

CONSIDERATIONS ON THE LIQUIDATION AMONG THE HEIRS OF THE FUNERAL EXPENSES*

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Abstract

According to article 984 par. (1) of the Civil Procedure Code, if an succession is divided, the court, in order to achieve a fair and complete division, determines the debts of the deceased, the debts and claims of the heirs towards the deceased, as well as the charges on the succession. The latter also include the expenses related to the burial of the deceased, both those related to the burial itself, and those related to respecting religious traditions and the value of funerary monuments. Thus, by virtue of the Latin adage "bona non intelliguntur nisi deducto aere alieno" (no goods are recognized unless debts have been removed), the formation and assignment of lots is preceded by the liquidation of the succession debts among the heirs, respectively the distribution of the responsibility for the funeral expenses between the heirs. Given that in the time that has elapsed since the Great Union a series of regulations on succession law followed, this study aims to present some aspects of the liquidation between the heirs of the expenses related to the funeral of the deceased, starting with the legislation applicable in the historical provinces to date.

Keywords: *charges on the succession, funeral expenses, commemoration expenses, estate judicial division, liquidation of the succession debts.*

Introductory Considerations

Any death causes funeral expenses, even in the absence of the deceased's earthly remains, as is the case of raising a cenotaph or respecting religious traditions. The organization of the funeral may result from the will of the deceased, according to article 80 par. (1) Civil Code¹ the deceased having the right to determine the type of his own funeral, or, in the absence of an explicit choice of the deceased person, from the will of other persons prescribed by law.

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¹ Law no. 287 from 17 July 2009 regarding the Civil Code, republished in the Official Journal of Romania, Part I, no. 505 from 15th of July 2011.

For the situation where the deceased did not order his funeral, article 17 par. (1) of the Law no. 102/2014² provides that the following persons are obliged to dispose in relation to the funeral: *a)* the person who has contracted the obligation to take care of the funeral; *b)* the person indicated by the will of the deceased; *c)* in the absence of will, the husband or the wife of the deceased, who lived in the same dwelling with the deceased person in the last part of his/her life; *d)* another close relative of the deceased, up to fourth degree of kinship.

Since the right to dispose as to the funeral is not entirely correlated with the legal or testamentary devolution of successions, we can also encounter the situation where the person who has the right to manifest his will regarding the organization of the funeral is not at the same time one of those called to inherit the deceased³, such as when the deceased leaves only relatives in the collateral line and has established several extraneous universal legatees, the latter not being obliged by will to take care of the funeral. In this case, the collaterals, although having the obligation to order the funeral, do not benefit from the inheritance, being removed from it.

However, most of the time, the heirs of the deceased or at least some of them take care of the funeral arrangements, contributing at least partially to the expenses related to the funeral of the deceased, both the funeral itself and the observance of the religious traditions (religious services and feasts – funeral banquets⁴ – that take place after such a funeral Mass to commemorate the memory of the deceased) and the cost of funerary monuments.

Funeral expenses are included in the charges on the succession, obligations which, without existing in the deceased's patrimony, are born at the opening of the inheritance or subsequently, regardless of the will of the deceased or of his will⁵, but also derive from the death of the one who leaves the inheritance. The charges on the succession, together with the debts of the deceased, constitute the debts of the succession, and these are divided *ipso jure*⁶ among the heirs in the moment of the opening of the succession, in proportion to the inheritance part received, so that, according to article 1155 par. (1) Civil Code, the obligation to bear the debts of

² Law no. 102 from 8 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.

³ S.-D. Șchiopu, *The persons obliged to dispose as to the funeral*, in „Revista Universul Juridic” no. 8/2018, p. 156.

⁴ See also F. Pavel, *Part of the soul. An old legal custom of Roman origin, embedded in the content designated by the concept of “duty of inheritance”*, in „Revista română de jurisprudență” no. 4/2016, p. 182-183.

⁵ F. Deak, *Treatise on succession law*, second edition updated and completed, Bucharest: Universul Juridic, 2002, p. 453.

⁶ This rule is not imperative so the deceased may charge one of the heirs with the full bearing of the funeral expenses and the exemption of the other heirs constitutes, according to art. 1155 par. (3) letter d) Civil code, a liberality to be reduced, if necessary.

the succession falls on the heirs who acquire the entire estate of the deceased or a fraction thereof, i.e. onto the legal heirs and the universal legatees or the legatees by general title.

