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**Death as a medical and legal fact**

“The moment of death marks the threshold at which the doctor’s mandate gently recedes. At that boundary, physician no longer serves as the guarantor of the patient’s life and health, as these legally protected interests have irreversibly ceased to exist”<sup>1</sup>.

**Introduction**

Since antiquity, the criteria for determining death were straightforward, relying primarily on the absence of breathing and the cessation of the heartbeat. In later centuries, additional postmortem changes, such as lividity, rigor mortis, cooling of the body, and decomposition, came to be recognised as definitive indicators of human death<sup>2</sup>. With the progress of science, in the 20th century (1960s) a new neurological criterion was introduced – *brain death*<sup>3</sup>. It is beyond doubt that human death constitutes both a legal and a medical fact. It is equally evident, however, that these are not the sole disciplines engaged with this phenomenon. Death is also embedded in cultural and social contexts and is closely intertwined with religious traditions. Moreover, it remains a subject of enduring interest within philosophy, ethics, and psychology. This study explores loss of life from two principal viewpoints: the legal and the medical. Its aim is to present the phenomenon of death through the lens of contemporary medical science and to outline the legal regulations governing the determination of human demise. In the 21st century, the definition of the term “death” is based on neurological criteria (brain death).

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<sup>1</sup>T. Jurek, B. Świątek, R. Drozd, *Forensic medical opinion in cases of misdiagnosis of death*, „Archives of Forensic Medicine and Criminology” 2007, No. 57, p. 416.

<sup>2</sup>K. Sobczak, A. Janaszczyk, *Controversies surrounding the neurological criterion of brain death*, „Via Medica” 2012, p. 182.

<sup>3</sup>*A Definition of Irreversible Coma*, Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death, JAMA 1968, No. 205(6), pp. 337–340.

## Definition of death

Defining the term “death” presents a considerable challenge, not merely because of the multitude of existing definitions, but above all due to the wide range of scientific disciplines in which the concept is formulated. It is therefore necessary to outline several of the principal definitions that have been proposed.

- 1) “a person is regarded as dead when there is a complete and irreversible cessation of the organism’s capacity to integrate and coordinate its physical and mental functions as a unified whole”<sup>4</sup>;
- 2) “the death of the brain, as the organ responsible for coordinating the body’s fundamental life functions, constitutes the death of the person”<sup>5</sup>;
- 3) “death is the complete and irreversible cessation of brain function”<sup>6</sup>;
- 4) “death is the irreversible cessation of all vital functions of the organism”<sup>7</sup>;
- 5) “death occurs when there is an irreversible cessation of all vital functions of the human organism, including permanent termination of circulatory and respiratory activity. A temporary suspension of these functions does not, in itself, constitute death”<sup>8</sup>;
- 6) “death is an inseparable phenomenon inherent to life, representing its inevitable and logical culmination”<sup>9</sup>.

Although numerous additional definitions of the term ‘death’ could be identified, further enumeration appears unnecessary for the purposes of this analysis<sup>10</sup>.

## Death as a medical fact

The literature emphasizes that death is a diverse and non-uniform phenomenon, and the process of dying itself unfolds through several distinct stages, including agony, clinical death, brain death, and biological (organismic) death<sup>11</sup>. It should be noted at this point that demise is evidenced by its characteristic signs, both early

<sup>4</sup>R.J. White, H. Angstwurm, I. Carasco de Paola, *Working Group on the Determination of Brain Death and its Relationship to Human Death*. *Citta del Vaticano*, „Pontificia Academia Scientiarum” 1992, p. 81.

<sup>5</sup>B. Wójcik, *Brain Death as a criterion of Human Death*, „Philosophical and Ethical Issues in Practical Medicine” 2007, No. 4(194), pp. 196–199.

<sup>6</sup>T. Marcinkowski, *Forensic Medicine for Lawyers*, Warsaw 1993, p. 117. T. Marcinkowski notes that the cited definition of death was adopted on 8 December 1975 at the initiative of the Forensic Medicine Commission of the Scientific Council of the Minister of Health and Social Welfare.

