

Chapter 1

Introduction

There is nothing more deceptive
than an obvious fact.

Sherlock Holmes / SIR ARTHUR CONAN DOYLE

Background and reasons for research

The pioneer of forensic medicine in the Netherlands, the forensic pathologist Professor J. Zeldenrust, described forensic medicine as 'the application of medical science and experience to further clarify legal question that have arisen'.¹ Forensic medicine in the Netherlands consists of performing postmortem examinations in cases of (suspected) unnatural deaths, conducting sexual assault investigations, conducting injury investigations and writing injury reports, gathering human materials (such as blood, DNA, or other material) for the purposes of criminal law and providing medical care (and advice) for detainees. As stated by Piette, even though forensic medicine is a medical discipline, it is almost entirely at the service of Justice and not of the sick. Therefore, national legislation will influence the practice of forensic medicine in some way.^{2(p9)} Without the Rule of Law, forensic medicine has no 'raison d'être'. Forensic medicine interacts continuously and very closely with justice. This means that even though forensic medicine can work together with for example forensic odontology, forensic anthropology and forensic radiology, it has a very broad scope that transcends the borders of traditional medical specialties.^{2(p11)} This is most true when it comes to the postmortem examinations part of forensic medicine. Not only is it influenced by national legislation, but it is also under constant scrutiny from the public.

In the beginning of the 19th century in the Netherlands, there were many complaints about the state of the forensic medicine and the non-existence of regulations within the field. This led to a Royal Decree in 1815 that determined that henceforth forensic medicine should be taught at every university. Unfortunately, this resulted in universities giving this subject as an ancillary mandate to the already existing and placed professors/chair holders. This did not lead to noticeable improvements. Furthermore, these mandates to chair holders seem to have disappeared in the last 200 years or so. In the 1980's a Dutch physician, Barend Cohen, started work as forensic physician and was surprised at the lack of knowledge and experience of other forensic physicians. As he himself found his knowledge lacking, he followed a course in forensic medicine in England. He used the gathered knowledge he brought back to the Netherlands to established continuous and further training for the forensic physicians in the Netherlands. In that period, he also wrote the first Dutch

Handbook in Forensic Medicine. He was given a professorship in Romania and in Indonesia and became a visiting professor at the University of Groningen. But he never became a chair holder in forensic medicine in the Netherlands.

For many years after this very little progress was made in the field, until about 2012, when a report was written on the state of forensic medicine in the Netherlands.³ In this report many critical notes were made. To name a few, the poor quality of the forensic medicine, the dwindling number of forensic physicians in the field, the lack of research in forensic medicine, the absence of dedicated professors or chair holders, the inferior quality of the guidelines, the substandard training of forensic physicians, all demand attention and so was recommended in the report. This report was on the forensic medicine as a whole and thus it also encompasses the postmortem examination.

Several reports have been written in the Netherlands on the subject of external postmortem examination and its quality. Each of those reports concluded that improvement is needed in almost every step of the process of external postmortem examinations.^{3,4,5,6} After the appearance in talk shows of a certain celebrity in the forensic field claiming that due to the poor quality of the Dutch system of postmortem investigations and the poor quality of the postmortem examination itself, the Netherlands might miss criminal offences such as murder, politics got involved. The Minister of Justice and Safety wrote the House of Representatives on the subject, and it became an item on the political agenda.⁷ In the last five to ten years, the field of forensic medicine has seen developmental growth in certain aspects. For instance, a scientific knowledge agenda for forensic medicine has been developed through which scientific research can be streamlined in defined research tracks.⁸ This has allowed for grants to be given to do the research and to develop better and scientifically based guidelines. Two chairs in forensic medicine have been established. Though these chairs are at the time of writing temporary, it is progress. Also, the training of forensic physicians has been improved. It has expanded from a 30 to 40 days long course to a full 3 years of residency in forensic medicine. As of this writing, improvement is still ongoing. It is a continuous process that requires time, dedication to and from the field, and relentlessly drawing attention from politics to the field.

