

Personal Data Processing within a Smart Cemetery

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Abstract

Starting from the characteristics that an intelligent cemetery should have, this article aims to highlight possible personal data processing within it. The article presents the challenges faced by smart cemeteries starting from examples of data handling inherent to the functioning of a classic cemetery, to then analyze processing hypotheses that may intervene precisely as a result of the technological input in the administration of cemeteries. Last but not least, the relationship between the processing of personal data, on the one hand, and the respect due to the memory of the deceased, on the other, is of interest for the functioning of a smart cemetery. Although the cemeteries are rather spared by technology, it is already obvious that they are not completely immune to it. Any introduction of modern technologies in these spaces must be carefully considered. Personal data processing should contribute not only to the good administration of the cemetery but also to the respect owed to the memory of those who have passed away while also protecting the privacy of the living ones.

Keywords: *smart city, cemetery, personal data processing, post-mortem privacy, memory of the deceased.*

Preliminary considerations

As it would be difficult to imagine a town without a cemetery, a *smart city*¹ is destined to serve its population even in death. Consequently, the characteristics of a smart city² should extend also to its cemetery. On the one hand, there is the usage of personal data to deliver city services; on the other hand, the data

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¹ For a definition, see the *Opinion of the European Committee of the regions – Smart cities: new challenges for a just transition toward climate neutrality – how to implement the SDGs in real life?*, published in the Official Journal of the European Union C 39 from 5 February 2020.

² 10 key criteria of a smart city are detailed by S. Goldsmith in *As the Chorus of Dumb City Advocates Increases, How Do We Define the Truly Smart City?*, 16 September 2021 (prepared with the help of B. Gardner), <https://datasmart.ash.harvard.edu/chorus-dumb-city-advocates-increases-how-do-we-define-truly-smart-city>.

subjects enjoy a right to the protection of their personal data. Both fall under the General Data Protection Regulation (GDPR)³. However, according to recital (27), the GDPR „does not apply to the personal data of deceased persons”.

Member States may provide rules regarding the processing of personal data of deceased persons. For example in Denmark the GDPR applies to the data of deceased persons for a period of 10 years following the death of the deceased⁴, while in France the data subjects can define directives relating to the storage, erasure and disclosure of their personal data after their death⁵.

Although Romania did not adopt such provisions, it does not mean that the dearly departed are left entirely defenceless. The processing of data on deceased persons will be analysed from the perspective of respect for their memory. In this regard Article 79 of the Romanian Civil code⁶ provides that „(t)he memory of the deceased person is protected under the same conditions as the image and reputation of the living person”.

Thus, while the functioning of smart cemeteries, and indeed any cemetery, requires the processing of personal data not only of the dead but also of the living data subjects, in Romania only the latter are protected under Regulation (EU) 2016/679.

Examples of Personal Data Processing within Classic Orthodox Confessional Cemeteries

Before looking at some challenges of processing personal data within a smart cemetery, it is necessary to analyze what happens in a classic one, all the more so as a smart cemetery is essentially a regular cemetery infused with digital and telecommunication technologies.

Processing of personal data is inherent to the administration of a cemetery, similar to any other service or business. For example Article 14 (2) (g) the Law no. 102 of 8 July 2014 on cemeteries, human crematoria and funeral services⁷ provides that the administrator has the obligation to draw up and keep the *record*

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, published in the Official Journal of the European Union L 119 from 4 May 2016.

⁴ Article 2 (5) of Act on supplementary provisions to the regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the Data Protection Act), published in 'Lovtidende' (the Law Gazette) on 24 May 2018, <https://www.datatilsynet.dk/media/7753/danish-data-protection-act.pdf>.

⁵ Article 85 (I) of *Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés* (version en vigueur au 11 décembre 2022), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000886460>.

⁶ Law no. 287 of 17 July 2009 on the Civil Code, republished in the Official Journal of Romania, Part I, no. 505 of 15 July 2011.

⁷ Published in the Official Journal of Romania, Part I, no. 520 from 11 July 2014.

books and the archive. Also, according to Article 15 (1), the administrator ensures the drawing up and keeping of a record register in which the following data must be entered: current number, day, month, year of burial or placement of the urn with ashes in a niche, *identification data of the deceased*, last residential address, date of death, number of parcel, row and burial plot, *name and address of the person who ordered the burial*⁸ and comments on the type and works of the burial plot.

Given that the majority of cemeteries belong to the Romanian Orthodox Church⁹, we will analyse its Regulation of cemeteries adopted two years ago¹⁰. This Regulation contains a series of annexes, models of various applications such as for the eternal concession of a burial plot (appendix 2), a seven years concession for temporary use (appendix 4), or the issuance of a new concession deed for the acquirer/acquirers (appendix 6). All three contain a clause: „I agree to the processing of personal data within the limits imposed by the GDPR rules”.