<sup>7</sup>E. Sobol, L. Drabik, A. Kubiak-Sokół, L. Wiśniakowska, *PWN Polish Language Dictionary*, Warsaw 2008, p. 1016.

<sup>8</sup>W. Grzywo-Dąbrowski, *Forensic Medicine for Lawyers*, Warsaw 1957, p. 74.

<sup>9</sup>A. Jakliński, J.S. Kobiela, K. Jaegermann, Z. Marek, Z. Tomaszewska, B. Turowska, *Forensic Medicine for Medical Students*, Warsaw 1983, p. 17.

<sup>10</sup>In this regard: J.B. Bleich, *Of cerebral, respiratory and cardiac death*, [in:] N. Lamm (ed.), *Contemporary Halakhic Problems*, Vol. 4, New York 1995, pp. 316–350; S. Fry-Revere, T. Reher, M. Ray, *Death: A New Legal Perspective*, „Journal Contemp. Health L. & Pol’y” 2011, No. 27; I.M. Kennedy, *The legal definition of death*, „Medico-Legal Journal” 1973, No. 41(1), pp. 36–41, DOI: 10.1177/002581727304100105; R. Cranford, *Criteria of Death*, [in:] W. Reich (ed.), *Encyclopedia of Bioethics*, New York 1995, p. 5.

<sup>11</sup>A. Gałęska-Sliwka, *Death as a medical-criminal problem*, Warsaw 2009, p. 18.

and late<sup>12</sup>. It is evident that the discontinuation of circulation and respiration does not fulfill the criteria for biological death, although it does satisfy the criteria for clinical death. This condition can be reversible as a result of resuscitation efforts. Individual (organismic) death denotes the complete and irreversible cessation of brain activity (brain death), whereas biological death corresponds to “complete and irreversible cessation of the organism’s vital functions”<sup>13</sup>. Interlethal (intramortem) reactions occur in the interval between brain death and biological death.

The medical fact under consideration is closely interconnected with the legal fact of determining the death of a human being. It should be emphasized that this legal determination is confined strictly to the formal declaration of death, which may be made solely on the basis of established medical criteria.

According to the amendment to the Act of January 31, 1959, on cemeteries and the burial of the deceased<sup>14</sup>, introduced pursuant to Article 206 of the Act on the medical rescue profession and the medical rescue self-government<sup>15</sup>, the authority to determine death and its cause is vested not only in the physician treating the patient in the terminal phase of illness, but likewise in the leader of a medical rescue team, if the death occurred during the course of medical rescue activities. Under current law, the following are required to declare death:

- a physician who treated the patient during the terminal illness, or a physician who provided the last medical services within 30 days preceding the patient’s death,
- the leader of a medical rescue team in the event that death occurs during a medical rescue operation, acting in the capacity of a medical rescue physician, paramedic, or nurse,
- the hospital ward physician, if death occurred in hospital.

According to the provisions of the Act on the Profession of Physician and Dentist, the legislator has specified that:

#### Art. 43. [Declaration of death]

1. A physician may declare death on the basis of their own clinical examination and findings.
2. In justified cases, a physician, excluding a dentist may condition the issuance of a death certificate on the performance of an autopsy.

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<sup>12</sup> „The signs of death are classified as early uncertain (pallor, cooling, and drying of the body), early certain (postmortem lividity and rigor mortis), and late signs, which include both decompositional changes (putrefaction, skeletonization) and preservative changes – collectively referred to as postmortem transformations – such as mummification, adipocere formation, peat transformation, and peat tanning”. See: V.J. DiMaio, D. DiMaio, *Forensic Medicine*, Wrocław 2003, p. 23–30, 228–249; cf. A. Jakliński, J. Kobiela, K. Jaegermann, Z. Marek, Z. Tomaszewska, B. Turowska, op. cit.; B. Popielski, J. Kobiela, *Forensic Medicine*, Warsaw 1972.

<sup>13</sup> A. Gałęska-Śliwka, op. cit., p. 18.

<sup>14</sup> Act on Cemeteries and Burial of the Deceased of January 31, 1959 [Journal of Laws 2025, item 1590, consolidated text].