Present situation

In the Netherlands in 2022 about 170.000 people died. According to the Central Bureau of Statistics and their statistics on causes of death about 9.266 persons have died of unnatural causes of death (for example suicide or accident) of which about 114 have been considered as criminal offence.⁹ Furthermore, according to the Regional Euthanasia Review Committees, in 2022 8.720 of all death in the Netherlands were from euthanasia.¹⁰

According to the Dutch law, particularly the Burial Act (*Wet op de Lijkbezorging*), every person that dies in the Netherlands needs to have an external postmortem examination performed. Usually this is done by the attending physician, being a general practitioner or a hospital physician. If that physician is convinced of a natural death, he will have to fill out the certificates of death, consisting of the so-called A-form (on the manner of death, being natural) and the so-called B-form (on the cause of death). If they are not convinced of a natural death, they must inform the forensic physician forthwith. If the forensic physician, after performing an external postmortem examination, is also not convinced of a natural death, they must inform the prosecutor forthwith. The forensic physician will then fill out the appropriate forms, consisting of the so-called article 10-form (on the manner of death, being unnatural) and the B-form (on the cause of death).¹¹

It also should be taken in consideration that in the Dutch system of medical practice in general, judicially, there is a significant difference between being qualified as a medical doctor and being competent as such. Being qualified means a physician is in possession of a medical licence (article 18 and 19 of the Act on Professions in Individual Healthcare (*Wet Beroepen in de Individuele Gezondheidszorg*)). To be competent to perform certain procedures, such as external postmortem examinations, a physician needs to be qualified and needs to have the medical knowledge, skills and experience with said procedure.¹²

On the subject of competence, the Royal Dutch Medical Association took the following position: “a broad interpretation of the term competence means that it is not just a matter of being technically able to perform a procedure, but it also means that the purpose of the procedure is known, that the consequences of the procedure can be assessed, that one knows how to handle complications, etc.”.¹²

It is interesting to note that when it comes to competence, the physician must decide himself whether he is competent to perform a certain

procedure. Accordingly, a physician that does not feel competent can, and should, refrain from performing said procedure.

The whole system relies on the attending physicians' knowledge about and expertise in performing external postmortem examination, their knowledge about the appropriate laws and on the knowledge and expertise of the forensic physician. That is irrespective of the functioning of the system itself.

Research question and outline of thesis

The research question of this thesis is 'Is the Dutch system of postmortem investigation adequate?'

To answer this question, an understanding of the basic system was needed. In chapter 2 an overall description of the Dutch system of external postmortem investigation is presented to answer the question what the Dutch system of postmortem examination is. This led to assess the terms used within the system and whether these terms were clear. Mainly the terms 'natural' and 'unnatural' death were studied in detail and reflected on. The differences between natural and unnatural causes of death and the philosophical grey areas between the two are discussed in chapter 3.

The system being pivotal on the attending physician, chapters 4 to 6 look at how physicians handle the external postmortem examination. In chapter 4 the competence, knowledge and the consistency in acting in the matter of postmortem examinations is assessed in general practitioners. In chapter 5, the same is done for hospital physicians. Chapter 6 looks into how hospital physicians fill out the death certificates and whether they conform to the relevant laws and acts. The certificates were assessed on correctness and accuracy.

Thereafter, it is discussed what legal obligations there are to which any system of postmortem examinations needs to conform. In chapter 7, the Dutch system is compared to the legal obligations arising from the European Court of Human Rights (ECHR).

Finally, in chapter 8, the Dutch system of postmortem examination is further evaluated by analysing the forensic autopsies in the Netherlands. Additionally, in this chapter, it was endeavoured to gain international

perspective by comparing the Dutch system with systems from other countries.

The chapters are presented in the original language of publication. The chapters in Dutch were published in Dutch as it pertains to the analysis of the Dutch system within the Dutch Rule of law or were written with a political purpose. The chapters in English were published in English because it made the articles accessible to a wider international public.

The main language of this thesis is English because although it pertains to the analysis of the Dutch system within the Dutch Rule of law, it has also international relevance when comparing systems between countries.

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