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## Forensic Autopsies in Italy

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**ABSTRACT:** In Italy, forensic autopsies are performed under one of two different statutes. Judicial autopsies are requested by the prosecutor or by the court; and nonjudicial forensic autopsies are done under a special statute whenever a proper death certificate was not filed by a treating physician.

Judicial autopsies are performed by doctors chosen from a special list, after a basic check on their training and competence, on a case-by-case basis. A fee of some \$350 is paid, by the Ministry of Justice, to the doctor for each case. As we have had an adversarial trial system, since 1989, we also have "adversarial autopsies" and the prosecutor, the defendant and the victim's next of kin each can appoint a forensic pathologist as a consultant to stand in at the autopsy and discuss the case. These forensic pathologists will testify in court as expert witnesses.

Nonjudicial autopsies, which are regulated by the National Health Service, are usually only performed by forensic pathologists in large urban areas. Elsewhere they are often omitted for lack of qualified physicians.

In this article, we discuss some of the practical and legal problems arising from both the new Italian criminal procedure and the National Health Service Regulation, stressing the need to study different systems, including the medical examiner system, in order to improve the quality of forensic medical investigations.

**KEYWORDS:** forensic science, jurisprudence autopsies, Italian criminal procedure, Italian national health service

Forensic autopsies are performed in Italy under one of two different statutes: judicial autopsies are requested by the prosecutor or by the court; nonjudicial forensic autopsies are done under a special statute whenever a proper death certificate is not filed by a treating physician.

In our country there is no such a jurisdiction as the medical examiner system in the USA. Prosecutors and courts, based in major cities, belong to a nationwide judicial system and have local geographical jurisdiction.

Judicial autopsies are performed by doctors chosen by the prosecutor or by a justice on a case-by-case basis from a special list after a brief check on their training and competence. A fee of some \$350 is paid by the Ministry of Justice to the doctor for each case, including court appearance. Since 1989, an adversarial trial system has been practiced. We also have "adversarial autopsies" and the prosecutor, the defendant and the victim's next of kin can each appoint a forensic pathologist as a consultant to stand in at the autopsy and discuss the case. These forensic pathologists will testify in court as expert witnesses.

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### **Organization of Forensic Pathology Services**

Thirty universities have medical schools; each medical school has a "legal medicine department" (institute of legal medicine). In these departments forensic autopsies are usually performed as well as teaching medicolegal topics and deontology to medical students.

A few hospitals and local agencies of the National Health Service have medicolegal departments: in these institutions medicolegal tasks are performed (such as evaluation of physical disability, physical examination for driver's license, etc.). These tasks should include autopsies but most of the time these cannot be performed due to the lack of trained staff or adequate facilities.

A training in legal medicine is provided by medical schools as a specialization diploma; forensic pathology is one of the topics taught in such schools. Only a few specialists choose to work as forensic pathologists and an in depth specialization training is not officially provided.

This system does not provide an official certificate in forensic pathology. On the other hand a certificate is not required to perform forensic autopsies or to serve as a private consultant in court. In geographical areas including medical schools judicial autopsies are usually performed by staff members of the institutes of legal medicine while in other areas this activity can be done by private consultants. Therefore it is not possible to estimate the number of doctors performing forensic autopsies in Italy.

### **Judicial Autopsies**

After a long tradition based on the Napoleonic Code and the Inquisitory Trial System, the new penal procedure code has been in effect since October 1989 [1]. Although its adversarial system is somehow similar to the British and American systems, many differences exist.

Forensic autopsies are governed by different articles and ordered by different prosecutors and justices.

Corte d'Assise, Tribunale and Pretura are the different Courts that share the competence in Penal Trials.

Corte d'Assise is in charge of serious offences, such as murder, and offences in which life or long sentences are provided.

Pretura is in charge of lower offences in which less than four years prison sentence is provided.

Tribunale is in charge of the remainder.

Two prosecutor offices share the burden of investigations and court appearances: one is in charge of Pretura cases (including manslaughter: negligent traffic homicides, medical malpractice, etc.) and is called the Pretura Prosecutor; the other office is in charge of Tribunale and Corte d'Assise cases (including murders) and is called the Tribunale Prosecutor. The latter is often in charge of the first investigation on every suspicious death report in order to assign each case to the legally competent magistrate.

