

Medico-Legal Death Investigation Systems – Poland

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ABSTRACT

In Poland a legal death can only be declared by a physician and they are the first link in the chain of medico-legal death investigation. It is usually a general practitioner or an emergency care practitioner. It can also be a medical doctor working in the hospital where the death occurred. Under Polish Code of Criminal Procedure, if it is suspected that death has been caused by criminal means, an external examination of the body at the place of its discovery and a forensic autopsy shall be performed. This suspicion is the only statutory prerequisite for forensic autopsy. In accordance with the Code, if the suspicion arises, these procedures are obligatory; however, they cannot be performed without the existing suspicion. The decision whether to deploy them is taken solely by the state prosecutor conducting the investigation. In accordance with the law, forensic autopsies are performed by a physician, “when practicable, a forensic pathologist”. Sadly, the availability of forensic pathologists in Poland is not large and autopsies are often conducted by a medical doctor who does not have this specialty. The scope of autopsy is not regulated by any laws, the physician always opens three main body cavities: the head, rib cage and abdomen with pelvis. Additionally, if need be, other areas may be opened. A forensic autopsy report consists of a formal section and a description of the actions performed. Finally, it outlines conclusions concerning the possible cause of death and other circumstances. The report is sent to the state prosecutor, who may decide to share it with the family of the deceased. Following the forensic autopsy, the state prosecutor issues a permission for burial of the body, which authorizes the physician to issue a document stating death and enables the family to collect the body for burial.

Keywords: Code of criminal procedure; external examination; forensic autopsy; medico-legal death investigation; Poland.

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Poland is a country located in Central Europe, with an area of 321,696 km² (120,733 sq mi), nearly 5 times bigger than Sri Lanka. Poland is the fifth-most populous member state of the European Union and has a population of over 38 million, almost 2 times larger than Sri Lanka's. Before the COVID-19 pandemic, an average of 400,000 deaths per year occurred in Poland, but in 2020-2021 this number rose to approximately 500,000 deaths per year. Only about 10,000 of these cases undergo forensic autopsy per year. They include mostly suicides – mainly hanging (approx. 5,000 per year), victims of accidents – mainly road traffic accidents

(approx. 2,500 per year), while homicides are much less common (approx. 600 per year). The latter mostly encompass deaths caused by head injuries inflicted with blunt objects (typically a fist, shod foot, stick, brick, stone) or torso injuries inflicted with sharp instruments (typically a knife). Deaths caused by shooting are even less common; they mostly include firearm accidents during hunting or suicides by persons legally owning firearms. Homicides with the use of firearms happen very rarely (approx. 20 per year). Polish population is highly homogenous. Most of us belong to the Roman Catholic faith and religion plays an important role in the life of many Poles, especially in smaller towns and in the rural areas of the country. However, since the Catholic Church does not impose any strict rules concerning interment (e.g., there are no regulations describing the time required for the burial to occur following death, the type of burial allowed – both typical earth grave and cremation are allowed, exhumation is not prohibited etc.), it does not impact death investigation in any way.

Under Polish Code of Criminal Procedure¹, if it is suspected that death has been caused by criminal means, an external examination of the body at the place of its discovery and a forensic autopsy shall be performed². This suspicion is the only statutory

prerequisite for forensic autopsy. In accordance with the Code, if the suspicion arises, these procedures are obligatory; however, they cannot be performed without the existing suspicion. The procedures in question are aimed not only at identifying the cause of death, but also at discovering all the other circumstances relevant to the case. The decision whether to deploy them is taken solely by the state prosecutor conducting the investigation. A mere suspicion that death has been caused by criminal means obliges the state prosecutor to order an external examination of the body at the place of its discovery and a forensic autopsy. The state prosecutor's decision is final and cannot be appealed. If the suspicion that the death has been caused by criminal means occurs after the burial of the body, the state prosecutor shall order an exhumation, regardless of the time elapsed, and a forensic autopsy. The state prosecutor shall also order a forensic autopsy in cases where it is suspected that death has been caused by criminal means and a clinical autopsy had been performed or forensic autopsy had been performed, but the procedures were not in line with the Polish criminal procedure, e.g., the forensic autopsy was duly performed, but it took place in a foreign country. The state prosecutor may only waive the autopsy on condition that the forensic pathologist duly proves in their opinion that it would serve no purpose in the given circumstances, e.g., it would be futile to order a forensic autopsy to reveal a recent myocardial infarction in a body exhumed 5 years after death. However, the detection of a basilar skull fracture in such a body is quite feasible. Issues other than the suspicion that death has been caused by criminal means, for instance an occurrence of a mass casualty incident, are not important in the decision-making process regarding autopsy, from the point of view of the Code. Of course, autopsies will be performed in the case of an aviation accident with a hundred casualties, but not because it was a mass casualty incident. They will be ordered since, at this stage of investigation, it is not possible to rule out that the accident was caused by a crime. All the same, in the case of an avalanche that buried a hundred victims, autopsies may not be necessary, as the deaths were caused by a natural phenomenon. Nevertheless, in the latter situation an external examination of the body at the place of its discovery and forensic autopsies can also be ordered. Their first aim is then the correct identification of the bodies, because requesting identification procedures in line with Interpol requirements (using primary identifiers) is possible in Poland only after initiating criminal proceedings. Apart from launching criminal proceedings, the only other possibility would be to do a visual identification of the bodies, which of course is not always possible and feasible. In such situations the law is circumvented by adopting an assumption that there may have been a crime committed (e.g., somebody triggered an avalanche) and formally the proceedings are in line with

