

Filip Křepelka<sup>1</sup>

## Death Abroad – Legal Framework and Practices

### I. Introduction

International conference „*Non omnis moriar*“ – *Prawne zagadnienia pochówku, dóbr osobistych zmarłego, wybrane zagadnienia dziedziczenia oraz swoboda działalności funeralnej* organized by professor *Jacek Mazurkiewicz* and his colleagues in Wrocław in 21<sup>st</sup> November 2014 addresses various legal aspects of dying and death.

Legal aspects of dying, death and burial abroad and cross-border movement of people or people expecting or wishing death and corpses of deceased, burials and graves abroad in general and in European Union where cross-border movements are free of restrictions and control are inherent topic for teacher of international and European law.

### II. Majesty of Death and Specific Legislation

Death is inevitable event in everybody's life. We all will die. We do not know only the date and circumstances of our death. Death of relatives, colleagues or friends is always troublesome. It is shocking if instant due to accident, crime, injury or sudden illness. It is exhaustive if result of debilitating disease lasting for months and years.

Death of particular individual has significant social and economic impact. Families, enterprises and groups suffer and even disintegrate. Death of leaders and other prominent persons or multiple deaths cumulated in short period caused by disasters, epidemics, famine and wars can put in danger entire collectives, enterprises and nations.

Death is always serious event. It is followed with period of substantial stress and increased sensitivity. Mourning is expected. All nations recognize vulnerability of survivors. Authorities and service providers are

---

<sup>1</sup> Assoc. Prof. JUDr., Masarykova Univerzita, Brno (prof. dr, Uniwersytet Masaryka, Brno).

obliged to follow specific legislation aimed at their protection. Public health concerns are often competing.

### **III. Legal Aspects of Death and their Eventual Internationalization**

Attention of most participants of the conference was paid to legal and ethical aspects of medical care for dying people, treatment and disposal of remains, impact of death on assisted reproduction, funeral services, graves and cemeteries, inheritance and wills and path of the deceased ones in culture including cyberspace.

These phenomena could cross national borders. Different national laws are applied. Incompatibility and conflict of laws can emerge. Specific challenges and increased expenditures result from physical and psychological distance. International and supranational harmonization, coordination and cooperation could resolve or mitigate these problems.

### **IV. Specifics of Death Abroad**

Many seriously ill or injured foreigners residing abroad return home when face their dying and death. They long for presence of relatives, they prefer linguistic proximity or they expect better palliative care in their last months and weeks<sup>2</sup>. Other people in the last phase of their life decide to stay and die abroad, because they perceive it as their home also in psychological sense. Funeral and burial are also realized in host country.

On the contrary, tourists and other short-term dispatched workers, travelling businessmen, students and other short-term migrants do not expect deterioration of their health and eventual death. They can face, however, sudden death due to injury or rapid illness.

Death abroad emerged throughout history. Diseases and injuries including these resulting from attacks did not spare travellers. On the contrary, travelling was risky. Return of injured and ill travellers was often impossible due to unavailable transportation. In addition to it, many illnesses and injuries became quickly fatal without modern medical treatments. Many prominent individuals died abroad.

---

<sup>2</sup> Briefly mentioned in case of both German pensioners in South Europe and Immigrants returning home in SCHNEIDER S., *Rente und tschüss?!*, *Deutsche Senioren verlegen ihren Ruhesitz ins Ausland*, Institut Arbeit und Technik, 2010, <http://iat-info.iatge.de/forschung-aktuell/2010/fa2010-01.pdf>

## **V. Definition of Death Abroad**

Nationality (citizenship) is the principal legal tie between an individual and particular country. It shall be used also for our consideration of death abroad. Citizen who died/dies outside territory of his/her own country died/dies abroad. People having double nationality need not to be considered unless they die in the third country.

However, real relation between an individual and particular country cannot be ignored. Many immigrants are well integrated in host country. Their ties with home country are reduced. Attribution of various migrants as regards their death is thus difficult. For statistical purposes, people are attributed to countries of their residence. Population of particular country are all individuals residing on its territory. Nationals residing abroad are excluded and foreigners entitled to long-term or permanent residence are included.

In some cases, it could be difficult to identify the country where deceased has died. Death emerging in cars and in trains is no problem. Solely death within few minutes during crossing border could result into unclear situation. Death aboard planes and ships is different. Death can occur aboard ship on high seas or kilometres above surface of countries with which travellers and plane has no genuine link. For practical reasons, law of country of registration of aircraft/vessel and law of country of landing are applicable<sup>3</sup>.

## **VI. Incidence of Deaths of Nationals Abroad and Deaths of Foreigners**

Travelling and residence abroad is now more frequent than it was in the past. We can thus expect that death abroad also become thus more frequent. However, modern technologies reduce the number of deaths abroad. Many seriously ill and injured foreigners enjoy modern medical care which prevents death or postpones it. Most of them can return quickly thank speedy and affordable transportation.

Despite it, several hundred Czechs die abroad annually according to information of consular service<sup>4</sup>. It represents approximately 0.4% of

---

<sup>3</sup> See articles 91, 94 and 17 of the United Nations Convention on the Law of the Sea (1982) on flag of the vessels, authority of flag state and innocent passage in coastal waters. Similar approaches can be found in Chicago Convention on International Civil Aviation (1944).