Of course, death investigation is not the main burden of prosecutors: their offices are generally very busy, their deputies overworked and cases are behind schedule. Moreover, in most of the peaceful Italian regions death investigations are fairly routine, consisting

mostly of traffic, natural, overdose, accidental deaths plus some homicides in which the circumstances are, for the most part, clear from the beginning.

In most cases in which no one is responsible for the death, no judicial autopsy is required by a prosecutor (at this point it is possible that a nonjudicial medicolegal autopsy will be performed, as we will see).

When a suspicious death has to be investigated and no one is suspected of any connected wrongful action, the prosecutor in charge is free to decide if a judicial autopsy has to be done. A doctor is appointed as his consultant and a report is written (Art. 359 CPP).

When someone is suspected to be responsible for the death, simple things become more complicated. The prosecutor can appoint a doctor as his consultant according to Art. 360: "technical investigations that can not be repeated." When something (including a dead body) can be subject to changes that can make it not suitable for further examination, any technical investigation (such as an autopsy) can be requested by the prosecutor, but he has to serve notice to the person/s investigated, to the victim and, in cases of death, to his family: spouse and children of age; if none, parents and brothers/sisters; also their defending attorneys need notice. This notice discloses that in a particular place, day and time a doctor will be appointed as prosecutor's consultant to do the autopsy. Both victim's family and the person investigated may appoint a medical consultant. Any physician can be appointed as consultant. Each consultant can serve nationwide without limitation.

This brings the adversarial trial system to the autopsy room—each party is entitled to know the autopsy results. The consultants discuss the autopsy and each consultant files a report to his nominating party. In this way, the scientific investigation report filed by the prosecutor's consultant can be brought to court and used during the trial. If one of the parties fails to participate for not having received a notification in the technical investigation, the results would not be allowed to be produced in court.

A different procedure, seldom used for autopsies as it is time consuming, is called "Incidente Probatorio" (Chapter VII), which is an incidental hearing before a justice in charge of overseeing the equity of prosecution investigations. This hearing is intended to acquire evidence without delay, to cross-examine a witness or appoint an expert when some external events can occur to alter the physical evidence or influence a witness.

An autopsy can be requested under this regulation: a doctor is appointed as a court expert and consultants can be appointed by the prosecutor and the private parties. Some time after the autopsy, when laboratory tests are completed, the court expert has to testify in a hearing and is cross-examined by the prosecution and private parties' attorneys and medical consultants as well. The consultants can also give evidence during this hearing, being subject to cross-examination.

Even if at a first glance a "technical examination that can not be repeated" ex art. 360 CPP and an "Incidente Probatorio" expertise appear similar, a difference exists. While the prosecutor consultant ex art. 360 CPP is appointed by a party (although he/she is bonded to equity by his oath), the expert in the "Incidente Probatorio" is appointed by a justice and is thought to be more impartial.

The switch from the "technical examination that can not be repeated" Ex art. 360 CPP to the "Incidente Probatorio" is done at the request of a party; the prosecutor can insist and stick to his decision when he or she opposes a switch requested by the defence, but this rejection has to be based on solid grounds, otherwise he or she will not be able to produce the technical investigations results in court.

Although the new penal procedure code leads to the results of medicolegal investigations being challenged under cross-examination in the court room, when a judicial autopsy is done the doctor in charge files a detailed report, including circumstantial data and police investigation results, the autopsy report, laboratory tests results. The causes

and manner of death are discussed and any other question posed by the appointing party is answered; any useful issues are pointed out.

### **Nonjudicial Autopsies**

Nonjudicial cases, in which an autopsy was not requested by the prosecutor, are regulated by a special act [2]. It provides that, in every death case a death certificate has to be signed by a licensed physician, either by the attending physician or a National Health Service Doctor after the examination of the deceased.

In large urban areas the city government in the past and the local National Health Service Agency today make an agreement with university institutes of legal medicine to do the necessary autopsies in order to determine the cause and the manner of death in unattended death cases. In many areas the burden of this task is left to the doctors of the local Public Health Department, often with no qualification in legal medicine or pathology. In these areas most of the necessary autopsies are omitted for lack of qualified physicians and adequate facilities, manpower, and organization. The majority of these cases are signed out on the basis of an external examination.