<sup>15</sup> Act of December 1, 2022, on the profession of paramedic and the self-government of paramedics [Journal of Laws 2022, item 2705].

3. A physician, excluding a dentist may issue a death certificate on the basis of post-mortem examination documentation prepared by another physician or other authorized individual, as well as on the basis of documentation confirming the permanent and irreversible cessation of brain activity (brain death) or the irreversible cessation of circulation preceding organ retrieval, as referred to in Article 43a.

Art. 43a. [Determination of brain death or irreversible cessation of circulation]

1. Assertion:

- 1) permanent irreversible cessation of brain function (brain death),
  - 2) irreversible cardiac arrest preceding organ donation – shall take place after the specialists referred to in paragraph 5 or 6 have carried out procedures in accordance with current medical knowledge, taking into account the method and criteria referred to in paragraph 3.
2. The method and criteria referred to in paragraph 3 shall be established in accordance with current medical knowledge by specialists in the relevant fields of medicine appointed and dismissed by the minister responsible for health.
  3. The Minister responsible for health announces, by means of a notice in the Official Journal of the Republic of Poland *Monitor Polski*, the method and criteria for stating:
    - 1) permanent irreversible cessation of brain function (brain death);
    - 2) irreversible cardiac arrest preceding organ donation.
  4. The minister responsible for health shall, at intervals of no less than five years, appoint specialists in the relevant medical fields to evaluate whether the method and criteria referred to in paragraph 3 remain consistent with current medical knowledge.
  5. Permanent irreversible cessation of brain function (brain death) is determined unambiguously by two medical specialists with a second degree of specialization or specialist title, including one specialist in anesthesiology and intensive care or neonatology, and the other in neurology, pediatric neurology, or neurosurgery.
  6. The irreversible cessation of circulation preceding organ retrieval is confirmed unambiguously by two specialist physicians holding a second-degree specialization or specialist title, one of whom must be a specialist in anesthesiology and intensive care or neonatology, and the other a specialist in emergency medicine, internal medicine, cardiology, pediatric cardiology, or pediatrics.
  7. The determination of permanent and irreversible cessation of brain function (brain death) or of irreversible circulatory arrest preceding organ procurement is deemed equivalent to the determination of death<sup>16</sup>.

The determination of death is grounded in the aforementioned medical criteria (early and late signs of death). However, it must be emphasized that early uncertain signs, such as cooling and pallor and even certain early signs, such as postmortem lividity, do not allow for absolute certainty that death has occurred. Cooling may result

<sup>16</sup> Act of December 5, 1996 on the profession of physician and dentist [Journal of Laws 2024, item 1287, consolidated text].

from hypothermia, pallor from significant blood loss, and lividity-like discoloration may appear during life (*cemetery rose*). Asystole, understood as the absence of electrical and mechanical cardiac activity, likewise cannot be regarded as a definitive sign, as cardiac function may still be restored. The same applies to respiratory arrest, which, from the perspective of emergency medicine, may be reversible through resuscitative measures. By contrast, postmortem rigidity (a reliable late sign) provides a firm basis for determining that death has occurred. In accordance with contemporary medical standards, death is defined as the complete and irreversible cessation of brain activity. A death certificate issued by a physician, paramedic, or nurse constitutes the formal confirmation of a person's death

### Death as a legal fact

From a legal standpoint, a person's existence is evidenced by their birth certificate, while their death is evidenced by a death certificate. This is stipulated by the provisions of the Act of November 28, 2014, on Civil Status Records<sup>17</sup>. The death certificate is issued on the basis of the medical declaration of death (Articles 92–95 of the Act). The legal institution of recognition as deceased must also be taken into account. The literature notes that recognition as deceased applies primarily to missing persons, although the Act itself does not define the term 'missing'<sup>18</sup>. Pursuant to Article 29 § 1 of the Civil Code, a missing person may be declared dead if ten years have elapsed since the end of the calendar year in which they were last known to be alive. However, if at the time of the declaration the missing person would have been over seventy years of age, a period of five years is sufficient<sup>19</sup>. It is emphasized that "a person cannot be declared dead before the end of the calendar year in which the missing individual would have reached twenty-three years of age. The extension of the period required to declare a minor deceased reflects the distinct way in which minors perceive reality and their limited capacity for independent action"<sup>20</sup>. The legislator permits a person to be declared dead when circumstances of a special nature arise, as provided in Article 30 of the Civil Code<sup>21</sup>). The time limits for declaring death under this provision differ from those set

<sup>17</sup> Act of November 28, 2014 - Law on Civil Status Records [Journal of Laws 2025, item 594].