the Code. This was also the reason why creating a DVI team in Poland required, in the first place, establishing procedures enabling a lawful cooperation of the state prosecutor, the police and forensic medicine experts as well as other specialists from different fields.

A legal death can only be declared by a physician and they are the first link in the chain of medico-legal death investigation^{3,4}. It is usually a general practitioner or an emergency care practitioner. It can also be a medical doctor working in the hospital where the death occurred. Typically, death is declared based on early certain signs of death, late signs of death, or injuries preventing survival. In hospital conditions, when a need to remove organs for transplantation arises, declaring death is a more complex issue involving multiple procedures aimed at investigating brainstem function.

The physician declares death and if: 1) they do not have sufficient grounds to suspect that the death was caused by criminal means, 2) there have not been sufficient grounds to suspect a suicide, and 3) the identity of the body is known, they issue a document stating death, required for the issuance of an official death certificate by a competent civil office, which is necessary for the organization of burial of the body or its cremation and burial of the ashes. If the death happened in hospital (and as long as the above three conditions apply), it is possible to perform a clinical autopsy to determine the cause of death and to issue a document stating death at a later time. Since such autopsies are not compulsory in any situation, because the cause of death is usually known and families of the deceased are typically opposed to autopsies, their number is low. A private clinical autopsy can also be performed in any case of death (as long as all the above-mentioned conditions apply), commissioned by the family of the deceased. However, the number of such autopsies is limited to one-off cases. In theory, Polish regulations also allow for the performance of an administrative-sanitary autopsy in cases where the deceased person was diagnosed with or suspected of having a contagious disease (provided that the above three conditions apply). However, in practice such autopsies are never performed.

On the other hand, if any of the three above mentioned conditions is not met, i.e., if: 1) the physician declaring death has sufficient grounds to suspect that the death was caused by criminal means, 2) there have been sufficient grounds to suspect a suicide, or 3) it is impossible to identify the body, they are obliged to notify the police. In this is the case, the physician does not issue a document stating death – it will be done at a later time by a different medical doctor. The police may also arrive at the place where body was discovered when notified by other persons or institutions (e.g., when the death occurred in a public place). After such

information is received, an investigation team is dispatched to the scene.

The state prosecutor shall be in charge of the investigation team – they shall be notified by the police, however, depending on the region of Poland and even local practices, the external examination of the body at the place of its discovery is often conducted by the police without their presence. Besides a scene of the crime officer, the investigation team should also include a physician – as provided in the relevant regulations: “when practicable, a forensic pathologist”. Unfortunately, the availability of forensic pathologists is low and the team is often joined by a medical doctor who does not have this specialty, which happens especially outside large cities, or sometimes the team is not joined by a medical doctor at all. Thus, the quality of such external examination is not up to expected standard.

Apart from external examination of the body itself, the investigation team also explores the place of its discovery. The examination should be conducted without delay to avoid the risk of potential evidence being destroyed. The state prosecutor in charge of the team is responsible for supervising all the performed procedures, but they, together with scene of the crime officer and forensic pathologist, are not the first to arrive at the scene. They are usually preceded by police officers, who ought to properly secure the site from unauthorized access. It is particularly important when the examination is performed in a public place. However, in practice, it is not always the case. The scene is often imperfectly secured and can be accessed by unauthorized persons (due to lack of screens or unwillingness to put them up). In such circumstances forensic pathologists and scene of the crime officers are subjected to unwelcome attention from passersby.