Universal legatees and legatees by general title, therefore, contribute to the payment of the charges on the succession and, implicitly, to the funeral expenses, in proportion to the inheritance share of each one. The legatees by particular title have a different situation in that they acquire only a certain good or a certain right, so that they are usually obliged to bear the burial costs only if the other inherited assets would be insufficient to pay the charges on the succession.

Among the heirs takes place also the judicial division of the inheritance so that the liquidation of funeral expenses can be accomplished concurrently with solving the dispute aimed to put an end to the indivision between heirs.

Although death is a constant that has accompanied us throughout history, for “every man owes a death” (I.S. Turgenev), after the Great Union of 1918 the regulation of funeral expenses was not always subject to the same rules throughout Romania. The union, though bringing together the historical provinces, did not also mark the moment of a legislative unification. Therefore, in what follows we will discuss how the matter of funeral expenses was regulated a century ago in the legal systems applied on the current territory of Romania, and will then look at the content of funeral expenses at present, as well as the liquidation of funeral expenses between heirs, without overlooking some aspects of tax law on the amount of such expenditure.

Funeral Expenses in the Legislation Applied before the Unification

Austrian law

The Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) was implemented on 1 January 1812 in Bukovina by Imperial Patent no. 496 of 1 June 1811, on 1 May 1853 in Banat through Imperial Patent no. 246 of 29 November 1852 and on 1 September 1853 in Transylvania by Imperial Patent no. 99 of 29 May 1853. Later, in 1861, the customary Hungarian law replaced the Austrian Civil Code in some parts of Banat and Transylvania⁷ and in Bucovina two Novels abrogated, completed and amended in 1914 and 1916 a series of texts on the matter of inheritance.

Also, the Austrian Civil Code applied in Banat and Transylvania was completed and amended by the Hungarian laws from 1867 to 18 October 1918, and

⁷ For the territorial division of the common courts, see I. Corjescu (translator), *The Austrian General Civil Code comprising the official text, laws, novels and ordinances published for its completion and modification or for the matters contained therein, applicable some in Bukovina, others in Transylvania*, Bucharest: Imprimeria Statului, 1921, p. V-VII.

from this date Romanian law-decrees were added⁸. Unlike Bukovina, the Austrian Civil Code applied in Banat and Transylvania was not modified by the two novels, namely the Imperial Ordinance of 12 October 1914 and that of 19 March 1916.

The Austrian Civil Code and the normative acts that completed or modified it were maintained in force after the Great Union of 1918 by article I par. (1) of the Decree-Law from 18 December 1918 for the administration of Bukovina and by Decree no. 1 of 24 January 1919 issued by the Conducting Council of Transylvania, Banat and the Romanian Parts of Hungary. The same measure was taken by article 137 par. (2) of the Romanian Constitution of 1923⁹ and article 98 par. (4) of the Romanian Constitution of 1938¹⁰ but with the intent that all codes and laws in force would be revised later in order to ensure legislative unity throughout Romania.

According to article 549 Austrian Civil Code, "funeral expenses corresponding to the custom of the place, with the situation and the estate of the deceased" were part of the charges inherent on the succession, because a quick burial of the deceased is imposed for sanitary reasons, and habit and morality claim a dignified burial. Likewise, article 2 par. (1) of the Law no. 102/2014 provides that everyone is entitled to a decent funeral.

Funeral expenses included the cost of the funerary monument, the religious services and funeral banquets, and this charge had preference over other creditors, so that when the deceased's estate was insufficient to cover the debts of the succession, the creditors received only what remained of the inheritance after deducting the funeral expenses¹¹.

Similarly, article 865 par. (1) letter b) from the Code of Civil Procedure¹² in relation to the rank of claims having general preference, orders that such expenses,

⁸ Dr. Anca (Leontin I.), *Compendiu de drept civil cuprinzând codul civil austriac în vigoare în Transilvania*, Cluj, 1924, p. 10, *apud* G. Plastara, *Romanian civil law course informed about the jurisprudence, the positive legislation, the new legal tendencies, the comparative law and the law of the adjoining provinces*, Volume III, Part I: Successions and Liberalities, Bucharest: Cartea Românească, s.a., p. 269, n. 3.