<sup>4</sup> According to the presentation available at web pages of the Ministry of Foreign Affairs ([www.mzv.cz](http://www.mzv.cz)) accompanying press conference held in 21. 6. 2013, there were

all deceases in the Czech Republic. It is hard to estimate whether this phenomenon is underreported.

Information about demographic events related to foreigners is provided by Czech Statistical Office. Unfortunately, residents and tourists are not distinguished. Death figures are surprisingly low<sup>5</sup> when compared with number of foreigners residing in the Czech Republic. Overproportion of young immigrants can explain it. We can expect that many immigrants will be naturalized in future. Their death will not be classified as an event related to foreigners.

Figures related to other countries and nations are difficult to find. Available figures are apparently established with different methods of calculation. Their comparison is thus impossible. Residents and tourists are usually not distinguished.

## VII. Administration of Deaths Abroad

In general, death of foreigner is treated as death of national. This approach is well-founded. There is no essential biological difference between individuals of various races and ethnicities in both their life and – finally – in their death. Nationality is legal and political construct.

Furthermore, nationality of some deceased can be unclear at least for short time and in few cases for long time or permanently. Decomposed and decayed remains found after long period of time are often hard to identify. However, contemporary methods of identification including genetic tests clarify most cases.

Death of an individual needs to be officially confirmed. Physicians are routinely called to control corpses. They are indispensable in unclear situations to check whether essential bodily functions have stopped irreversibly.

Many people die during their transport to hospital or during their hospitalization. Intensive care is provided unsuccessfully for many. Others enjoy palliative care. Both kinds of patients pass away with assistance and

---

398, 494, 432, 414, 441, 417 and 385 consular assistances related to death of Czech nationals abroad in years 2006-2012, see *Zahájení turistické sezóny 2013* (Beginning of tourist season) at [http://www.mzv.cz/jnp/cz/udalosti\\_a\\_media/archiv\\_zprav/rok\\_2013/x2013\\_06-21\\_zahajeni\\_letni\\_turisticke\\_sezony\\_2013.html](http://www.mzv.cz/jnp/cz/udalosti_a_media/archiv_zprav/rok_2013/x2013_06-21_zahajeni_letni_turisticke_sezony_2013.html)

<sup>5</sup> 247, 219, 231, 245, 281, 287, 299, 332, 356 and 404 deaths of foreigners were reported in years 2002-2011 in the Czech Republic according to *Cizinci: Demografické události cizinců (Demographic events of foreigners) – Live births and deaths of foreigners*, see [http://www.czso.cz/csu/cizinci.nsf/kapitola/ciz\\_demgr\\_udalosti](http://www.czso.cz/csu/cizinci.nsf/kapitola/ciz_demgr_udalosti)

observance of healthcare practitioners. Degenerative processes resulting into death can thus be identified in medical records. Administration of death of their patients is routine in hospitals.

Death outside hospitals is treated with bigger suspicion. Local police shall be informed in many countries. Numerous police precincts, cities and districts engage coroners. Policemen or coroners check cursorily causes of death to exclude violent and other suspect cases. Authorities finalize the process with registration of death in registries<sup>6</sup>.

Notification of relatives is extremely stressful for physicians and nurses, but also for policemen and officers. Many authorities thus develop guidelines for it and provide assistance for those charged with this task.

Countries have developed specific procedures if deceased is identified as foreigner. Embassies and consulates are informed. Authorities of home state finalize administration. Surely, relatives and domestic authorities are often informed in advance by relatives, companions, employers, travel agencies and insurers.

All countries care for their deceased nationals abroad and their relatives with guidance and assistance to relatives<sup>7</sup>. Death abroad is registered also in home country<sup>8</sup>.

Citizens of the European Union are entitled to assistance by embassies and consulates of other member states in the third countries without mission of their member state. Consular assistance is provided in various urgent situations including death<sup>9</sup>.

---

<sup>6</sup> According § 21 Zákon č. 301/2000 Sb., o matrikách, jménu a příjmení (Act on Vital Registries, Name and Surname), registries of deaths are held in each registry district. Competence is clarified if location is unknown.

<sup>7</sup> Web pages of Czech Ministry of Foreign Affairs address the issue in the list of specified events and situations abroad. There is Guideline Úmrtí občana ČR v zahraničí (Death of Czech national abroad). Contacting of Czech diplomatic or consular mission abroad, control of eventual travel insurance, engagement of travel agency and funeral service in Czechia with experience with cross-border service is recommended and steps are described as regards death certificate and *post-mortem* passport. Advice and assistance is for free. Costs are to be assumed by individual expected to negotiate handling of corpse and funeral services expected in Czech legislation. Contrary to many other countries including Poland, the Czech Republic has no law on consular service and assistance.

<sup>8</sup> Specific registry for vital events exists in the Czech Republic according the Act mentioned above.

<sup>9</sup> Article 5(1)(a) of the Decision 95/553/EC of the Representatives of the

Various extent of services provided by consular service of European countries related to death of their nationals – assistance related to death of nationals of other member states is rare - were identified by joint study of consular practice of the member states<sup>10</sup>.

### VIII. Interim Care for Corpses

Most people died at home in previous centuries. Corpses were treated by relatives and neighbours. Many cultures have century-long tradition of handling with corpses. Religious views on life, death and afterlife are reflected. Experience with related risks was also considered. According to philosophers and historians, burial of deceased by community was an important step in development of mankind.

