Article 2 (1) of *Law no. 102 from 8 July 2014* on cemeteries, human crematoriums and funeral services reads as follows: “Everyone has the right to a decent funeral and to pay their last respects at the resting place of the deceased”. It is further provided that the funeral can be religious or secular and the will expressed during life by the deceased or, in the absence thereof, the religious affiliation must be taken into account when determining the last resting place and organizing funeral services. That is the general framework regarding the organization of funerals in Romania.

In its following provisions the law doesn't deal with the customs related to funerals, as long as they don't interfere with public health. One such custom is the one regarding the *closure of the coffin*. Article 5 (1) (a) of the Technical and Health Rules issued to execute the law provides that embalming is mandatory when the family chooses to expose the deceased in public places, such as mortuary houses, funeral homes, and chapels, with the *coffin lid open*. Also, Article 20 (3) (g) contains the only express prohibition regarding the *reopening of the coffin*, and this only if the person died as a result of an infection with a highly pathogenic infectious agent.

A history researcher showed that in Transylvania “(i)mportant differences appear

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between denominations [...] regarding the moment of covering the coffin. In general, among Romanians, in the second half of the 20th century, the coffin is covered at the end of the funeral service, before leaving for the cemetery. [...] Unlike the Romanians, among the Hungarians and the Saxons, the coffin lid is placed before removing the dead from the house” (Pop, 2013, p. 125). Therefore, according to tradition, most of the population favours covering the coffin at the end of the religious service. Hence, this custom is part of how a funeral is conducted, and, traditionally, the coffin should be covered only at the end of the funeral service.

As long as the death and burial take place on the national territory, there is no question of breaking the tradition, since the law prohibits the reopening of the coffin only in the case of death due to a highly pathogenic infectious agent. However, even in the latter situation, tradition can be stronger than the law, and those who take care of the funeral may wish to view the deceased. One such incident was reported by the media last year when a zinc coffin was found dumped at a landfill on the outskirts of Bucharest (Dumitrescu, 2021a). A second incident (Dumitrescu, 2021b) came to reinforce the conclusion that, even in a cross-border funeral, there is no certainty that the lid will remain shut even in a pandemic context.

Given the increasing mobility of citizens, it is quite common that the deceased lived abroad to work or study while maintaining a close connection with the country of origin where the funeral should take place. However, there are no EU legislative measures to replace the current international agreements and harmonise the national provisions (Şchiopu, 2020, p. 99-105). From this arises the need to analyse the *international legal framework* to determine how the context can limit the manner of funerals in the possibility of opening the coffin upon return.

## **2. International Convention for the Transportation of Corpses (1937)**

The first international instrument created to facilitate cross-border funerals in modern times is the *International Convention for the transportation of corpses* concluded in Berlin on 10 February 1937. Romania acceded to it on 17 November 1942. The Contracting Parties of the Berlin agreement are Germany, Austria, Belgium, Congo, Egypt, France, Italy, Mexico, Portugal, Czech Republic, Romania, Slovakia, Switzerland and Turkey.

Article 1 and 2 of the Convention introduced a “laissez-passer”, document that attests that the body was placed in the coffin per the provisions of the convention. Regarding it, Article 29 (2) of Law no. 102/2014 provides that “(i)n order to bring deceased persons to Romania, the approval of the consular office of Romania in the respective country, the approval of the public health authorities in the respective country, as well as the declaration of receipt from the administration of the cemetery where the burial takes place are required”.

According to Article 37 of *Law no. 62 from 15 April 2019* regarding the consular services, “(t)he diplomats with consular powers and consular officials issue, upon request, death passports for the authorization of the funeral transport to Romania of persons of Romanian citizenship or origin, deceased abroad, to be buried in Romania,

under the conditions provided by Law no. 102/2014 on cemeteries, human crematoriums and funeral services, as well as international conventions to which Romania is a party". From the wording of the two provisions ("the cemetery where the burial takes place" and "to be buried in Romania") it follows that the transportation of the corpse is done in view of a burial, not a cremation.

This conclusion is reinforced by Article 3 of the Convention which reads that "(l)e corps sera placé dans un cercueil métallique" [the body will be placed in a metal coffin] and "(l)e cercueil métallique sera ensuite hermétiquement clos (soudé)" [The metal coffin will then be hermetically sealed (welded)]. It is more than evident that the sealing of the coffin is to be permanent and not undone in the country of destination, as it happened in the two incidents reported by the Romanian media.

### **3. Council of Europe: Agreement on the Transfer of Corpses (1973)**

Given that the Berlin convention had not had the desired results, mainly because few states ratified it, it was considered of the utmost importance that all questions connected with the problem be brought before the World Health Organisation (Van den Berg, 1949, p. 1). In the end, a new *Agreement on the Transfer of Corpses* was drawn up within the Council of Europe and opened for signature by the member States on 26 October 1973. In this case we have a *laissez-passer for a corpse* issued by the State of departure. It is to note that while the provisions of the latter are applied even to frontier regions, the Berlin Convention does not apply to the transport of bodies taking place within the limits of border regions.

