**Poland’s inputs to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on the protection of dead persons and their human remains, including of victims of potentially unlawful killings input to the report on the policy regarding the protection of corpses and human remains.**

1. **Legal aspects**
2. Protection of human corpses in the criminal law:

Article 262 of the Criminal Code on the profanation of a corpse in its current wording has been part of the 1997 Criminal Code since it came into force on 1 September 1998. Under this article, anyone who profanes a corpse, human ashes or a burial site of a dead person shall be liable to a fine, community sentence or imprisonment for a maximum term of 2 years (§ 1). Anyone who robs a corpse, grave or another burial site of a dead person shall be liable to imprisonment for a term going between 6 months and 8 years (§ 2).

According to the case-law, “profanation of a corpse must result from an intentional action and thus involve expressing disrespect towards the dead person, insulting them and desecrating both verbally and by means of ostentatious gestures” (judgment of the Court of Appeal in Katowice of 15 January 2004, case no. II AKa 374/03).

1. Protection of human corpses in the civil law:

In the Polish legislation, the primary legal act governing the handling and burial of corpses is the Act of 31 January 1959 on cemeteries and burial of the dead (Journal of Laws of 2023, items 887 and 1688). Under Article 80(4) of the Act of 4 September 1997 on government departments (Journal of Laws of 2022, item 2512 and of 2023, item 2029), the said Act falls within competence of a minister competent for public administration.

The Act of 23 April 1963—Civil Code (Journal of Laws of 2023, items 1610, 1615, 1890, 1933, hereafter CC) does not contain a provision directly referring to the handling of corpses or a burial site. However, indirect reference should be made to two fundamental civil law issues in question, that is the right to a grave and the related protection of personal interests. Regarding the so-called right to a grave, it should be noted that it basically stems from an unnamed civil law contract between an individual acquiring the right to a plot at a cemetery and the cemetery administration. The contents of the right to a grave and its time scope depend on the contents of the contract and the type of the grave. Under Article 7(1) of the Act on cemeteries and burial of the dead, such a contract is entered into for a minimum of 20 years and its extension usually requires paying a fee for further use. This right can only be construed as a property right that is the right to bury a corpse in a specific grave, vested in the person who concluded the contract with the cemetery administrator. The right to a grave, understood in this limited way, is transferable and heritable. However, such a contract is usually concluded to bury a specific dead person, therefore it is usually called a contract to bury a corpse. It does not require a specific form and can therefore be implicit and entered into through the receipt of a corpse with the aim of burying it and the payment of a fee. Essential elements of such a contract include in particular the specification of the burial site, the kind of the grave, its purpose, and the fee for the burial of a corpse. As a result of the conclusion of such a contract, the right to a grave becomes effective *erga omnes*, since everyone is obliged not to interfere with this right.

Upon the burial of the first deceased, the separation of property and personal rights becomes impossible, and thus property rights are no longer separable. Since that moment, they cannot be exclusively used and disposed of by the person who entered into the contract with the cemetery administrator. From now on, the right to the grave is vested in all eligible individuals, since it is based on family connections to the person buried in the grave.

Individuals entitled to bury a human corpse are listed in Article 10(1) of the said Act, wherein the closest family of the deceased includes: the remaining spouse, descendants, ascendants, collateral relatives up to the fourth degree, and relatives by affinity up to the first degree. The right to bury soldiers who died while in active military service is vested in the relevant military authority, in line with military regulations. The right to bury individuals who have rendered great service to the state and the community is vested in state authorities, institutions, and civil society organisations. The right to bury a corpse is also vested in individuals who voluntarily undertake to do so. The right to bury a corpse is a substantive right and a part of the right to foster the memory of a deceased person, which is a personal interest within the meaning of Articles 23 and 24 of the CC in line with established doctrine and case-law, and includes, above all, the choice of place and manner of burial, and the change of the resting place.