<sup>18</sup> K. Flaga-Gieruszyńska, *Court proceedings in cases of recognizing a person as dead – selected issues*, [in:] J. Gołaczyński et al. (eds.), *Non omnis moriar. Personal and property legal aspects of human death. Selected issues*, Wrocław 2015, p. 247.

<sup>19</sup> Act of April 23, 1964 - Civil Code [Journal of Laws of 1964, No. 16, item 93, as amended].

<sup>20</sup> K. Flaga-Gieruszyńska, op. cit., p. 248 with reference to: A. Bartosiewicz, *The conditions for recognizing a person as deceased and establishing death in Polish law in a comparative context*, KPP 2005, No. 4, p. 945.

<sup>21</sup> Article 30 of the Civil Code states: § 1. Person who has gone missing during air or sea travel in connection with a maritime or aviation catastrophe, or another event of an exceptional nature, may be declared dead upon the lapse of six months from the date of that catastrophe or event. § 2. If it is not possible to establish that a ship or vessel has been lost, the six-month period shall begin to run one year after the date on which the ship or vessel was scheduled to arrive at its port of destination, or if no port of destination had been designated two years after the date on which it was last reported. § 3. A person who has gone missing due to a direct threat to life not covered by the preceding paragraphs may be declared dead one year after the date on which the threat ceased or, depending on the circumstances, should have ceased.

out in Article 29 of the Act. The shortening of the period after which a person may be declared dead results from the occurrence of circumstances expressly identified by the legislator, particularly maritime and aviation disasters. A declaration of death in such cases is made through judicial proceedings. The literature indicates that such proceedings conclude with a judicial declaration of death, and that “the moment of death should be determined by identifying the date and time that are most probable in light of the available evidence and the court’s factual presumptions”<sup>22</sup>.

“The legal consequences of a person’s death extend beyond the issuance of a death certificate or a judicial declaration of death. Among the many resulting effects, particular attention should be given to the consequences arising from the death or disappearance of a family breadwinner for individuals entitled to alimony, including the need to introduce a temporary family pension”<sup>23</sup>.

Death is a universal phenomenon, open to many interpretations. The aim here, however, is not to explore its universal character, but rather to examine its non-medical, specifically legal consequences. Several examples illustrate this dimension. Perhaps the most frequently discussed is inheritance: a deceased person can no longer manage their property, and in the absence of a will, the statutory right of succession passes to the relatives designated by law, particularly the spouse and children. Also noteworthy are the copyright implications arising upon the death of a creator<sup>24</sup>. Under medical law (*sense largo*), there are instances in which a patient’s death is regarded as the consequence of an error – whether organizational, diagnostic, or therapeutic<sup>25</sup>.

Not only within civil and administrative law, but equally within the sphere of criminal law, human death entails profound legal consequences. The causation of another person’s death, even when unintentional gives rise to criminal liability. Under Polish criminal law, murder (in its basic, qualified, and privileged forms), fatal assault, and unintentional homicide are all punishable offenses. In any criminal proceedings concerning murder, involuntary manslaughter, fatal assault, or a traffic incident resulting in death, the central element of the offense is the death itself, the circumstances of which must be thoroughly elucidated – including its place and time, cause, and mechanism. The post-mortem examination of human remains lies at the intersection of medicine and law. Statutory provisions regulate both the conduct of autopsies and the collection of biological material from the deceased. Determining the time and cause of death constitutes a fundamental component of the process of establishing the truth.

<sup>22</sup> K. Flaga-Gieruszyńska, *op. cit.*, p. 261.