By reading it one may be led to believe that the lawfulness of processing relies on the consent of the data subject. Since consent should be freely given and it should not be regarded as freely given if the data subject is unable to refuse consent without detriment¹¹, it becomes clear that consent is not the lawful basis for the processing. Given that the purpose for which the personal data are initially collected is the issuance of the concession deed, the true basis is the one provided by Article 6 (1) (b): the *performance of a contract* to which the data subject is party or to take *steps at the request of the data subject before entering into a contract*. Further processing for archiving purposes derives from the obligation of the administrator to keep the archive and it falls under Article 6 (1) (c) GDPR: processing necessary for *compliance with a legal obligation*¹².

The same clause: „I agree to the processing of personal data within the limits imposed by the GDPR rules” can be found in other annexes of the Regulation of

⁸ The following persons have the obligation to arrange the funeral: the person who has agreed by contract that will take care of the funeral, the person established by the testament of the deceased, the spouse of the deceased, who lived in the same dwelling as the deceased in the last part of the deceased's life, the will of another close relative of the deceased up to and including the fourth degree. For further details, see S.-D. Șchiopu, *Family Relations in the Light of Romanian Funeral Laws*, Law Review vol. XI, issue 2/2021, p. 71-75.

⁹ See G. Tilkin, *Quelles professionnalités pour les cimetières en Roumanie?*, TEOLOGIA no. 2/2013, p. 63, n. 12.

¹⁰ Sfântul Sinod al Bisericii Ortodoxe Române, *Regulamentul cimitirelor din Biserica Ortodoxă Română* (aprobat prin hotărârea nr. 11.943 din 9-11 decembrie 2020), Bucharest: Institutul Biblic și de Misiune Ortodoxă, 2020.

¹¹ Recital (32) and (42) GDPR. See also D.-M. Șandru, *Elemente privind reglementarea consumământului în prelucrarea datelor cu caracter personal, potrivit art. 6 din Regulamentul nr. 2016/679*, Revista română de drept al afacerilor no. 5/2017, p. 131.

¹² For the application of this basis for processing, see D.-M. Șandru, *Situații în care este permisă prelucrarea datelor cu caracter personal fără consimțământul persoanei vizate*, in A. Săvescu (coord.), RGPD - Regulamentul general privind protecția datelor cu caracter personal: comentarii și explicații, București: Hamangiu, 2018, p. 43-44.

cemeteries in the Romanian Orthodox Church: the burial approval request (appendix 8) and the application for exhumation approval (appendix 9). Even in these situations there can be no question of consent. Given that Article 15 (1) of the Law no. 102/2014 prescribes that the administrator ensures the drawing up and keeping of a register in which the *name and address of the person who ordered the burial* must be entered¹³, the true basis is the one provided by Article 6 (1) (c) GDPR: processing necessary for *compliance with a legal obligation*.

From the above mentioned examples, it can be seen that something as basic as determining the appropriate basis for the processing still eludes the main operator of Romanian classical cemeteries, which raises doubts regarding its ability to manage a lawful processing of personal data within a smart cemetery.

Non-processing of Personal Data within a Municipal Cemetery

Recently, the municipal cemetery of Alba Iulia attracted the attention of the media¹⁴. In short, the administrator applied orange paint to several graves within the cemetery prior to the Day of the Dead, this action taking place as a result of non-payment by the concessionaires of their legal obligations.

The unfortunate event is linked to the provisions of Article 14 of the Law no. 102/2014 which reads as follows: „The administrator of the cemetery withdraws the right to use the burial places and notifies the holders of the right of use in writing in the following cases: [...] b) leaving or maintaining in a state of neglect for a period of more than 2 years the burial places and the funeral works, after a prior notification; c) non-payment of fees under the conditions stipulated in the contract”. Also, Article 6 (3) provides that the owner of the cemetery is obliged to draw up the regulations for the organization and operation of the cemetery.

In Alba Iulia, Article 23 (c) of the adopted regulation¹⁵ prescribes that holders of the right of use over burial places have the obligation to pay by March 15 of each year the fees charged for the maintenance of the cemetery and graves for the current year. The *maintenance of the graves* covers cleaning them of garbage and vegetable remains every month starting from April and ending in October. Payment of these fees is mandatory regardless of how the grave is arranged. In light of the foregoing, failure to pay the fees can result in losing the right to use the burial places. The matter can be all the more serious when some family members are perhaps already buried in that grave.

¹³ *Mutatis mutandis* this provision also applies to exhumations.

¹⁴ Marinela Brumar, *Primarul de la Alba Iulia critica vopsirea cu portocaliu a mai multor morminte din cauza neplătii taxelor*, 6.11.2022, <https://www.agerpres.ro/social/2022/11/06/primarul-de-la-alba-iulia-critica-vopsirea-cu-portocaliu-a-mai-multor-morminte-din-cauza-neplatii-taxelor--1008753>.

¹⁵ *Local Council Decision no. 156 of 24 May 2011*, <https://se.apulum.ro/Registratura/DetaliiuHCL?nr=156&an=2011>.