It should be noted that the circle of individuals entitled to protection under this right is not limited to the person who entered into the contract with the cemetery administrator, paid the fee for the grave, or the one who paid for the tombstone, but it includes all close relatives of the deceased. An infringement of a personal interest in the form of the said right to a grave can take various forms including insulting a human corpse or ashes, the deceased’s resting place, and robbing a corpse or a grave. If an eligible person alleges violation of their individual feelings regarding the fostering of the memory of a deceased person, claims can be made under Articles 24(1) and (2) and 448 of the CC. The claims made under Article 24 of the CC include demand that an action threatening one’s personal interests be ceased, that actions necessary to remove the effects of an infringement of personal interest be taken, that monetary recompense or an appropriate amount of money be paid to a specific public cause, or that financial damage resulting from the infringement of a personal interest be remedied. In turn, Article 448 of the CC provides for a remedy to injury, that is non-pecuniary damages caused by infringement of a personal interest consisting in physical and psychical suffering of the injured party. Awarding a recompense for non-pecuniary damages is discretional.

1. **Precudural aspects related to the activities of the Police**

Polish Police, performing its statutory tasks, is responsible for investigating the circumstances of revealing a human corpse, as well as carrying out activities in various cases of sudden or violent death. In a situation where the doctor declaring the death unambiguously determines its cause as natural, the police - if called to the place where the corpse was revealed - limit their own activities to enabling the medical services to carry out their tasks and entities handling transportation of the corpse in accordance with the Law of January 31, 1959 on cemeteries and burying the dead (Polish Journal of Laws 2023, item 887, 1688). In such a situation, it is the responsibility of the county to arrange for the transportation of the corpse to a forensic institution or the nearest hospital with a dissecting room to determine the cause of death if the corpse is discovered in a public place. In case of a natural death, the determination of the cause of death is carried out administratively.

A different procedure applies in cases where a doctor fails to determine the cause of death. In such a situation, a criminal cause of death may be suspected, even when the circumstances do not directly indicate the involvement of third parties. The police in such circumstances are obliged to carry out procedural actions to die necessary extent. These are carried out by the police, including inspection of the place where the body was found.

According to Article 209 § 2 of the Code of Criminal Procedure. - inspection of the corpse is carried out by the prosecutor with the participation of a forensic expert, and in urgent cases, the Police inspects the corpse and at the same time fulfilling the obligation to immediately notify the prosecutor. When notifying the prosecutor, the Police obtains information from them whether they will arrive at the place where the body was found to inspect it and whether they will order the opening of the body by a forensic expert in order to determine the actual cause of death and thus exclude criminal causing of death.

In the context of the above-signalled actions undertaken by the Police in the event of revealing of a corpse, it should be pointed out that with regard to the manner of handling human remains, in addition to the Law of June 6, 1997. - Code of Criminal Procedure (i.e., Journal of Laws of 2022, item 1375, 1855, 2582, 2600, of 2023, item 289, 535, 818, 1606,1860), the following stipulations apply:

1) the Law of January 31, 1959 on cemeteries and burying the dead,

2) the Decree of the Minister of Health of December 7, 2001, on the handling of corpses and human remains (i.e., Journal of Laws of 2021, item 1910),

3) Regulation of the Minister of Health of March 23, 2011 on the manner of storage of corpses and remains (i.e., Journal of Laws, item 405),

as well as:

- Guideline No. 3 of the Commander-in-Chief of Police of August 30, 2017 on the performance of certain investigative activities by police officers (Journal of Laws of the National Police Headquarters item 59, of 2019, item 92, and of 2020, items 20 and 54) - Chapter 8 entitled. "Inspection of the place, person and objects".