For the purpose of the Agreement, Article 1 (2) provides that "the State of destination is that in which the corpse is to be buried or cremated after the transport". Also, according to Article 6 (1) the coffin must be impervious and it may consist of "either an outer coffin of wood with sides at least 20 mm thick and an inner coffin of zinc carefully soldered or of any other material which is self-destroying" or "a single coffin of wood with sides at least 30 mm thick lined with a sheet of zinc or of any other material which is self-destroying". On the one hand, it is rather obvious that neither an inner coffin of zinc carefully soldered, nor a coffin lined with a sheet of zinc is suitable when the cross-border transferred corpse is to be cremated in the state of destination. On the other hand, both Article 10 (1) of the International Convention for the Transportation of Corpses and Article 2 (2) of the Agreement on the Transfer of Corpses allow the contracting parties to grant greater facilities by means of bilateral agreements.

### **4. Bilateral Agreements on the Transfer of Corpses**

In this context, some states concluded such bilateral agreements to simplify the procedures for transferring the bodies of deceased persons by land. The three examples presented in the following were concluded between France and its neighbours: Monaco, Spain and Belgium.

The first one is the *Agreement between France and the Principality of Monaco on the transport of bodies* (Accord entre la France et la Principauté de Monaco sur les

transports de corps), signed in Monaco on 15 October 1963. It stipulates that the body should be placed in an *airtight coffin* only when the journey to be made, whatever the duration and the mode of transport, is longer than 200 kilometers; when the period between the moment of the placing in the coffin or the exhumation and that of the burial or reburial exceeds 48 hours; when it comes to the body of a person who died of a contagious disease (smallpox, cholera, anthrax, paratyphoid infection, dysentery) or when, in case of doubt, the use of the hermetic coffin has been declared necessary by the competent authorities.

The second one is the *Agreement on technical cooperation between the Government of the French Republic and the Government of the Kingdom of Spain regarding the transfer of bodies by land* (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), signed in Malaga on 20 February 2017. This bilateral agreement provides that only if it is expected that the arrival of the body at its final destination cannot occur within 72 hours, it must be placed in a transfer coffin fulfilling the conditions provided by the Strasbourg Agreement. Also, the agreement may not apply in certain cases for the preservation of public health.

The third one is the *Agreement between the Government of the Kingdom of Belgium [...] and the Government of the French Republic on the transfer of bodies by land* (Accord entre le Gouvernement du Royaume de Belgique [...] et le Gouvernement de la République française en matière de transferts de corps par voie terrestre des personnes décédées), concluded in Paris on 9 March 2020 and currently in the process of ratification. It stipulates that the use of a waterproof wooden coffin is mandatory, but this derogation does not apply if the death is due to certain contagious diseases. Also, the coffins of zinc or any other metal remain, if necessary, authorized.

The advantage of a wooden coffin is that it can be cremated. However, these bilateral agreements don't offer a solution when the repatriation of the mortal remains is done in a metal coffin. To this end, it was necessary that the French legislator intervened.

In a Response of the French Ministry delegated to local authorities from 2005 it is mentioned that “The Government [...] has initiated a reflection intending to change the law in this area so that the [...] opening of coffins can be authorized by the prefect or the mayor, with the respect due to the deceased, their graves, and the emotion of the families, without the a priori intervention of the public prosecutor”.

The legislative change saw the light of day last year, when the Law no. 2022-217 of 21 February 2022 added to the *Public health code* an article, L. 2223-42-1, that reads as follows: “At the request of the person having the capacity to provide for the funeral and when the body of the deceased has been placed, to ensure its transport, in a coffin made of a material presenting an obstacle to cremation, an authorization to transfer the body to a suitable coffin can be issued by the mayor. This authorization can only be issued with a view to the cremation of the body, which takes place without delay after the change of coffin, and provided that the deceased has not been affected by one of the transmissible infections prescribing or prohibiting certain funeral operations, the list of which is fixed by regulation”. The *Decree no. 2022-1127 of 5 August 2022 on various measures relating to funeral regulations* specifies that the mayor decides on the request

for authorization within six days of receipt of this request. The latter must be accompanied by a medical certificate attesting that the deceased was not suffering from a transmissible infection appearing on the lists mentioned in a (list of transmissible infections that require immediate confining in an airtight coffin: orthopoxviruses, cholera, plague, anthrax, severe and contagious viral hemorrhagic fevers) and b (the list of transmissible infections that require immediate confining in a simple coffin) of article R. 2213-2-1 of the Public health code.

So the changing of the coffin can occur only when the deceased was not affected by one of the transmissible infections included in Article 1 or 2 of Order of 12 July 2017 issued by the French Minister for Solidarity and Health.

## 5. Conclusions

Although the international conventions don't prohibit the opening of the coffin in the destination state, its specifications (welded/soldered/airtight) led us to believe that it is not meant to be opened upon return. However, the destination states should not limit the manner of funerals and it should regulate such a procedure, while protecting public health, when the body is to be cremated, as can be seen from the French example.

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