Handling of corpses has been professionalized in modern times. People have thus little personal experience with death and with corpses of deceased. Most people pass away in hospital. Remains are thus dispatched to hospital morgues and taken over by funeral services. Remains of people which have died elsewhere are picked up by funeral services and dispatched for autopsy<sup>11</sup>.

Professional care for corpse is expensive. Expenditures are generally covered by relatives of the deceased individual<sup>12</sup>. Related expenditures are usually compensated with inherited property. Specific provisions address financing of funeral and disposal of corpse. Funeral and interment/cremation can be prepaid or insurance covers these expenditures. The first care after death in hospital is usually covered by public health insurance or similar public financing of healthcare. Mandated autopsy is realized by public authorities or financed by them.

---

government s of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations.

<sup>10</sup> See SCHWEIGHOFER E., FARO S. (eds.), *Consular and Diplomatic Protection – Legal Framework in the EU Member States – CARE Project, Citizens Consular Assistance Regulation in Europe*, Istituto di teoria e tecniche dell'informazione giuridica del CNR, 2010, available at <http://www.careproject.eu>, chapter 4.2. – Assistance in cases of death – identifying and repatriating remains, pp. 629-631

<sup>11</sup> See §§ 83-87 Postup při úmrtí (administration of deceases) in Zákon č. 372/2011 Sb., o zdravotních službách a podmínkách jejich poskytování (Act on health services and conditions of their provision) in the Czech Republic.

<sup>12</sup> § 114 in Zákon č. 89/2012 Sb. občanský zákoník (new civil code applicable since 2014) stipulates for financing of funeral services (interment/cremation) with assets of the deceased. Deceased is entitled to decide on method of burial. Related are entitled to decide on it if no will was formulated.

All countries address death of individuals without sufficient property and relatives for coverage of expenditures related to their death. Treatment of corpse and burial are financed by public authorities<sup>13</sup>.

Treatment of remains of deceased foreigners is different from that one of nationals also as regards its financing. Reimbursement is expected to come from abroad. It could be more difficult to arrange it. Consular assistance is often necessary for transfer of money.

Misuse of grief and stress of relatives by providers of funeral services is tackled with detailed national legislation and close surveillance of their activities by authorities.

Repatriation could tempt providers and their personnel to misuse, because it is hard for survivors and other involved persons to complain. Complaints of relatives and other involved can also result from misunderstanding and different attitudes related to manipulation with remains. Among others, mandated autopsy or routine resort to them after death due to accidents, disasters or specific illnesses in several countries could easily spark conflicts with distressed relatives<sup>14</sup>.

Nevertheless, countries respect different attitudes of foreigners and refrain from cremation as irreversible disposal of corpse<sup>15</sup>.

## **IX. Repatriation of Corpses**

Transport of both passengers and cargo is quick and reliable in most parts of the world. Transportation of corpses resembles transportation of both goods and persons. Corpses do not care for themselves. From this point of view, they are cargo. Nevertheless, ethical concerns make remains rather specific kind of cargo. In addition to it, medical concerns make transported corpses potentially dangerous item. Specific standards are thus applicable. Repatriation of corpses would thus be rather expensive and complicated activity.

---

<sup>13</sup> According to § 5 of Zákon č. 256/2001 Sb., o pohřbniectví (Act on funeral services), municipalities organize so-called social funeral. If heirs held liable are not found and no assets are left, the Ministry of Regional Development reimburses related expenditures. Cremation is the cheapest method of burial in Czechia. Cremation was questioned by poor relatives objecting it.

<sup>14</sup> Colleague from the department of forensic medicine reported about serious conflict with high-ranking father related to mandatory autopsy of remains of fatally injured daughter of Polish nationality.

<sup>15</sup> According § 5(3) of the Act, deceased foreigners are to be buried at the expense of municipality solely with approval of his/her country or after one month period. Interment is mandatory.

National laws of all countries address export, import and transit of corpses with specific requirements relating to corpse, casket, insulation, control and certification. Approval is required<sup>16</sup>. Public health and morality justify these requirements. Nevertheless, their implementation can be easily become obstacle for repatriation.

Two multilateral treaties have been concluded by European countries for simplification of cross-border transportation of corpses. The Agreement concerning the Conveyance of Corpses (*l'Arrangement sur le transfer des corps*) was agreed in Berlin in 1937 and the Agreement on the Transfer of Corpses in 1973 in the Council of Europe<sup>17</sup>. Requirements for easier cross-border transportation of corpses are specified by both treaties. Hermetically closed coffin could be required. Labelling or concealing is specified. *Post-mortem* passport (*laissez passer*) as document accompanying the corpse is described.

People involved in cross-border transportation of corpses shall check whether particular country is contracting party to these treaties. Bilateral treaties and agreements shall be considered in case of other states.

Associations of providers of funeral services in the European Union reflects unsatisfactory situation in the largest supranational entity where border controls are suppressed. They reacted with own initiative<sup>18</sup> related to the effort of the European Commission following enactment and implementation of the Directive on Services in Internal Market<sup>19</sup>.