In accordance with the provision of § 44 of the abovementioned guidelines, when organizing and conducting visual inspection of a crime scene of a complex state, the following stipulations apply additionally:

(a) "Methodology for conducting visual inspections of terrorist crime and disaster sites" and

(b) "Methodology for identifying the bodies of disaster victims"

adopted by the Inter-Ministerial Team for Terrorist Threats created by Order No. 162 of Polish Prime Minister of October 25, 2006 on the establishment of the Inter-Ministerial Team for Terrorist Threats. Significantly, both methodologies used the Disaster Victim Identification Manual (DVI Manual), which includes a description of the methods developed by the Interpol and recommended for use by DVI teams, including, in addition to suggested methods and procedures for action, a description of the recommended structure of DVI teams, as well as forms for post-mortem (PM), ante-mortem (AM) data collection and data linkage.

There are no explicit provisions in the internal acts on the issue of respect for human remains, which are the subject of examination by the forensic laboratory in the search and identification process. Samples that are sent for examination most often constitute bone fragments, teeth, hair, blood from unidentified corpses, less often organ fragments (soft tissue fragments). The material for biological examination is, as required, delivered to the laboratory by the ordering party after appropriate judicial and technical protection. The forensic laboratory is responsible for the test objects from the moment they are delivered by the police units/organizational units until they are returned to the ordering party after the tests have been performed. The order and research materials are recorded and stored for the duration of the research in accordance with applicable regulations (fragments of human remains are usually stored frozen). Samples are taken from the remains in the amount necessary to obtain a positive result of genetic testing, leaving the remaining material still available for possible repetition of testing, if possible.

The process involved in the testing of the above-mentioned evidence/identification material follows the same procedure as for all samples of biological origin, including comparative material in the form of swabs from the buccal mucosa and includes all stages of the testing process, i.e. the process of DNA isolation, quantification, amplification and electrophoresis. The evidence remaining after testing is sent back to the ordering party with an opinion or report on the examinations carried out, with the exception of blood packets, which are kept for 6 months after testing and then disposed of, unless the ordering party decides otherwise (Order No. 10 of the Commander-in-Chief of the Police of May 7, 2015 on the manner of handling with research material and the mode and manner of maintaining forensic collections in the police forensic laboratories).

In identification cases, when the DNA profile determined from the unknown corpse is to be recorded in the DNA Dataset on the basis of the submitted order to enter information on the results of deoxyribonucleic acid - DNA analysis into the DNA Dataset, such biological material (for example in the form of bone dust, small bone fragments or DNA extracts) is then included in the forensic collection in order to repeat die research in the future (if such need arises). Pursuant to the provisions of Art. 21a point 3 of the Police Act of April 6, 1990, the DNA data collection includes samples collected from a person or a human corpse in order to conduct deoxyribonucleic acid (DNA) analysis, in the form of swabs from the buccal mucosa, blood, hair bulbs or secretions, and in the case of human corpses, biological material in the form of tissue samples, called "biological samples".

Since 2019 in Polish Police Force has been operating a Disaster Victim Identification Team (DVI), whose task is to perform activities aimed at identifying victims in the event of a mass disaster. The "Methodology for Identifying the Bodies of Disaster Victims" developed in June 2019 and applied in the Police coincides with Interpol's guidelines in the field in question, and takes into consideration religious and ethical aspects by mentioning that DVI teams work in an interdisciplinary manner, involving experts in various fields (including forensic genetics experts) according to the goal of positive identification of victims. The guiding principle in this process is to adhere to the highest possible standards of work in accordance with accepted ethical standards, ensuring proper treatment of both victims' bodies and their kin, with full moral responsibility for the acts undertaken, which is expected to go a long way toward alleviating the suffering of victims' families. The aforementioned Methodology emphasizes that the conduct of identification should be carried out with all due diligence and the highest principles of professionalism, and that the states on whose territory the incident occurred share responsibility for the ethical and transparent treatment of all victims, in accordance with the principle of respect for dignity and taking into account religious and cultural aspects.