⁹ Promulgated with the Royal Decree no. 1.360 of 28 March 1923 and published in the Official Journal of Romania, Part I, no. 282 from 29th of March 1923.

¹⁰ Promulgated with the Royal Decree of 27 February, 1938 and published in the Official Journal of Romania, Part I, no. 48 from 28th of February 1938.

¹¹ C. Bardoși, *Liquidation of the debts and charges on the succession in the Romanian, Austrian and Hungarian Law*. Doctoral thesis defended at the State Faculty of Law and Sciences from Cluj in the field of Comparative Civil Law - 1927, reprint from „Revista Notarilor Publici”, p. 10. Similarly, art. 945 par. (1) of the Civil Code Carol II (republished in the Official Journal of Romania, Part I, no. 206 from 6th of September 1940, as amended) stipulated that "the charges on the succession will be paid before the debts of the deceased." According to art. 930 (2) of the same code, the funeral expenses should be considered among the charges on the succession.

¹² Law no. 134 from 1 July 2010 regarding the Code of Civil Procedure, republished in the Official Journal of Romania, Part I, no. 247 from 10th of April 2015.

in so far as they have been incurred in relation to the debtor's condition and status, precede other claims¹³. Unlike the Austrian Civil Code, our Code of Civil Procedure does not explicitly mention the custom of the place, but this condition is somehow understood because "it is notorious that at present the religious practice of custom has a different content in the different localities in Romania, especially in villages and communes, where the non-observance of the community rules is sanctioned by public opprobrium"¹⁴.

In the Austrian law system, the funeral entrepreneur could not turn against all heirs for the payment of these expenses, but he could claim them only from the heir who had ordered the funeral, even when the spending exceeded the appropriate limits corresponding to the custom of the place, the situation and the deceased's estate. Also, only the heir who had commissioned the funeral could claim compensation for the expenses incurred¹⁵.

Hungarian law

In some parts of Banat and Transylvania, in 1861, Hungarian private law replaced the Austrian Civil Code. After the Great Union of 1918, as in the case of the Austrian Civil Code, Hungarian law was maintained, initially by Decree no. 1 of 24 January 1919 issued by the Conducting Council of Transylvania, Banat and the Romanian Parts of Hungary, and subsequently by the same constitutional provisions.

According to Hungarian law, funeral expenses, the transport of the corpse, the grave, the funerary monument, as well as the religious services and funeral banquets were included in the charges on the succession, with the remark that all these expenses were to be reduced by the court "to a measure appropriate to the material state and the social position that *de cuius* had"¹⁶.

Reporting funeral expenses to the estate and social status of the deceased has no modern origins, since this rule can be found in the writings of the Roman jurist Ulpian: *sumtus funeris arbitrantur pro facultatibus, vel dignitate defuncti*¹⁷.

¹³ With the exception of those mentioned in art. 865 par. (1) lit. a) from the Code of Civil Procedure.

¹⁴ F. Pavel, *op. cit.*, p. 183.

¹⁵ C. Bardoși, *op. cit.*, p. 11, n. 1.

¹⁶ *Idem*, p. 12.

¹⁷ D.11.7.12.5 (*Ulpianus lib. 25 ad Edictum*) in „Corpus Iuris Civilis”, ed. Albert Kriegel și Moritz Kriegel, pars prior, impressio septima, Lipsiae: sumtibus Baumgaertneri, 1865.

Romanian law

In the Old Kingdom, the Civil Code of 1864¹⁸ was implemented from 1 December 1865¹⁹. Unlike the Austrian Civil Code, our code did not mention funeral expenses, but the doctrine²⁰ considered them as part of the content of the notion of charge on the succession, the latter being mentioned for example in article 774 (co-heirs contribute to the payment of the debts and charges on the succession, each in proportion to what it takes).

In the case of the judicial partition of the inheritance, in application of the provisions of the Civil Code of 1864, the courts considered the expenses incurred with the burial, the alms and the funerary monument as part of the charges on the succession, being deducted from the assets of the inheritance²¹.