---

<sup>16</sup> According to § 9(4) of Zákon č. 256/2001 Sb., o pohřbnictví (Act on funeral services), importation of corpse or its transit through Czech territory requires approval by embassy or consulate. This approval shall rely on death certificate and permission of the country of death which shall be based on no objections for public health and forensic purposes.

<sup>17</sup> CETS no. 080, for chart of signatures and ratifications, declarations, reservations and other communications, full text in various languages and explanatory reports see the Council of Europe – Treaty Office (<http://www.conventions.coe.int>). The agreement was ratified by 23 European countries including the Czech Republic. On the contrary, Poland is not contracting party.

<sup>18</sup> European Federation of Funeral Services – Code of conduct on cross-border transport of bodies, <http://www.eesc.europa.eu/resources/docs/117-private-act.pdf> accepted by the European Economic and Social Committee as code of conduct proposed by private party. There is no information about reception of this initiative by the European Commission.

<sup>19</sup> The liberalization was enhanced with the Directive 2006/123/EC of on services in the internal market.

Significant costs of repatriation are expected to be paid by individuals and institutions of former home country of deceased person. Authorities of host countries often require payment in advance or guarantee. Certainly, it can be arranged privately. However, consular assistance is often important for confused relatives.

Insurance covering eventual repatriation of remains shall thus be recommended. It is usually a part of travel insurance as package covering urgent treatment and repatriation of severely injured or ill travellers and other risks related to travel (baggage, delays, and liability).

Smuggling of corpse across borders by relatives due to administrative burden and high expenditures is probably contemplated by many but mostly given up in cases if persons and goods are routinely checked. It would be surely punished with heavy fines or with imprisonment. In addition to it, such behaviour would provoke suspicion of various criminal activities. Narcotics are smuggled in corpses from time to time. Illegal trade in organs and tissues need not to be feared due to utmost urgency of transplantation medicine.

Nevertheless, attempts to smuggle corpses shall be expected at borders where controls are carried loosely or ceased altogether. The Schengen system can be mentioned<sup>20</sup>.

Cremation in country of death and subsequent exportation of ashes could be significantly cheaper and less administratively burdensome. People without objections towards cremation would resort to it. Host countries could resort to it if repatriation or burial are not reimbursed.

## **X. Travelling for Funeral Services and Burial Abroad**

We can expect that intentional exportation and importation of corpses besides repatriation faces considerable administrative obstacles. These obstacles are justified with public health and security. Compliance with requirements would be expensive. Nevertheless, absolute prohibition is rare.

Rich people spend huge sums for many eccentric goods and services. Burial abroad can be among such reckless spending. Nevertheless,

---

<sup>20</sup> Discovery of 71 corpses in van from Hungary near Parndorf (Austria) in 27.8.2015 related to ongoing European migrant crisis in which thousands pass borders with assistance of clandestine networks. Dead migrants and refugees from Iraq, Afghanistan and Syria entered the vehicle alive. Death resulted from suffocation. Nevertheless, this tragedy shows clearly that corpses can be easily transported across internal borders.

no place could be identified as internationally attractive for burials and millionaires from abroad.

Some foreigners die in country of immigration, but prefer to return in coffin to country they perceive as spiritual home. Islamic population living in France spend huge sums for burial of their deceased in Maghreb countries due to both longing for the country of origin and prohibition of cemeteries reserved for religious communities in the country of *Laïcité*<sup>21</sup>. Cremation abroad is sought for opposite reasons. Such disposal of corpses is sought by relatives and other charged with organization if unavailable at home or if is cheaper abroad if cross-border transportation of remains is not subject of administrative troubles.

Exportation of ashes is easier than repatriation of corpses. Certificates of death and cremation are often required by border control authorities. Specific standards are prescribed by airlines and by postal service. Some people ignore these rules without facing sanctions. Small containers can easily pass controls and ashes can be masked<sup>22</sup>.

Cross-border movement of corpses for their cremation emerges in the European Union. Deceased Germans are cremated in Czech crematories offering incineration for lower prices than German crematories<sup>23</sup>. We can assume that free movement of services<sup>24</sup> guarantees cross-border movement of corpses. They should not be labelled as goods. Restrictions would be justifiable if spread of serious contagious diseases is feared<sup>25</sup>.

Evaluation for custom duties and related statistics already before the accession of the Czech Republic to the European Union brought anecdotic result. Importation of remains for their cremation was classified as inward processing<sup>26</sup>.

---

<sup>21</sup> SCHOFIELD H., *Why many French Muslims choose burial abroad*, 21. 7. 2013, “BBC News Magazine”, <http://www.bbc.com/news/magazine-23325581>

<sup>22</sup> One colleague summarized us administrative requirements and final non-compliance with them during repatriation of ashes of fatally injured Czech mountain climber from Venezuela.

<sup>23</sup> FÖRST S., *Zur Billig-Bestattung nach Tschechien – Video-Projekt* (Seeking cheap burial in Czechia...), 25. 11. 2012, “Berliner Morgenpost”, <http://www.morgenpost.de>

<sup>24</sup> See articles 56-62 of the Treaty on Functioning of the European Union (TFEU).

<sup>25</sup> See article 52 of TFEU applicable according Article 62 TFEU. In the Czech Republic, transportation of remains of persons infected with dangerous contagious disease requires approval of regional hygienic authority.

<sup>26</sup> As explained unofficially by former customs officer.