While securing corpses/human remains by forensic technicians at crime scenes with fatalities, the June 2019 "Methodology for the examination of terrorist crime and disaster scenes." (para. 22. Handling of corpses and human remains during visual inspection of sites of terrorist crimes or disasters for the purpose of identifying the bodies of victims) emphasizes that the transfer of corpses and human remains to a storage point for corpses and, subsequently, their transport to a dissecting room or other appropriate place, should be done in a manner that guarantees due respect to the deceased. In addition, Guideline No. 3 of the Commander-in-Chief of Police dated August 30, 2017 on the performance of certain investigative activities by police officers describes in details the procedure for conducting an inspection of a corpse at the scene of its discovery, in particular in terms of describing the surroundings in which the corpse is located, its arrangement, appearance, the clothing it has, taking into account traces, as well as objects revealed by and on the corpse.

1. **Sanitary provisions**

The tasks of the State Sanitary Inspection in the field of supervision over cemeteries and the handling of corpses and human remains include:

* inspection of sanitary and hygienic conditions in cemeteries, funeral homes and vehicles transporting bodies and human remains,
* issuing exhumation permits,
* taking positions regarding the exportation of bodies and human remains outside the borders of Poland and the importation of bodies and human remains from abroad for burial,
* taking positions regarding the establishment, expansion or closure of a cemetery.

Issues regarding the treatment of bodies and human remains are regulated in the Act of January 31, 1959 on cemeteries and burial of the dead, the Regulation of the Minister of Health of December 7, 2001 on the treatment of corpses and human remains, the Regulation of the Minister of Health of 23 March 2011 on the method of storing corpses and remains. Pursuant to the above legal acts:

**Transport of bodies and remains** is possible by:

1) by rail, planes and ships within the borders of Poland,

2) outside the borders of Poland, if the death occurred on the territory of Poland- may take place after obtaining the permission of the relevant state district sanitary inspector.

To bring bodies and remains from abroad for burial, you must obtain:

* permission of the mayor competent for the place where the body or human remains are to be buried; the permit is issued after consultation with the relevant state district sanitary inspector;
* a certificate from the Polish consul, issued after presenting the permit, stating that the body or human remains may be brought to the territory of Poland.

Carrying or transporting bodies in open coffins is prohibited. Transporting corpses is permitted using means of transport specially designed for this purpose.

A body transported within the country for a distance of more than 60 km is placed in a tight wooden coffin, filled with a 5 cm thick layer of liquid-absorbing substance. The coffin is closed in the presence of the district sanitary inspector, who then seals it. During transport, the coffin is placed in a tightly closed bag made of impermeable plastic, resistant to mechanical damage.

A body exported abroad is placed in a wooden coffin, stamped with sheet metal or with a metal insert, or in a metal coffin. The bottom of the coffin is filled with a 5 cm thick layer of liquid-absorbing substance. The coffin is placed in a tight wooden box that prevents the coffin from moving, or in another container made of an impermeable material. The district sanitary inspector may also order other precautions to be taken when transporting bodies, and if he finds that the measures taken are sufficient, he seals the coffin. After transporting the body to its destination, the body is buried immediately without opening the coffin. The human remains as a result of cremation are transported in an urn. Specialized entities are equipped to transport bodies and remains over a distance of over 60 km.

**Exhumation of bodies and human remains may be carried out**, among others:

* at the justified request of persons authorized to bury bodies\* with the permission of the relevant sanitary inspector,
* based on the decision of the competent sanitary inspector in the event of occupation of the cemetery area for another purpose.

\* The right to bury a human body has the immediate remaining family of the deceased person, namely: 1) the remaining spouse; 2) descendant relatives; 3) ascending relatives; 4) collateral relatives up to the 4th degree of kinship; 5) direct affinity to the 1st degree.

The right to bury the bodies of military personnel who died in active military service is vested in the competent military authorities in accordance with military regulations.

The right to bury the bodies of people of merit to the state and society is vested in state authorities, institutions and social organizations.

The right to bury a body is also granted to persons who voluntarily undertake to do so.

