

Medico-Legal Death Investigation Systems – The Netherlands

Vidija Soerdjbalie-Maikoe^{1,2,3}, Udo Reijnders⁴

¹Soerdjbalie Forensic Medical Expertise, SFME, the Netherlands

²Eurofins_TMFI, The Maastricht Forensic Institute, Maastricht, The Netherlands

³Department of Forensic Medicine and Pathology, University of Antwerp, Belgium

⁴Forensic Medicine Department, GGD Amsterdam, the Netherlands

ABSTRACT

In the European Union (EU), and thus in the Netherlands, human rights are subject to the Universal Declaration of Human Rights (1948), the instruments of the international human rights framework, the Treaty of the European Union (art. 2, 3, 6 and 21) and the EU Charter of Fundamental Rights, including the European Convention on Human Rights, which is monitored by the European Court of Human Rights. According to Article 2 of the Convention on Human Rights, the right to life must be protected. As a result countries have criminal law to judge criminal activities like murder and manslaughter. The Dutch criminal justice system and its medico-legal death investigation system follow the so-called Romano-Germanic legal system, which is founded on codified statutes and ordinances. In the Netherlands three different groups of medical doctors are involved in post-mortem investigation, depending on the manner of death, being: the *attending physician*, the *forensic physician* and the *forensic pathologist*. If there is a (possible) unnatural death with a criminal offense, the public prosecutor (or the examining magistrate) will formally seize the body and require a forensic autopsy. This occurs at the stage of preliminary criminal investigation under the authority and lead of the public prosecutor, whereas the police chief is the practical leading investigator. At this stage the role of the examining magistrate is also to monitor the lawful application of investigative powers, the progress of the investigation and to prepare the preliminary investigation for further investigation by the court. As of the final sentence of the court, the public prosecutor or the suspect can appeal. The Court of Law issues a ruling at the end of the handling of a criminal case. Subsequently, appeal in cassation to the Supreme Court is possible when there have been demonstrable procedural errors or new facts have emerged which may affect the case and the earlier ruling. The Supreme Court is the final stage of the legal process.

Keywords: Criminal justice; legal system; Netherlands; public prosecutor, Romano-Germanic legal system; unnatural death

Corresponding Author: Vidija Soerdjbalie-Maikoe
soerdjbaliefme@kpnmail.nl
ORCID iD: <https://orcid.org/0000-0001-7386-3702>

ARTICLE HISTORY

Received: 21.05.2022

Received in revised form: 13.09.2022

Available online: 30.09.2022



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ARTICLE

In January 2022 the population of Netherlands was about 17 million with a growth in yearly death rate from 75,929 deaths in 1950 up to 170,839 deaths in 2021 (approximately 3,252 deaths weekly). The increase in deaths is the result of the steady growth and an increase in the population of inhabitants and a decline in birth rates in the Netherlands. The Dutch criminal

justice system and its medico-legal death investigation system follow the Romano-Germanic legal system, where codified statutes and ordinances rule the land. In the European Union (EU), and thus in the Netherlands, human rights are subject to the Universal Declaration of Human Rights (1948), the instruments of the international human rights framework, the Treaty of the European Union (art. 2, 3, 6 and 21) and the EU Charter of Fundamental Rights, including the European Convention on Human Rights, which is monitored by the European Court of Human Rights. Due to Article 2 of the Convention on Human Rights, the right to life must be protected. This article also states that any one's life should be taken into account and that the state has an obligation to investigate possible criminal offences. Countries have criminal law for this purpose and to judge criminal activities like murder and manslaughter. In the Netherlands there are 4 locations in Dutch legislation where information about death is mentioned. These are^{1,2,3,4}: the '*Wet op de Lijkbezorging, WLB*', the '*besluit op de Lijkbezorging*', the '*Civil Code* and the '*Wet op de orgaandonatie, WOD*'. The '*WLB*' exists since 1991 and is the follow up of the