The correlation between bearing the burial expenses as a charge on the succession, on the one hand, and the quality of heir to the deceased, on the other hand, is also illustrated in the jurisprudence from the beginning of the last century, when, according to article 652 par. (2) and article 679 from the Civil Code of 1864 which provided that the surviving spouse could inherit only in the absence of legitimate or natural heirs of the twelfth degree, it has been ruled that not the husband has to bear the funeral expenses of his wife, but her heirs, because the husband cannot be forced to bear the charges of the marriage after the death of his wife²².

On the other hand, in the case of a deceased wife without children, but married with dowry, it was considered that the husband has to bear the funeral and memorial expenses, not her heirs, since such expenses stem from a natural obligation²³ and cannot be claimed back, since according to article 1392 par. (2) Civil Code of 1864 repetition is not admitted in respect of natural obligations, which have been freely paid.

Although after the Great Union in 1918 the provinces united with the Old Kingdom have for the time being retained their own legislative identity, there are

¹⁸ Published in the Official Journal of Romania no. 271 from 4th of December 1864, no. 7 from 12th of January 1865, no. 8 from 13th of January 1865, no. 8 from 14th of January 1865, no. 11 from 16th of January 1865 and no. 13 from 19th of January 1865.

¹⁹ The 1864 Civil Code did not apply to all people in the Old Kingdom: the Mohammedan population of Dobrogea (historical region divided since the 19th century between Bulgaria and Romania.) was subject to Muslim legislation on successions (Article 30 of the Law on the Organization of Dobrogea). See D. Alexandresco, *Theoretical and Practical Explanations on Romanian Civil Law as Compared to the Old Laws and to the Main Foreign Laws*, tome III - part II: Ab intestat successions, Bucharest: Atelierele Grafice Socec & Co., 1912, p. 220.

²⁰ M. B. Cantacuzino, *Elements of Civil Law* [1921], Bucharest: All Educational, 1998, p. 284; D. Alexandresco, *op. cit.*, p. 59, n. 4.

²¹ F. Pavel, *op. cit.*, p. 182.

²² Romanian Court of Cassation, section I, 21 October 1913, *Curierul Judiciar*, in G. Plastara, *op. cit.*, p. 807.

²³ N. J. Constantinescu, *On successions*, second edition, Bucharest: Curierul Judiciar, s.a., p. 43-44.

no differences in the funeral expenses, all three legal systems permitting the inclusion of funeral expenses in the sphere of the concept of charge on the succession, burden that should be appreciated *pro facultatibus, vel dignitate defuncti*.

In relation to the completion of the Union in terms of legislation, the 1923 Constitution provided for in article 137 par. (1) that “all codes and laws existing in the different parts of the Romanian State will be revised in order to bring them into line with the present Constitution and ensure legislative unity”. Equally, according to article 98 par. (4) of the 1938 Constitution, all codes and laws in force were to be revised with a view to unifying the legislation.

This goal, although it should have been accomplished by a new civil code²⁴, and in the interwar period there were made studies with rich *de lege ferenda* proposals²⁵ it was eventually accomplished by the extension in the new territories of the civil law from the Old Kingdom of Romania, considering that on the territory of the Romanian state there is “no other civil law better and more susceptible to progress than our civil code [from 1864] and that it cannot be allowed to take as basis in the new legislation other than this code”²⁶ and “even though those laws [from the new territories] would be superior to the Old Kingdom, it would still have been expected a demand for their replacement”²⁷.

Therefore, from 15 October 1938, through the Decree-law no. 478/1938²⁸ the Austrian Civil Code was abolished and the civil law from the Old Kingdom was extended to Bukovina, with all the changes that had been made to it until then, without any exception. Since following the Second Vienna Award of 1940 Romania lost the territory of Northern Transylvania, the extension of the civil law of the Old Kingdom to the territories over the Carpathians did not initially include the North of Transylvania. In Banat and in Southern Transylvania, the application of the Romanian Civil Code from 1864 was extended, starting with 15 September 1943 through Law no. 389/1943²⁹. This legislative unification was completed with the regaining of Northern Transylvania and the extension of Romania's legislation

²⁴ The Civil Code Carol II, whose entry into force was delayed *sine die* in January 1941.