## **XI. Euthanasia and Assisted Suicide Abroad**

Few people intentionally travel abroad for dying there when suffering from debilitating disease. On the contrary, dying at home is preferred.

Every country has locations which are attractive for people determined for whatever reasons including depressive disorders to commit suicide. Skyscrapers, bridges and other high structures, rocks, abysses, water streams can be used for fatal jump. Barriers are thus installed in the most notorious places. Remote places can be used for shooting, hanging or intoxication.

From time to time, people commit suicide abroad. We can assume that most cases result from impulse emerging abroad. Nobody indicates significant intentional cross-border movement. No place is highlighted as attractive being attractive for suicide internationally.

Euthanasia or assisted suicide is an exception. Most countries prohibit euthanasia and sanction assistance to person willing to commit suicide. Several countries allowing or tolerating these practices are thus in spotlight. The Netherlands and Belgium liberalized euthanasia and gradually extended its scope and relaxed requirements on it.

Nevertheless, Switzerland has become notorious for cross-border mobility for assisted suicide as surrogate for euthanasia. Association *Dignitas e. V.* provides assistance to commit suicide to seriously ill and injured. This well-paid service is legal in Kanton Zürich. Decriminalization of this behaviour retained even after public awareness to this controversial phenomenon. Many people served by this association operating in were foreigners<sup>27</sup>.

## **XII. Cross-border movement of Preserved Corpses**

Most religions and cultures require burial of deceased. From this point of view, displayed embalmed remains are also buried. Retention of unburied body or body parts - including skull and bones without other tissues after their decomposition – is prohibited and punished<sup>28</sup>.

Autopsies were controversial practice during centuries. They were accepted gradually for specified purposes. Forensic, medical and

---

<sup>27</sup> For details about practice and law in Switzerland see BOSSHARD G., *Beihilfe zum Suizid – medizinische, rechtliche und ethische Aspekte*, Praxis 2012, 1013:183-189, available at <http://www.ageas.ch>

<sup>28</sup> According to § 359 of 40/2009 Sb. *trestní zákoník* (new criminal code) illicit opening of grave, tomb, urn and taking and retention of human remains is punishable with imprisonment in Czechia.

educational autopsies are allowed. Legislation stipulates conditions for autopsies and their realization. In addition to it, professionals agreed and follow guidelines with aim to avoid societal critique. As already mentioned, differences between approach and expectation of foreign relatives can cause disputes.

Controversial manipulation with human remains is exhibitions of these preserved with *plastination*. Exhibitions marketed variably as *Body Worlds*, *Bodies Revealed* and *Bodies* were organized<sup>29</sup>. However, legal frameworks and practice for importation and exhibition differed widely and sparked controversy<sup>30</sup>.

### **XIII. Multiple Deaths Abroad**

Accidents cars, buses, trains, ships and planes or natural disasters (avalanches, landslides, earthquakes and fires) resulting in numerous fatalities and eventual injuries require mobilization of available capacities.

If foreigners are among the dead or injured persons, consuls are expected to arrive to place and coordinate necessary assistance. Quality of this assistance is closely scrutinized by general public of home country. Therefore, home countries dispatch additional personnel and often arrange repatriation of remains and assume its costs.

Above mentioned consular cooperation of the member states the European Union in favour of unrepresented citizens addresses such events with specific provisions as emergency events<sup>31</sup>.

### **XIV. Victims of Crime, Perpetrators, Prisoners and Executed**

Corpses of victims of crime are investigated by coroners and forensic

---

<sup>29</sup> Plastination was developed by G. HAGENS in 1977. Exhibitions of plastinated corpses are organized worldwide by Premier Exhibitions Inc. (Georgia, USA), see <http://www.premierexhibitions.com>

<sup>30</sup> Exhibitions were realized also in the Czech Republic. Deans of all three medical faculties of the Charles University in Prague asked their students to refrain from being engaged as demonstrators at the exhibition. Legal scholars claimed that Czech legislation prohibits this display of remains, see POLICAR R., „*Bodies*“ *ve světle českého práva* („Bodies“ in light of Czech law), „Zdravotnické noviny“, č. 20, 2007. Nevertheless, local authorities did not react. Probably, they feared incurred expenditures.

<sup>31</sup> See „emergency situations“ plus „lead state concept“ in national reports published in Consular and Diplomatic Protection – Legal Framework in the EU Member States (cited above). Attention was paid to consular management related to death of numerous nationals of the member states of the European Union which have died as tourists in South Asia in 26 December 2004 Indian Ocean Earthquake and Tsunami.

pathologists. Burial is prohibited<sup>32</sup>. Repatriation of remains is thus often postponed. On the other hand, consular service of home country often pays increased attention to these cases followed closely by media. Expenditures otherwise incurred to relatives and insurers are paid by home country.

Foreigners as identified or suspected criminals killed by authorities during their pursuit and attempts to arrest them, prisoners which have died during their imprisonment abroad, and even executed foreigners are treated in opposite way. These individuals are often buried without any ceremonial and repatriation of their remains is frequently blocked even if somebody is willing to cover expenditures. Unsurprisingly, home countries of these people are reluctant to finance it.

## **XV. Epidemics of Contagious Diseases**

Epidemics resulted in the past often in mass dying or even in extinction of some communities. Famine, criminality and anarchy followed. Burials were immediate and summary, traditional rituals were often suppressed if identified as source of infection by authorities.