### **Pitfalls**

No system is perfect and its worst detractors are those who work for, use or are somehow connected with it. Every forensic autopsy system is likely to be criticized from people with knowledge of its pitfalls.

A survey we made a year after the new penal procedure code went into effect [3] shows that too much time lapses before a judicial autopsy is done (most of the time, more than two days, the range being one to nine with an average of three days) due to the time-consuming obligation to serve notice on every party involved. When a judicial autopsy is not requested and an autopsy has to be done to sign a death certificate, time is wasted waiting for the prosecutor to decide if he or she wants a judicial autopsy to be done.

Autopsies have seldom been requested under the "Incidente Probatorio" procedure because of the time needed to set a hearing (up to ten days, according to our survey). This procedure has been requested by defense attorneys to turn down a prosecutor's consultant they did not like to take charge of the case, generally in alleged medical malpractice cases.

So far, we are getting used to drastic changes due to decomposition and autolysis, even when effective refrigeration is available. The loss of details and diagnostic accuracy both in gross and histological changes, as well as the impaired results of laboratory tests lead to the loss of physical evidence useful for medicolegal purposes.

Prosecutor consultants and court experts should be chosen from a list of doctors, who are enlisted upon request and are admitted after a brief check on their training and competence; sometimes an expert from a different area is chosen. The selection committee is local and a member of the local medical association is the only expert in medicine (but not necessary in legal medicine), the others being members of the judicial system. So far, this system allows prosecutors and justices to appoint poorly skilled doctors as consultants or experts. The case-by-case basis of the personal appointment means that nobody is in charge of supervising the cases as the nominating party lacks the skill and training to understand if the nominee did a good job or not. Evidence can be lost or misinterpreted. In many places the most skilled and experienced professors of legal medicine never seek to be enlisted in these lists in order to avoid being selected by the state to perform a low-paying and time-consuming task.

Moreover, the prosecutor has the power to select the cases in which a judicial autopsy

is to be done. Although having juridical training, he lacks the skills to properly select these cases on a scientific basis. Due to the load of paperwork connected with a judicial autopsy, some prosecutors avoid an autopsy whenever they can, as in traffic accident cases where the victim died at the scene. Sometimes one of these autopsies has to be done to comply with the death certificate regulation. For the most part in such cases laboratory tests may not be performed for lack of funds.

### Highlights

Bringing the adversarial system into the autopsy room, where many experts in legal medicine can participate in the autopsy and discuss the case, reduces the chances for an autopsy to be poorly performed or inadequate. When the parties appoint skilled medico-legal consultants, a sort of case supervision is achieved. It is paramount that the consultants attend the autopsy to ensure the quality of the postmortem examination, as a poor autopsy is likely to cause a permanent loss of evidence [4].

The cross examination of the expert witness brings to the court-room a method of selecting good and effective experts, as a poor expert is likely to make a poor appearance. The previous penal procedure code was more relaxed about the qualification of the expert appointed by the state whose written expertise was difficult to challenge as he or she was supposed to tell the truth and the consultants of the private parties were thought to write reports on behalf of their client regardless of the truth. Nowadays this presumption has lost some strength and a successful challenge to the opinion given by a court expert or a prosecutor consultant is possible.

### Comments

The pitfalls described here have to be overcome and the highlights enhanced if scientific death investigations is considered useful to our judicial system. To achieve these results, a nationwide system has to be considered.

Unfortunately such an important change would necessarily mean a major change of the criminal procedure code and of the entire system of criminal justice. This ambitious goal would certainly meet some opposition both within the judicial system, because of the obvious loss of jurisdiction, and within the Academic Medico Legal Community for the organizational and financial changes that the new system would imply.

The two systems coexisting in the U.S.A.—the coroner and the Medical Examiner—have been criticized [5,6] showing weak and strong points. A good knowledge of these [7] and other systems can lead to a better understanding of our needs in order to design an adequate organization intended to use existing resources and meet the needs of Italy.

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