²⁵ As an example, see G. Docan, *Comparative civil law studies: Hungarian and Austrian legislation in Transylvania compared to Romanian law*, volume V, Bucharest: Curierul Judiciar, 1926.

²⁶ A. Rădulescu, *The Legislative Unification*, Bucharest: Cultura Națională, 1927 [reprint from the Annals of the Romanian Academy, Memoirs of the Historical Section, series III, tom. VII: 373-415], p. 31 [403].

²⁷ *Idem*, p. 33 [405]. In private law matters, the first step was the *Law for the expansion in Bessarabia of some provisions from the legislation of the Old Kingdom*, enacted by the Royal Decree no. 876 from 29th of March 1928, published in The Official Journal of Romania, Part I, no. 77 from 4th of April 1928.

²⁸ *Decree-law no. 478 from 30 September 1938* for the expansion in Bukovina of the Old Kingdom's legislation, published in the Official Journal of Romania, Part I, no. 228 from 1st of October 1938.

²⁹ *Law no. 389 from 21 June 1943* on the expansion of the civil and commercial legislation in the Trans-Carpathian Romania, published in the Official Journal of Romania, Part I, no. 142 from 22nd of June 1943.

through Law no. 260/1945³⁰. However, the veritable legislative unification took place only with the implementation on the 1st of October 2011 of the 2009 Civil Code³¹.

Content of Funeral Expenses at Present

The current civil code, although, unlike its predecessor, mentions the funeral expenses under article 1392 – but not in relation to the charges on the succession, but in the context of the reparation of the damage in the case of tort liability – doesn't individualize them. Funeral expenses include both the expenses related to the moment of the actual funeral, as well as the subsequent ones concerning the organization of the commemorative religious services and funeral banquets.

The expenditure related to the burial moment itself includes the cost of the concession of the burial plot, the funeral monument, the coffin and its accessories, the funeral services, the funeral Mass officiated by religious representatives on the occasion of the religious burial, as well as the cost of the funeral banquet and the funeral customs.

Funeral expenses are admitted as charges on the succession, only to the extent that they are not excessive³², so the construction of a burial vault or a mausoleum cannot be considered as a charge on the succession³³, but may be a charge imposed on the legatee or expressly assumed by contract. Also, the cost of a funerary monument can be excessive when it includes important artwork or is made with high value materials, but in such circumstances, at the request of the interested party, the court will be obliged to reduce the amount of funeral expenses to be incurred as part of the debts of the succession³⁴.

As for the content of the expenses for the religious services and funeral banquets that take place after the actual funeral to commemorate the memory of the deceased the Orthodox tradition requires that, after the funeral, to organize religious services and commemorative feasts at 3 days, 9 days, 40 days, 3 months, 6

³⁰ Law no. 260 from 4 April 1945 on the applicable legislation in Northern Transylvania, and the rights acquired in this territory during the Hungarian occupation, published in the Official Journal of Romania, Part I, no. 78 from 4th of April 1945.

³¹ See S.-D. Șchiopu, *Short considerations on the legislative unification in civil matters*, in „Revista română de jurisprudență” no. 2/2018, p. 178.

³² Supreme Court, civil section, *decision no. 478/1989*, in „Revista română de drept” no. 1-2/1990, p. 128.

³³ See Ploiești Court of Appeal, civil section, *decision no. 1696/1996*, unpublished, *apud* A. L. Banu, *The liabilities of the inheritance*, Bucharest: Universul Juridic, 2011, p. 106, n. 2.

³⁴ S.-D. Șchiopu, *Bearing the funeral expenses*, in „Dreptul” no. 8/2018, p. 41.

months and one year after death³⁵. Also, on these occasions, various gifts are offered for the soul of the departed.

Neither post-funeral expense should be excessive, character that we think should be appreciated by reference to the value of the estate, the social status of the deceased (not of the heirs), the religious cult he was part of, as well as the local funeral customs.

Action on the Liquidation of Funeral Expenses

On the one hand, article 984 par. (1) final thesis from the Code of Civil Procedure provides that “if an inheritance is partitioned, the court will also establish [...] the charges on the succession” and, on the other hand, according to article 1157 par. (1) from the Civil Code on the actions of the heirs against their coheirs for the amounts they paid in excess of their share, the heir who has paid more than his share of the common debt has the right to pursue remedies against the other heirs, but only for the share of the common debt (debts of the succession) that belongs to each one.