On the one hand, a prior „notification” by marking the graves with paint indicates that the administration chose not to process personal data to send out the said notification, for example, by mail. On the other hand, such a choice had as result public outrage. It follows that a decision not to process personal data can do as much harm or even more than personal data processing under an invalid legal base.

Handling Personal Data within a Smart Cemetery

As mentioned, smart cemeteries are essentially regular cemeteries infused with digital and telecommunication technologies, but this is only half of the story. What makes them truly smart is how the technology is put to use. In view of the unfortunate event from Alba Iulia, one could imagine a digital platform that processes the personal data of both the living and the dead, together with IoT data regarding the physical infrastructure of the cemetery, including the graves.

The personal data of the living would be processed in relation to the holders of concession rights over the burial plots. The personal data of the dead would be processed in order to keep track of the location were their mortal remains are buried¹⁶, all the more so as Article 15 (4) of the Law no. 102/2014 prescribes that the administrator is obliged to provide information about the place of burial of the deceased person to those who are interested, during office hours. Both cases are examples of processing that could be carried out without technology. However, since „a smart city (or really any city) should not deploy technology and analyze data unless it directly relates to making the city a better place”¹⁷ we argue that the use of digital tools could only improve the functioning of the cemeteries.

In this context, it was pointed out the need for the assistance of good legal and technical advisors when crafting contracts for acquiring technology solutions¹⁸. It is important not only to have a good understanding of the technical details but also to ensure the fundamental right of the data subjects to the protection of natural persons in relation to the processing of their data¹⁹.

As to the dead, the future may make true what was once a figment of someone’s imagination. Perhaps it will bring us a Fortresses of Solitude where the living could interact with the dead, just as Kal-El talked to his father, the late

¹⁶ For an example of QR code use for locating graves, see Svilena Iotkovska, *Croatian e-cemetery service locates the resting places of departed loved ones*, 27 October 2021, <https://www.themayor.eu/en/a/view/croatian-e-cemetery-service-locates-the-resting-places-of-departed-loved-ones-9206>.

¹⁷ S. Goldsmith, *As the Chorus of Dumb City Advocates Increases, How Do We Define the Truly Smart City?*, <https://datasmart.ash.harvard.edu/chorus-dumb-city-advocates-increases-how-do-we-define-truly-smart-city>.

¹⁸ *Ibidem*.

¹⁹ Article 8 (1) of the Charter of Fundamental Rights of the European Union and Article 16 (1) of the Treaty on the Functioning of the European Union.

Jor-El, in the 1978 Superman film. Than it may arise the question of recognizing even a right to privacy for a deceased person²⁰, right which for the moment is reserved for the living. Given that in Denmark the GDPR applies to the data of deceased persons for a period of 10 years following the death of the deceased, it would not be such a great leap to admit also a right to privacy for the dearly departed.

The Respect Owed to the Memory of the Deceased

Leaving aside what the future may bring, the processing of personal data of deceased persons is protected in Romania under Article 79 of the Romanian Civil code²¹ which prescribes that „(t)he memory of the deceased person is protected under the same conditions as the image²² and reputation of the living person”. Consequently, only a data processing that violates at least one of the two could infringe the interdiction of defamation against the memory of the deceased and activate the protection provided by the Civil code.

However, this protection is rather limited considering that Article 256 (2) provides that the action for restoring the integrity of the memory of a deceased person may be initiated by a limited number of persons, namely the surviving spouse, the descendants, and the collateral relatives but only up to the fourth degree. Basically only those who have direct descendants can hope in the long term for the protection of their memory and implicitly of their personal data.

Before the digital revolution the memory of any deceased was doomed to fade in the absence of a family to keep the flame of remembrance alive. The same cannot be said today when natural oblivion has become inoperative in the context of information technology, even in the absence of relatives. While nowadays the remembrance casts a longer shadow than it used to do, those entitled to protect the memory of the deceased have remained the same.

Conclusions

Although the cemeteries are rather spared by technology, it is already obvious that they are not completely immune to it. Any introduction of modern technologies in these spaces must be carefully considered because personal data processing should contribute not only to the good administration of the cemetery

²⁰ For a comprehensive analysis, see C. Buitelaar, *Post-mortem privacy and informational self-determination*, *Ethics and Information Technology*, Vol. 19, Issue 2, June 2017, <https://doi.org/10.1007/s10676-017-9421-9>.

²¹ *Law no. 287 of 17 July 17 2009* on the Civil Code, republished in the Official Journal of Romania, Part I, no. 505 of 15 July 2011.

²² Article 75 (2) of the Romanian Civil code: In exercising the right to his own image, one may prohibit or prevent the reproduction, in any way, of his physical appearance or his voice or, as the case may be, the use of such reproduction.

but also to the respect owed to the memory of those who have passed away while also protecting the privacy of the living ones.

Also, given that the flame of remembrance remains alive longer in the context of information technology, *de lege ferenda* the legislator should enlarge the circle of those who can initiate the action for restoring the integrity of the memory of a deceased person.