Countries often reacted on epidemics abroad with quarantine imposed on incomers, control of cross-border movement and eventual closure of borders. Repatriation of living nationals was often difficult under such conditions. Corpses were buried / cremated without any distinction.

Most epidemics were suppressed in 20<sup>th</sup> century and several serious contagious diseases eradicated. Nevertheless, the planet is not entirely free from epidemics. 2014 Ebola outbreak in West Africa resulted in collapse of health care in Guinea, Liberia and Sierra Leone. Mass burials emerged. Funeral rites including touching and kissing of remains contributed to spread of infection<sup>33</sup>. Borders were closed. People travelling from entire West Africa were controlled. Numerous false alarms occurred. Emergencies were checked whether prepared for outbreak. Most countries discouraged their nationals from travels to the countries. Detached expatriates were evacuated. Infected physicians, nurses and other volunteers were assisted by their home countries and enjoyed the

---

<sup>32</sup> According to § 115 of Zákon č. 141/1961 Sb., o trestním řízení soudním (Act on judicial proceedings in criminal matters) requires examination and autopsy of corpse of person which could be crime victim. Burial is prohibited. Measures are invariably applicable on Czechs and foreigners.

<sup>33</sup> *Deadly Ebola Outbreak: Funeral Rites Blamed*, “Sky News”, 25 March 2014, <https://uk.news.yahoo.com>

best care available– with alleged exception of Cuba<sup>34</sup>. Number of foreign victims was negligible. Repatriation of corpses was not highlighted in media.

## **XVI. Wars and Other Armed Conflicts**

Claiming that people often die in wars could be downplayed as self-evident. However, it is feasible to do it. Force is used by state government in huge extent towards other countries and their people. Damages are widespread. War could be labelled as opposite to law.

Wars in previous centuries were often extremely cruel. Defeated fighters and other population were often treated harshly, tortured and exterminated. Enemies were generally dehumanized and demonized. Belligerents realized that hostilities should not be without any rules. Reciprocity led to establishment of basic rules and compliance with them.

20<sup>th</sup> century was marked with large-scale wars with fatalities going in millions. Tragic experience resulted into improvement of international rules for protection of people. Humanitarian standards developed in international law – Hague Conventions and Geneva Conventions - and were implemented in legal framework and practice of belligerent parties.

International conventions aimed at protection of individuals in various situations – i.e. fighters (combatants) on land and sea, prisoners of war and civilian population - are aimed at reduction of fatalities and inhuman treatment. The most destructive and uncontrollable weapons (biologic, chemical warfare, land mines and other dangerous ammunition) are prohibited. Arbitrary and mass killing is declared war crime. Executions are to be restricted to perpetrators of the most heinous crimes. Nevertheless, fatalities are also addressed.

Armies cared for their killed and deceased fighters and related individuals. Nevertheless, it was often troublesome to collect and preserve corpses of their fighters in battlefield. Collection of corpses cost lives of many other soldiers. Evacuation was thus respected by enemy. Ceasefire was often agreed for this purpose. On the contrary, killed and deceased enemy combatants were often treated harshly. Similarly, prisoners of war were often killed or tortured and starved to death and then buried without any respect.

---

<sup>34</sup> See REICHEN P., *Landesverweis wegen Ebola*, 22. 11.2014, “Tagesanzeiger” ([www.tagesanzeiger.ch](http://www.tagesanzeiger.ch)).

Summary burials were often necessary in battlefields for prevention of diseases in army. Repatriation of corpses was usually impossible. Even leaders were often buried abroad.

All four Geneva Conventions address death of nationals of enemy country<sup>35</sup>. Certification of death and burials of deceased combatants on both land and on sea, prisoners of war and civilians is expected. Death certificates shall be issued. Home country of deceased shall be informed via international institutions or similar channels of communication. Graves shall be identifiable. Deceased combatants and prisoners of war shall be buried with their identification tags for eventual exhumation and repatriation. Burial at sea is allowed if necessary. Cremation shall be avoided because of rejection of this method by many nations and for impossibility of future identification, exhumation and repatriation.

## **XVII. Graves of Foreigners and War Graves**

Repatriation of remains of deceased travellers, combatants, immigrants and refugees was challenging and expensive or impossible altogether for centuries. Therefore, burial abroad was necessary.

Graves of distinguished foreigners were and are protected with effort of country of origin or communities venerating the deceased personality. Sometimes, international agreements and arrangements establish joint effort of host country and country of origin.

For example, maintenance of the tomb of internationally reputed Czech pedagogue and scientist *Jan Amos Komenský (Comenius)* in Naarden (the Netherlands) is based on intergovernmental agreement since the identification of his grave in 1929<sup>36</sup>.

The biggest attention is paid for war graves and cemeteries. Thousands soldiers have died as combatants or prisoners of war abroad. Most of

---

<sup>35</sup> See articles 16 and 17 of Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1st Geneva Convention), articles 19 and 20 of Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (2nd Geneva Convention), articles 120 and 121 – Death of Prisoners of War of Convention relative to the Treatment of Prisoners of War (3rd Geneva Convention) and articles 129-131 of Convention relative to the Protection of Civilian Persons in Time of War of 12. 8. 1949.