<sup>23</sup> M. Maciejewska-Szałas, J. Świątek-Rudoman, *Select legal consequences of the death and disappearance of the family breadwinner for persons entitled to maintenance and the need to introduce a temporary family pension*, „Legal Studies KUL” 2023, No. 2, pp. 153–173; J. Grygutis, *Legal aspects of determining the moment of payment of benefits under the right to family pension after a person declared dead*, „Internet Legal Review TBSP UJ” 2015, No. 4.

<sup>24</sup> M. Piątek, *The death of the creator – selected aspects*, [in:] E. Żywucka-Kozłowska, A. Opalska, M. Treder (eds.), *Death in many guises. Selected issues*, Olsztyn 2017, p. 72 et seq.

<sup>25</sup> N. Wąsik, *Organizational error of a healthcare entity. Criminal law aspects*, Toruń 2020; A. Engler-Jakubiak, *Organizational medical error*, „Zeszyty Naukowe Ostrołęckiego Towarzystwa Naukowego” 2023, Vol. XXVII, pp. 274–288; Z. Marek, *Medical error. The doctor’s ethical, deontological and legal responsibility*, Kraków 2007.

Death constitutes the antithesis of life, its final boundary. It does not always occur from natural causes; it may result from the wrongful acts of others, but it may also arise from an individual's own self-destructive behavior. Under Polish law, suicide itself is not subject to criminal punishment; however, incitement to suicide, assistance in taking one's own life, and conduct that leads another person to attempt suicide are criminally sanctioned.

Each case of suicide necessitates a comprehensive determination of the circumstances surrounding the individual's death. Beyond its legal and medical dimensions, the act of taking one's own life also carries significant social, cultural, and religious implications.

## Conclusions

Human beings are not biologically immortal. Organism inevitably undergoes senescence, and despite extraordinary progress in contemporary medicine, no remedy capable of arresting death, no true "elixir of life" has been discovered. Every human existence has a clearly defined beginning and an equally inevitable end. Just as birth gives rise to a series of legal effects, so too does death. In principle, the final official act in which an individual's name appears is the death certificate. Yet this is not invariably attainable. The number of unidentified human remains continues to increase each year, underscoring both contemporary forensic challenges. This phenomenon is not new. During the Second World War, millions of individuals perished, both soldiers and civilians. To this day, the precise number of those who died in German concentration camps, Soviet labor camps, and other sites of mass repression remains unknown. Countless victims lie in graves of the unidentified. Nevertheless, in certain cases, unidentified human remains can be subjected to forensic analysis and successfully attributed to specific individuals even after decades, routinely through genetic testing. At this point, the medical and legal domains intersect by identification of the deceased.

Each instance of death constitutes a unique phenomenon and a universal endpoint of human existence. It transcends nationality, citizenship, age, gender, skin color, and religion. Analyzing the literature in the broadest sense of the term, it can be natural, violent, accidental, intentional, heroic, and shameful. However, this is a different scope of exploration than law and medicine.

## BIBLIOGRAPHY

### Literature

- A Definition of Irreversible Coma*, Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death, „JAMA” 1968, No. 205(6).  
Bartosiewicz A., *The conditions for recognizing a person as deceased and establishing death in Polish law in a comparative context*, KPP 2005, No. 4.