As, more often than not, the heirs of the deceased or at least some of them take care of the funeral arrangements voluntarily, contributing at least to some of the funeral expenses, one can encounter the situation where one of the heirs paid all the funeral expenses, that is to say, over his share from the debts of the succession.

Thus, when an heir has paid over his share, he is granted a right against the other heirs held to pay the debts of the succession. The action for the liquidation of funeral expenses and the observance of the religious traditions exercised by the heir who voluntarily paid the deceased’s funeral over his contributory part is a personal civil action based on *negotiorum gestio*³⁶.

Since it has as its object the recovery of a debt claim, having a patrimonial and personal character, the action for the liquidation of funeral expenses is subject to extinctive prescription within the general limitation period applicable to debt rights, irrespective of whether the action is formulated within the action aimed to put an end to the indivision between heirs or separately³⁷.

³⁵ See High Court of Cassation and Justice, criminal section, *decision no. 362/2014*, available on <http://www.scj.ro>, consulted on 15.10.2018, as well as G. P. Gheorghiu, *The custom and the law. The derogatory power of custom*, Bucharest: Tipografia Federației Naționale Cooperative de Librărie, 1943, apud F. Pavel, *op. cit.*, p. 182-183.

³⁶ D. Chirică, *Treatise on Civil Law: Successions and liberalities*, second edition, Bucharest: Hamangiu, 2017, p. 421.

³⁷ G. Boroi in G. Boroi, L. Stănculescu, *Civil law institutions in the regulation of the new Civil Code*, Bucharest: Hamangiu, 2012, p. 294-295. In the same sense, High Court of Cassation and Justice, *decision no. 6 from 19th of January 2009* concerning the prescriptive nature of the requests for the liquidation of claims relating to funeral expenses and the expenses for observance of the religious traditions constituting the liabilities of the succession, published in *The Official Journal of Romania*, Part I, no. 321 from 14th of May 2009.

The possession of the inherited assets by the heir, who paid for the funeral, has a prescription breaker character because this possession has the significance of recognition from the other heirs, so that the limitation period starts to run from the date of the request for the inheritance partition, which could result in the creditor being deprived of the succession assets³⁸.

This is a relatively recent orientation, the previous practice being that the liquidation of funeral expenses between heirs within the succession partition was not subject to prescription because the action for partition is imprescriptible³⁹, and the claims regarding the funeral expenses and for the respect of religious traditions follows the legal status of the partition.

What happens, however, with the liquidation of funeral expenses between heirs in the event that the deceased's debts are to exhaust the entire inheritance mass? The Civil Code Carol II, according to which the funeral expenses were considered among the charges on the succession, offered an adequate solution in the sense that the charges on the succession were to be paid before the debts of the deceased. Unfortunately, the Civil Code of 2009 does not distinguish between the debts of the deceased and the charges on the succession in terms of their liquidation. Only the Code of Civil Procedure by article 865 par. (1) letter b) orders that such expenses, in so far as they have been incurred in relation to the debtor's condition and status, precede other claims, other than those referred to in the preceding paragraph.

Funeral Expenses...and Taxes

"Anyone is entitled to a decent funeral", according to article 2 par. (1) from the Law no. 102/2014, and therefore funeral expenses must be within certain limits "in the sense of acceptable, reasonable expenses"⁴⁰. However, these may be more significant, but only when they were indicated by the deceased, as the latter can determine the way of his own funeral, or when they are paid with the consent of the heirs out of the deceased's patrimony⁴¹.

Currently, according to the Methodological Norms for the Application of the *Fiscal Code*, "the debts of the succession include [...] also the funeral expenses up to

³⁸ Supreme Court, civil section, *decision no. 503/1987*, in „Revista română de drept” no. 12/1987, p. 72-73; G. Boroi, *op. cit.*, p. 295.

³⁹ Supreme Court, civil section, *decision no. 1699/1972* in „Revista română de drept” no. 4/1973, *apud* C. Turianu, *Succession and estate division: commented and annotated case-law*, Bucharest: Pinguin Book, 2004, p. 245.