<sup>36</sup> Comenius was buried in *Waalse Kapel* in 1670. His grave was sought by Czech volunteers since 1871 and finally identified in 1929. Czechoslovak government leased the chapel for symbolic remuneration. Settings were later integrated into *Comeniusmuseum* operated by local foundation supported by the town and the Czech Republic, for detailed information see <http://www.comeniusmuseum.nl>

them were buried where they had died. Repatriation of corpses was possible after end of hostilities but was realized to limited extent.

The protocol to the Geneva Conventions<sup>37</sup>, bilateral treaties and intergovernmental arrangements addressing protection and maintenance of war graves emerged in 20<sup>th</sup> century. According to these conventions and implementing legislation<sup>38</sup>, host country arranges administration and country of origin finances maintenance of graves of its soldiers and expatriated civilians.

Systematic repatriation of corpses of killed combatants and other deployed personnel is recent practice of armies of developed countries at international missions in troublesome regions of the world. We can only speculate whether eventual involvement in large-scale conflicts would compromise this practice feasible with limited number of fatalities, abundant high-quality equipment and good transportation lines.

### **XVIII. Unburied Corpses and Burials outside Scope of State Authority**

Burial at high seas is well established practice of all seafaring nations. Retention of remains of deceased on ship was impossible for shortage of space and hygienic concerns on journey on high seas. Deceased were thus buried by throwing into sea<sup>39</sup>.

Countries including landlocked ones<sup>40</sup> have special provisions related to burial at sea. Such burial usually excludes full examination and autopsies for forensic and medical purposes.

---

<sup>37</sup> Article 34 of the Protocol additional to the Geneva Conventions of 12. 8. 1949 and the Protocol relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8. 6. 1977 requires respect to graves and gravesites, requires access to relatives and representatives of official services and return of remains. Contracting parties are encouraged to conclude bilateral agreements addressing maintenance of graves and graveyards.

<sup>38</sup> Zákon č. 122/2004 Sb., o válečných hrobech a pietních místech (Act on war graves and places of reverence) is recent Czech legislation addressing war graves. Detailed list about war graves in Czechia and war graves of Czechs and Czechoslovaks abroad is available at web page <http://www.valecnehroby.cz> Information is available in several foreign languages addressing needs of people from other countries.

<sup>39</sup> PRYOR J., *Interment without Earth: A Study of Sea Burials during the Age of Sail*, Writing 20 (spring 2008): “Archaeology of Death”, 2008, <http://twp.duke.edu/uploads/assets/Pryor.pdf>

<sup>40</sup> § 40 Zákon č. 61/2000 Sb., o námořní plavbě (Act on seafaring) prefers delivery of corpse to the nearest port, burial at the sea is allowed after joint decision of captain and ship physician. Any death or missing person shall be registered and reported to authorities.

Burial at sea or scattering of ashes of people which have died on land is practice preferred by seamen and accepted in several countries. Some other nations and religions reject it<sup>41</sup>.

Locations where corpses of sailors and passengers, which have died during ship disasters and could not be recovered, can be found are sometimes proclaimed as areas where access and searches are prohibited. For example, wreck of ferry *Estonia* sunken in 28. 9. 1994 in Baltic Sea with 852 fatalities is protected by international agreement<sup>42</sup> as mass underwater gravesite.

Several people die and are left unburied in inaccessible mountains, polar areas and other remote places. Corpses decompose quickly in tropical forests and warm seas and gradually in mild climate, or they remain intact for centuries in icebergs or in cold seas<sup>43</sup>.

Several astronauts have died during start or landing of their spacecraft. Their remains were often burned or scattered. Nevertheless, no astronaut died in the space outside gravitation of the Earth. Eternal move of his/her corpse in the space, remains left on surface of planets, their evaporation near stars or expected breakup in proximity of black holes incites imagination. Sci-fi describes execution of criminals or elimination of enemies with “spacing”<sup>44</sup>.

Death in the deep space shall not be confused with dispatching of ashes to orbit. This service is already offered as extravagant funeral service for several thousand dollars.

## **XIX. Globalization, Multiculturalism and Death**

Large-scale migration and quick social changes in the last centuries confront nations with unknown traditions and with novelties related

---

<sup>41</sup> Unnecessary burial at sea is rejected by Islamic jurisprudence. Decision of US government to bury terrorist leader *Ossama bin Ladin* killed during his capture by US special unit in 2011 was thus debated.

<sup>42</sup> Agreement between the Republic of Estonia, the Republic of Finland and the Kingdom of Sweden regarding the M/S *Estonia* agreed on 23 February 1995, <http://www.regeringen.se/content/1/c6/10/13/73/e9a46570.pdf>

<sup>43</sup> Temporal distance is outside scope of this paper. 1991 discovery of 5300 year old Ötzi in Italian Alps resulted in dispute on amount of finder’s fee in Italian courts. It can be debated how much old remains must be to become object of archeologic importance and to leave standards addressing corpses.

<sup>44</sup> Scientific analysis of human exposure to vacuum by G. A. LANDIS and vacuum exposure in science fiction, see <http://www.geoffreylandis.com/vacuum.html> and [http://www.geoffreylandis.com/vacuum\\_sf.html](http://www.geoffreylandis.com/vacuum_sf.html)

to disposal of corpses. Some are quickly accommodated. Other ones shock and face rejection by society and eventual suppression by authorities and with legislation.