If the cemetery area is taken over for another purpose, the bodies and human remains should be reburied in another place. The bodies of persons who died of infectious diseases, the list of which is established by the Minister of Health, cannot be exhumed at the request of persons authorized to bury the body within 2 years from the date of death.

The exhumation of bodies and human remains is permitted from October 16 to April 15; it is carried out in the early morning hours.

The competent district sanitary inspector should be notified of the intended exhumation, who supervises the exhumation and may allow the exhumation to be carried out at a different time, while maintaining the precautions established by him. A body exhumed before the expiry of the mineralization period is extracted together with the coffin, which is placed, without opening, in a box tightly covered with sheet metal for the duration of transport within the country At the place of reburial, the coffin is removed from the box and immediately buried in the cemetery without opening it. In the case of exhumation performed after the mineralization period, the excavated remains together with the remains of the coffin are placed in a new coffin and prepared for transport. The body or human remains exported after exhumation outside Poland are closed in a new coffin and prepared for transport. Bodies or human remains exhumed within 20 years from the date of burial are recovered together with the coffin, which is placed, without opening, in a tight box designed exclusively for this purpose, stamped with sheet metal. In case of exhumation performed after 20 years from the date of burial, the excavated human remains together with the remains of the coffin are placed in a new coffin. For reburial after exhumation, the coffin should be immediately removed from the box and placed in the grave without opening it. Earth excavated from the grave should be used to fill the grave. The bodies of people who died of infectious diseases specified in the Regulation of the Minister of Health of December 6, 2001 on the list of infectious diseases in the case of which the declaration of death requires special treatment of the bodies of people who died of these diseases, immediately after the death is confirmed, are wrapped in a cloth saturated with liquid disinfectant, is placed in a coffin, the coffin is closed tightly and the outside is washed with disinfectant liquid. Then a foil bag made of impermeable plastic, resistant to mechanical damage, is placed over the coffin. The body is taken directly from the place of death to the cemetery and buried within 24 hours of death. After the coffin is delivered to the cemetery, the bag is removed and burned.

In addition, the following precautions apply:

* people cannot gather in the room where the body is lying,
* touching a corpse is prohibited except for the activities specified above,
* 5 cm thick layer of liquid-absorbing substance is placed at the bottom of the coffin

In the event of death due to an infectious disease not included in the list, but resulting in compulsory hospitalization:

* 5 cm thick layer of liquid-absorbing substance is placed at the bottom of the coffin
* touching the body is not allowed except for activities related to washing, dressing and placing the body in the coffin,
* disinfectant liquid is used to wash corpses,
* Immediately after placing the body in the coffin, the coffin is closed tightly and the outside is washed with disinfectant liquid.

In case of bodies of people who died of the disease caused by the **SARS-CoV-2 virus** (COVID-19), the following applies:

* disinfect the corpse with a disinfectant liquid with a virucidal spectrum;
* refrain from standard procedures for washing corpses, and if necessary, special precautions should be taken;
* avoid dressing the body for burial and showing the body;
* place the body in a protective, tight bag, along with clothes or hospital gowns, and if the body is sent for cremation, place the first bag with the body in the second bag;
* disinfect the outer surface of each bag by spraying it with a disinfectant liquid with a virucidal spectrum;
* place the secured body in a transport capsule, in the case of transferring the body to a crematorium, made of a material enabling its washing and disinfection, which after transferring the body to the incinerator is subject to standard decontamination with surfactants, or
* a coffin for burial, in the case of direct burial in a cemetery;
* 5 cm thick layer of liquid-absorbing substance at the bottom of the burial coffin ;
* immediately after placing the body in the coffin or transport capsule, close the coffin or transport capsule tightly and spray it with a disinfectant liquid with a virucidal spectrum;
* transport of bodies, if possible, should be carried out in one transport team.

The above activities, in the case of death in hospital, are performed by people employed by the hospital, and in the case of death outside the hospital, by appropriately trained people employed in funeral homes.