⁴⁰ F. Pavel, *op. cit.*, p. 183.

⁴¹ *Ibidem*.

the amount of 1.000 lei, which need not be proven by written documents”⁴². *Per a contrario*, for the purpose of calculating the inheritance tax, the inclusion of a higher amount in the debts of the succession can be made only by proving the difference with documentary evidence.

In contrast to the current regulation, article 55 from the *Law on the stamp duties and the tax on legal acts and deeds from 29 April 1927* provided that “Not more than 50.000 lei shall be admitted to the debts of the succession as funeral expenses. [...] In setting the amount, account will be taken of the social condition of the deceased and the importance of the wealth left”⁴³. The establishment of a limit on the amount of funeral expenses is explained by the fact that during the interwar period the inheritance tax was calculated on the net share of each heir or legatee, and excessive funeral costs could substantially diminish the net inheritance mass and implicitly the tax owed.

The fact that in the year 1939 the progressive tax on successions varied between 3% (the first tranche of 100.000 lei from the net inheritance remitted to the 1st degree descendants and the spouses) and 56% (the tranche of 30.000.001 to 50.000.000 lei of the net *mortis causa* liberality that was remitted to strangers and relatives from the fourth degree up) justifies the legislator's interest in imposing a maximum threshold on funeral expenses precisely to limit the possibility of tax evasion.

We underline that this limitation of funeral expenses only concerned the fiscal aspects of the liquidation of the debts of the succession, so that on the field of civil law the assessment of the excessive character of the amount of the funeral expenses was made by reference to the need to satisfy the creditors of the inheritance, as it happens today when such expenses, in so far as they have been incurred in relation to the debtor's condition and status, generally precede other claims.

Since the tax provided by the Fiscal Code is no longer a true inheritance tax, but has rather the nature of a fine for not completing the succession proceedings within two years from the death, being set up not so much to obtain state revenues, but rather to compel the heirs to complete the notary succession procedure within a reasonable time⁴⁴, the limitation of the amount of funeral expenses in tax matters is no longer justified, so that the provision from the *Law on the stamp duties and the tax on legal acts and deeds from 29 April 1927* has not been taken up by the current legislator.

⁴² See the *Methodological Norms for the Application of the Law no. 227/2015 regarding the Fiscal Code*, approved by the Government Decision no. 1 from 6 January 2016, published in the Official Journal of Romania, Part I, no. 22 from 13th of January 2016.

⁴³ *Law from 29 April 1927 on the stamp duties and the tax on legal acts and deeds*, official edition, Bucharest: Monitorul Oficial și Imprimeriile statului. Imprimeria Centrală, 1939.

⁴⁴ In this regard, see I. Nicolae, *The Development of Inheritance Tax in Romania*, in „*Revista română de drept al afacerilor*” no. 10/2015, p. 102.

References:

1. *Constitution of 1923*, published in the Official Journal of Romania, Part I, no. 282 from 29th of March 1923.
2. *Constitution of 1938*, published in the Official Journal of Romania, Part I, no. 48 from 28th of February 1938.
3. *Civil Code of 1864*, published in the Official Journal of Romania no. 271 from 4th of December 1864, no. 7 from 12th of January 1865, no. 8 from 13th of January 1865, no. 8 from 14th of January 1865, no. 11 from 16th of January 1865 and no. 13 from 19th of January 1865.
4. *Law from 29 April 1927 on the stamp duties and the tax on legal acts and deeds*, official edition, Bucharest: Monitorul Oficial și Imprimeriile statului. Imprimeria Centrală, 1939.
5. *Civil Code Carol II*, republished in the Official Journal of Romania, Part I, no. 206 from 6th of September 1940, as amended.
6. *Decree-law no. 478 from 30 September 1938* for the expansion in Bukovina of the Old Kingdom's legislation, published in the Official Journal of Romania, Part I, no. 228 from 1st of October 1938.
7. *Law no. 389 from 21 June 1943* on the expansion of the civil and commercial legislation in the Trans-Carpathian Romania, published in the Official Journal of Romania, Part I, no. 142 from 22nd of June 1943.
8. *Law no. 260 from 4 April 1945* on the applicable legislation in Northern Transylvania, and the rights acquired in this territory during the Hungarian occupation, published in the Official Journal of Romania, Part I, no. 78 from 4th of April 1945.
9. *Law no. 287 from 17 July 2009* regarding the Civil Code, republished in the Official Journal of Romania, Part I, no. 505 from 15th of July 2011.
10. *Law no. 134 from 1 July 2010* regarding the Code of Civil Procedure, republished in the Official Journal of Romania, Part I, no. 247 from 10th of April 2015.
11. *Law no. 102 from 8 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.
12. *Government Decision no. 1 from 6 January 2016* for the approval of the Methodological Norms for the Application of the Law no. 227/2015 regarding the Fiscal Code, published in the Official Journal of Romania, Part I, no. 22 from 13th of January 2016.