After taking a photographic and written record, the scene of the crime officer secures the evidence. Although these steps are clearly their responsibility, they are assisted by forensic pathologists, especially in case of biological evidence. It is worth mentioning that scene of the crime officers in Poland are usually highly skilled and knowledgeable about the types of materials that should be collected at the scene and the means of securing them.

The next step involves the forensic pathologist, who commences the external examination by describing in detail the location of the body, its clothes and possible signs of soiling or damage. The following step involves describing signs of death and examining postvital reactions, which allow to determine time since death. Next, the forensic pathologist describes general characteristics of the body and proceeds to report bodily injuries. During the examination it is vital to

determine whether there are any injuries present, to identify them and to establish whether they involve areas responsible for vital functions and whether they may be related to the death. Finally, time of death should be determined and, if possible, a likely cause of death, as well as possible involvement of third parties and advisability of forensic autopsy.

It should be noted that if during the external examination of the body at the place of its discovery the forensic pathologist finds no evidence of the involvement of third parties in the death and if other circumstances (examination of the scene, interrogation of witnesses) do not arouse any doubts, the state prosecutor present at the scene may decide that they do not suspect a criminal cause of death and release the body to the family for burial. However, the body is usually transported to the local department of forensic medicine and kept in a morgue refrigerator until the state prosecutor decides on further action in the case. The time for taking this decision is not legally determined in any way. The decision is typically announced promptly, but sometimes it takes many days.

If, after all the required procedures had been deployed, the state prosecutor still suspects a criminal cause of death, they order a forensic autopsy. Such autopsies are often superfluous, since prosecutors prefer to request one as a safety precaution than to be later accused of groundlessly waiving it – this is simply a safer choice for them.

In accordance with the law, such autopsies are performed by a physician, “when practicable, a forensic pathologist”. Sadly, as already mentioned before, the availability of forensic pathologists in Poland is not large and autopsies are often conducted by a medical doctor who does not have this specialty. The quality of such autopsies is not up to expected standard. According to the law, the state prosecutor should be present during the autopsy. In practice, it is not always the case, although nowadays state prosecutors attend forensic autopsies more often than in the past. Moreover, if need arises, the autopsy can be joined by a scene of the crime officer, who takes photos, necessary samples (e.g., swabs collected from under fingernails), fingerprints, etc.

The scope of autopsy is not regulated by any laws, the physician always opens three main body cavities: the head, rib cage and abdomen with pelvis. Additionally, if need be, other areas may be opened, for instance paranasal sinuses, inner ear, vertebral column, joints, soft tissues in relevant places etc.⁵⁻⁸. The choice of autopsy scope is usually left to the physician, although formally the state prosecutor may determine it at their own discretion. Similarly, the choice of materials to be

collected for additional tests is usually left to the physician, although formally the state prosecutor also has the power to make it. The cost of forensic autopsy is normally fixed and does not depend on the scope of examination nor the type of collected materials. It is covered by the ordering party, i.e., the state prosecutor.

The situation is different with regards to ordering tests of the collected material, which incur extra costs. Every single test translates into additional expense for the state prosecutor. Fortunately, the prosecutor typically, but not always, trusts the physician in this matter and orders the suggested tests. Only three departments of forensic medicine in Poland offer the possibility to perform medical imaging (PMCT scanning) prior to the actual forensic autopsy, consequently these procedures are not very popular and the state prosecutor does not insist on them, to avoid additional costs.

A forensic autopsy report consists of a formal section and a description of the actions performed. The former includes information about the autopsied body, date of autopsy, name of institution ordering the autopsy, case file reference number, name of the physician and persons present at the autopsy, as well as data concerning the circumstances of death (or, alternatively, medical record data, if the death happened in hospital). The latter contains an actual description of the body given in order of the steps performed and a description of all organs, as well as traumatic, pathological, and postmortem lesions. Next, the document enumerates the materials collected at the scene for further testing and the means of securing these materials. Finally, it outlines conclusions concerning the possible cause of death and other circumstances. The report is sent to the state prosecutor, who may decide to share it with the family of the deceased. They may also disclose selected information from the report to the media.

Following the forensic autopsy, the state prosecutor issues a permission for burial of the body, which authorizes the physician to issue a document stating death and enables the family to collect the body for burial.

Second look autopsy is not customarily performed in Poland, although after releasing the body to the family it is by all means possible. Nor is it customary for the forensic pathologist hired by the family to participate in the forensic autopsy. However, in exceptional cases, the family of the deceased wishes to attend the autopsy.

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