There are different attitudes to manipulation with deceased and disposal with their corpses. Some nations and communities display their deceased at funeral ceremonies. Others invariably let their remains in textile, coffin or casket.

Interment is generally accepted. On the contrary, cremation is controversial practice in international perspective. It is frequent in many countries<sup>45</sup>. For example, almost all deceased Japanese are cremated. Czechia can be mentioned as European country with widespread resort to cremation<sup>46</sup>. Ritual cremation is mandated in Hinduism. On the contrary, cremation is decisively rejected in Islam, Judaism and Orthodoxy. Most Catholics do not prefer it, albeit it was reluctantly accepted by the Roman Catholic Church in 1963<sup>47</sup>. Among others, controversy related to cremation is recognized with the Geneva Conventions.

Preservation of remains with embalming is expensive and challenging. It is realized sporadically with few rich or revered deceased. Nevertheless, it is not prohibited in most countries. Decomposition with chemicals (*resomation*) or dry freezing followed with interment in biodegradable casket (*promession*) are novel methods of burial accepted without objection. On the contrary, freezing of corpse (*cryoconservation*) is problematic for necessity to assure refrigeration of stored corpses and eventual tackling with melted remains if refrigeration intentionally or accidentally stopped.

Cryonics technology aimed at preservation of people which cannot be healed now with the hope that treatment will be available in future is not

---

<sup>45</sup> For overview see „List of countries by cremation rate“ in English Wikipedia. Variable cremation rates among 50 states of the USA are noticeable.

<sup>46</sup> See HORÁKOVÁ P., *The history of the cremation movement in the Czech lands*, 22. 8. 2005, <http://www.radio.cz> Czech cremation movement emerged in late 19th century. Austrian-Hungarian authorities opposed it due to its anti-Catholic tendencies. Hygiene and saving the soil for the living were also mentioned. *Společnost přátel žehu* (the Association of Friends of Cremation) provides advance financing of cremation and funeral rites in one of numerous crematories built mostly in interwar period. My grandmother was member of the association and decline of cremation would be ignorance of her wish.

<sup>47</sup> According to Article 1177 of the Code of Canon Law, the Roman Catholic Church recommends burial of the bodies of deceased. It, however, does not prohibit cremation.

only depicted in sci-fi, but also proposed. Unsurprisingly, this procedure is controversial. Many countries would consider it as murder or assisted suicide if resuscitation is impossible. If this technology is mastered in future, it would blur distinction between living and deceased people<sup>48</sup>. We can expect that such technology will be addressed differently by nations. Cross-border movement for this treatment can thus be expected.

Fringe methods of disposals would face rejection and prohibition in most countries. Letting of corpses for vultures and harsh weather with eventual dismemberment according to traditions of Zoroastrians (“towers of silence”) and Tibetans (“sky burials”) would face restrictions in modern urbanized society. *Post-mortem* cannibalism – tradition of the Fore tribe in Papua-New Guinea which led to epidemics of fatal Kuru disease - would be surely rejected as barbaric practice.

## XX. Conclusions

Impulse for interest for the topic which coincided with invitation for the conference *Non omnis moriar* was my consideration of legal aspects of MH17 flight disaster.

Malaysian airplane on route from Amsterdam to Kuala Lumpur was shot down above Ukrainian territory held by pro-Russian separatists in 17th July 2014. All 298 passengers and crew members died instantly. Investigation was compromised with ongoing hostilities resulting in deficient cooperation of authorities. Responsibility for the tragedy is disputed until now. Troublesome collection of corpses and body parts, their handling by local authorities, endless storage in waggons without refrigeration in hot summer, examination by local and foreign experts and final repatriation to the Netherlands and to other countries was closely followed by international audience<sup>49</sup>.

This horrifying spectacle reminds us that death can be unexpected. It can touch us or our relative, colleagues and friends any moment and place. The passengers did not know that they flew over contested region. Majority of them barely knew about ongoing conflict. Nevertheless,

---

<sup>48</sup> For detailed legal analysis see PERLIN A. A., „*To Die in Order to Live*“: *the Need for Legislation Governing Post-Mortem Cryonic Suspension*, “Southwestern University Law Review”, vol. 36, No. 1, p. 33, 2007.

<sup>49</sup> For overview of timeline of recovery of corpses, measures, negotiation, complaints a related figures see „*Malaysia\_Airlines\_Flight\_17#Recovery\_of\_bodies*“ in English Wikipedia.

individual death abroad is routine situation. Practical, societal and legal challenges related to it deserve appropriate attention.

### **Abstract**

The paper addresses numerous practical aspects of death and dying abroad and related national, international and supranational legal framework. The role of international treaties and supranational law in the European Union without systematic controls of persons and goods on internal borders is highlighted. Death abroad is an event which causes increased challenge to the relatives of the deceased and the authorities of both host and home countries. Consular assistance is needed for certification of death and repatriation of remains. There is also intentional movement of persons for euthanasia and remains for funeral or for cremation abroad. Graves of soldiers and civilians which have died abroad during wars are protected with international standards. People prefer and reject various methods of disposal of remains and funeral rite. New methods emerge. Migration and globalization can thus result in controversies.

Keywords: international and supranational law, death, funeral, cross-border movement, consular assistance, the European Union.