13. D. Alexandresco, *Theoretical and Practical Explanations on Romanian Civil Law as Compared to the Old Laws and to the Main Foreign Laws*, tome III - part II: Ab intestat successions, Bucharest: Atelierele Grafice Socec & Co., 1912.

14. A. L. Banu, *The liabilities of the inheritance*, Bucharest: Universul Juridic, 2011.

15. C. Bardoși, *Liquidation of the debts and charges on the succession in the Romanian, Austrian and Hungarian Law*. Doctoral thesis defended at the State Faculty of Law and Sciences from Cluj in the field of Comparative Civil Law - 1927, reprint from „Revista Notarilor Publici”.

16. G. Boroi, L. Stănculescu, *Civil law institutions in the regulation of the new Civil Code*, Bucharest: Hamangiu, 2012.

17. M. B. Cantacuzino, *Elements of Civil Law* [1921], Bucharest: All Educational, 1998.

18. D. Chirică, *Treatise on Civil Law: Successions and liberalities*, second edition, Bucharest: Hamangiu, 2017.

19. I. Corjescu (translator), *The Austrian General Civil Code comprising the official text, laws, novels and ordinances published for its completion and modification or for the matters contained therein, applicable some in Bukovina, others in Transylvania*, Bucharest: Imprimeria Statului, 1921.

20. N. J. Constantinescu, *On successions*, second edition, Bucharest: Curierul Judiciar, s.a.

21. F. Deak, *Treatise on succession law*, second edition updated and completed, Bucharest: Universul Juridic, 2002.

22. G. Docan, *Comparative civil law studies: Hungarian and Austrian legislation in Transylvania compared to Romanian law*, volume V, Bucharest: Curierul Judiciar, 1926.

23. I. Nicolae, *The Development of Inheritance Tax in Romania*, in „Revista română de drept al afacerilor” no. 10/2015, p. 95-103.

24. F. Pavel, *Part of the soul. An old legal custom of Roman origin, embedded in the content designated by the concept of “duty of inheritance”*, in „Revista română de jurisprudență” no. 4/2016, p. 179-184.

25. G. Plastara, *Romanian civil law course informed about the jurisprudence, the positive legislation, the new legal tendencies, the comparative law and the law of the adjoining provinces*, Volume III, Part I: Successions and Liberalities, Bucharest: Cartea Românească, s.a.

26. A. Rădulescu, *The Legislative Unification*, Bucharest: Cultura Națională, 1927 [reprint from the Annals of the Romanian Academy, Memoirs of the Historical Section, series III, tom. VII: 373-415].

27. S.-D. Șchiopu, *Bearing the funeral expenses*, in „Dreptul” no. 8/2018, p. 38-47.

28. S.-D. Șchiopu, *The persons obliged to dispose as to the funeral*, in „Revista Universul Juridic” no. 8/2018, p. 155-160.

29. S.-D. Șchiopu, *Short considerations on the legislative unification in civil matters*, in „Revista română de jurisprudență” no. 2/2018, p. 174-180.

30. C. Turianu, *Succession and estate division: commented and annotated case-law*, Bucharest: Pinguin Book, 2004.

31. High Court of Cassation and Justice, *Decision no. 6 from 19th of January 2009* concerning the prescriptive nature of the requests for the liquidation of claims relating to funeral expenses and the expenses for observance of the religious traditions constituting the liabilities of the succession, published in The Official Journal of Romania, Part I, no. 321 from 14th of May 2009.