- Bleich J.B., *Of cerebral, respiratory and cardiac death*, [in:] N. Lamm (ed.), *Contemporary Halakhic Problems*, Vol. 4, New York 1995.
- Cranford r., *Criteria of Death*, [in:] W. Reich (ed.), *Encyclopedia of Bioethics*, New York 1995.
- DiMaio V.J., DiMaio D., *Forensic Medicine*, Wrocław 2003.
- Engler-Jakubiak A., *Organizational medical error*, „Zeszyty Naukowe Ostrołęckiego Towarzystwa Naukowego” 2023, Vol. XXVII.
- Flaga-Gieruszyńska K., *Court proceedings in cases of recognizing a person as dead – selected issues*, [in:] J. Gołaczyński et al. (eds.), *Non omnis moriar. Personal and property legal aspects of human death. Selected issues*, Wrocław 2015.
- Fry-Revere S., Reher T., Ray M., *Death: A New Legal Perspective*, „Journal Contemp. Health L. & Pol’y” 2011, No. 27.
- Gałęska-Śliwka A., *Death as a medical-criminal problem*, Warsaw 2009.
- Grygutis J., *Legal aspects of determining the moment of payment of benefits under the right to family pension after a person declared dead*, „Internet Legal Review TBSP UJ” 2015, No. 4.
- Grzywo-Dąbrowski W., *Forensic Medicine for Lawyers*, Warsaw 1957.
- Jakliński A., Kobiela J.S., Jaegermann K., Marek Z., Tomaszewska Z., Turowska B., *Forensic Medicine for Medical Students*, Warsaw 1983.
- Jurek T., Świątek B., Drozd R., *Forensic medical opinion in cases of misdiagnosis of death*, „Archives of Forensic Medicine and Criminology” 2007, No. 57.
- Kennedy I.M., *The legal definition of death*, „Medico-Legal Journal” 1973, No. 41(1), DOI: 10.1177/002581727304100105.
- Maciejewska-Szałas M., Świątek-Rudoman J., *Select legal consequences of the death and disappearance of the family breadwinner for persons entitled to maintenance and the need to introduce a temporary family pension*, „Legal Studies KUL” 2023, No. 2.
- Marcinkowski T., *Forensic Medicine for Lawyers*, Warsaw 1993.
- Marek Z., *Medical error. The doctor’s ethical, deontological and legal responsibility*, Kraków 2007.
- Piątek M., *The death of the creator – selected aspects*, [in:] E. Żywucka-Kozłowska, A. Opalska, M. Treder (eds.), *Death in many guises. Selected issues*, Olsztyn 2017.
- Popielski B., Kobiela J., *Forensic Medicine*, Warsaw 1972.
- Sobczak K., Janaszczyk A., *Controversies surrounding the neurological criterion of brain death*, „Via Medica” 2012.
- Sobol E., Drabik L., Kubiak-Sokół A., Wiśniakowska L., *PWN Polish Language Dictionary*, Warsaw 2008.
- Wąsik N., *Organizational error of a healthcare entity. Criminal law aspects*, Toruń 2020.
- White R.J., Angstwurm H., Carasco de Paola I., *Working Group on the Determination of Brain Death and its Relationship to Human Death. Citta del Vaticano*, „Pontificia Academia Scientiarum” 1992.
- Wójcik B., *Brain Death as a criterion of Human Death*, „Philosophical and Ethical Issues in Practical Medicine” 2007, No. 4(194).

## **Sources of law**

Act on cemeteries and burial of the deceased of January 31, 1959 [Journal of Laws 2025, item 1590, consolidated text].

Act of April 23, 1964, Civil Code [Journal of Laws 1964, No. 16, item 93, as amended].

Act of December 5, 1996, on the profession of physician and dentist [Journal of Laws 2024, item 1287, consolidated text].

Act of June 6, 1997, Penal Code [Journal of Laws 2025, item 383, consolidated text].

Act of November 28, 2014, Law on Civil Status Records [Journal of Laws 2025, item 594, consolidated text].

Act of December 1, 2022, on the profession of paramedic and the self-government of paramedics [Journal of Laws 2022, item 2705].

## **Death as a medical and legal fact**

### **Summary**

The death of a human being is both a legal and a medical fact. Obviously, these are not the only fields of science that revolve around these events. These are likewise cultural and social facts, as well as those pertaining to religion. Death remains a subject of enduring interest within philosophy, ethics, and psychology. This report considers the phenomenon of death from two principal perspectives: the legal and the medical.

**Keywords:** death, law, medicine

## **Śmierć jako fakt medyczny i prawny**

### **Streszczenie**

Śmierć człowieka jest zarówno faktem prawnym, jak i medycznym. Oczywiście nie są to jedyne dziedziny nauki, które koncentrują się wokół śmierci. Z aspektem tym związane są także fakty kulturowe, społeczne, ale też i religijne. Śmierć pozostaje również w zainteresowaniu filozofii, etyki, psychologii. Niniejszy artykuł obejmuje zagadnienie śmierci w dwóch aspektach: prawnym i medycznym.

**Słowa kluczowe:** śmierć, prawo, medycyna