'*Begrafeniswet van 1869*'. Surprisingly the definition of 'death' is not mentioned in Dutch legislation. However the 'WLB' describes the definition of 'a corpse' as the body of a dead person or a stillborn after 24 weeks of gestation (art. 2 lid 1 a and b WLB). Due to 'WLB' (art. 4 WLB), this body must undergo an external examination ('*uitwendige lijkshouw*') after death. It is dependent on the cause or manner of death which medical doctor will be involved at this point. The following options are applicable^{1,2,3,4}:

a certain natural death: the attending physician (a general practitioner, other medical doctor or medical specialist) will perform the external examination and fills in the death certificate (art. 7 and art. 12 WLB). The death certificate consists of two forms, named the A form (article 7 of the Law of Funeral Services) with identification data of the deceased person and the B form (article 12a of the Law of Funeral Services) on which the possible cause of death is mentioned for the benefit of the National Bureau of Statistics.

an (possible) unnatural death: a forensic physician of a regional forensic medicine department (also known as '*gemeentelijk lijkshouwer*') must be deployed to perform an extensive investigation, in close cooperation with the police and a public prosecutor. Forensic physicians ('*gemeentelijk lijkshouwers, art. 3 WLB*') are appointed by mayors and aldermen, which illustrates that external examination of the dead ('*the lijkshouw*') is not a criminal proceeding. Forensic physicians work at local centers in different parts of the Netherlands (in total 22 GGD's) or in private constructions and can be contacted anytime of the day on any day. After investigation by the forensic physician which includes *external examination of the corpse* (and if necessary limited sampling for toxicologic screening or DNA investigation-prostatic fluid/sperm investigation), *analysis of the medical history* of the deceased, *scene investigation* and *interpretation of police investigation*, the possible cause of death is given and manner of death can be concluded as:

- a natural death, which means that no further investigation is required and the body is given to relatives for burial or cremation (art. 11 WLB). If relatives wish a clinical autopsy on the body, written permission is necessary, followed by a clinical autopsy by a surgical pathologist in a hospital.
- a (possible) unnatural death. This conclusion must be reported by the forensic physician to a public prosecutor (art. 10 WLB).

The public prosecutor will decide the follow up. If there is;

- no (suspicious) criminal offense after thorough investigation by the forensic physician, the public prosecutor will stop further investigation and the body is given to relatives for burial or cremation (art. 11 WLB).
- a (possible) unnatural death with a criminal offense, the public prosecutor (or the examining magistrate) will formally seize the body and require a forensic autopsy. The nomination of the forensic pathologist is done by the public prosecutor [in case of a NRGD (Netherlands Register of Court Experts)-registered professional] or by the examining magistrate (if the professional has no NRGD registration). Relatives are informed that a forensic autopsy will occur, but no permission is requested, as the body is seized. The forensic physician will provide the forensic pathologist with the forensic medical report, which gives the forensic pathologist insight about the findings prior to autopsy, including external examination findings by the forensic physician, scene information and medical history. In the Netherlands forensic pathologist do not frequently visit the scene.

A forensic autopsy in the Netherlands is performed by independent privatized senior forensic pathologists or by forensic physicians or forensic pathologists working at the Netherlands Forensic Institute. Forensic pathologists completed a 5 years medical specialist training as surgical pathologist, followed by sub-specialization in forensic pathology of two years. They are registered in at least three medical and judicial registers (BIG, RGS and NRGD), which means that they are obligated to follow both medical and judicial training and courses to maintain their expertise. The NRGD is independent and guarantees and promotes the input of forensic experts in the legal process.

A forensic autopsy by a forensic pathologist in the Netherlands is a complete and extensive external and internal examination of the human body or part of it, including sampling for further investigations and histopathological investigation of internal organs. The external examination which was earlier performed by the forensic physician at the scene or in a mortuary, will be repeated/extended during forensic autopsy by the forensic pathologist, with description and interpretation of injuries, extensive external and internal sampling for histology, toxicology, DNA-prostatic fluid/sperm and other investigations and identification (if necessary). Internal examination is performed with standard investigation of thoracic, abdominal, pelvic, skull, neck and back dissection and if necessary dissection of other

regions of the body, followed by histologic examination of sampled tissues. Extensive investigation of external and internal anogenital area is also performed, and if necessary completed with histopathologic investigation of these structures. Additional toxicological, neuropathological, microbiological, ophthalmological and metabolic investigations are requested if necessary.

Extensive photography is a standard element of forensic autopsy in the Netherlands. The forensic autopsy is performed by guidelines issued by the Dutch Association of Pathology and conforms to international standards. The quality of a forensic autopsy is ensured and monitored by external committees using ISO standards and by visitation from the medical-scientific professional association of pathologists.

The results of a forensic autopsy are produced in an autopsy report. In this report the forensic pathologist provide: extensive description and explanation of external and internal injuries, description of internal organs, anogenital findings, diagnosis of diseases, sampling data, results and interpretation of additional investigations and the determined cause of death (if found). If necessary and possible the forensic pathologist can further explain the earlier suggested manner of death stated by the forensic physician, after additional information is obtained from the police, the public prosecutor or clinical medical experts. The forensic pathology report is intended for the public prosecutor who is the applicant for the forensic autopsy. A copy of the report is sent to the senior police officer who is leading the investigation.

PEDIATRIC FORENSIC PATHOLOGY

Byard and Krous mention pediatric forensic pathology as a sub-specialization of forensic pathology dealing with cases involving children⁵. As pediatric cases represent only a very small proportion of forensic autopsies, most forensic pathologists have very limited experience in this area, which results in quality issues when pediatric forensic cases are investigated by them⁵. It is very important to have the knowledge and experience in differentiating natural diseases, congenital abnormalities and resuscitation artefacts from real traumatic injuries, which is very different compared with the investigation of adults. Misunderstanding can lead to misdiagnosis with detrimental consequences. A pediatric forensic pathologist would have the knowledge to evaluate and interpret autopsy findings and medical history findings regarding the manner of death in pediatric cases. Literature analysis helps in differentiating between accidental and non-accidental injuries and give probability statements which are very useful in the legal process. Even the description and interpretation of signs of child abuse and anogenital traumatic lesions

due to sexual abuse, need handling by a pediatric forensic pathologist who has exposure on this field. Recruiting medical doctors for pediatric forensic pathology is seen by Byard and Krous and by us as an increasingly serious problem due to the heavy workload and complexity of these cases which are frequently high profile with enormous media exposure and stress⁵. In the Netherlands only two certified senior pediatric forensic pathologists have performed about 90% of all pediatric forensic autopsies for the Netherlands during a 15 years period (2005-2020), using (inter)national guidelines and protocols.

LEGAL FORENSIC PROCEDURE IN THE NETHERLANDS

The preliminary criminal investigation starts from the point the public prosecutor is involved and seizes the corpse. This is under the authority of the public prosecutor whereas the police chief is the practical leading investigator. The public prosecutor is however the overall leader at this stage of postmortem investigation. The examining magistrate also has a role at this stage in monitoring the lawful application of investigative powers, monitoring the progress of the investigation and preparing the preliminary investigation for further investigation by court. The role of the public prosecutor ends at this level of investigation and the main person involved at this stage is the judge of the criminal court. Rules about the preliminary criminal investigation and the following court investigation are included in the Code of Criminal Procedures (*'Wetboek van Strafvordering'*). From the final sentence of the court, the public prosecutor or the suspect can appeal in a Court of Law within fourteen days after final statement in court. The Court of Law judge is named counselor and the public prosecutor is called Attorney General. Finally, the Court of Law issues a ruling which indicates the end of the handling of a criminal case. After this, appeal in cassation to the Supreme Court is possible.

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