

Forensic Dentistry and Human Identification: Legal Framework

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The task of the forensic odontologist at the international criminal proceedings is usually to act as an expert witness. This means that forensic odontologist is to give factual information on the investigations enacted at the site(s) relevant to the court proceedings concerned [1]. All the conclusions and comments are therefore to be limited strictly on the professional sphere and competence of the expert witness [2]. All comments going beyond that sphere are nonsense comments and do not fall within the role of an expert witness, even if is not seldom that the defence counsel or sometimes also the prosecutor may propose or encourage this kind of conclusions to be made. The situation does not change even if the expert is invited to testify for the prosecution or defence team as long as forensic odontologist is heard as an expert witness. It is not the task for an expert witness to build the case or fill the gaps in the evidence for the defence or the prosecution, instead, forensic odontologist is expected to provide facts and scientific conclusions solely based on these facts. It is the role of the defence or prosecution teams to connect those materials to other available evidence and the task of the judges of the court or tribunal concerned to decide what legal conclusions the presented forensic material might support or what possible circumstances that may exclude in the possible scenarios of chain-of-actions.

The situation may be different, if the expert has during his activities at the Host-State seen something relevant for the proceedings happen, which does not relate to his professional work, but may be important for the criminal court or tribunal. On those matters he should be heard separately as a (normal) witness. For these situations, if necessary, the international courts and tribunals have also developed effective witness protection measures, which may protect the identity of the witness if his security may be endangered by his testimony. Naturally, these measures do not concern the expert witness as their role is different in the proceedings.

The evolving concept of the universality of human rights is in formation to include the view that these rights are to be extended to the deceased in the form of dignified handling of human remains and burial. This view is also becoming widely accepted within in the forensic science community. The interpretation has its roots in the ethical code of forensic science and is, in addition, partially based in the legal framework of international humanitarian law. The recommendations of the International Commission of the Red Cross, on the resolution of Human rights and forensic science, explicitly addressed the dignified

handling, proper management and disposal of humans remains, in addition to respect for the needs of families [3]. These developments with a decade should ensure that samples taken from the humans remains are taken solely for investigation of manner and cause of death and identification of the deceased [4].

These codes of conduct also imply that the possibilities for identification of found human remains should be ensured, e.g., by preserving data and possible samples for later identification, wherever possible, when forensic investigations are conducted. Besides the connected implications of human rights, the remains of the victims deserve the last rites of their own traditions and religion and are to be buried in proper graves with their own and true names identifying each own [5]. This conduct is also an important part of the reconciliation process, and therefore, the costs of identification procedures should be made available already during the early stages of reconstruction and normalization of any broken society [6].

In cases of inadequate investigative procedures due to insufficient expertise or suspected bias, the investigations should be undertaken by an independent commission. Moreover, the differences in national procedures and legislations and the level of forensic sciences in different countries, is also reflected in the work done in international framework. The most basic requirement is that the persons doing that work should be properly educated experts of forensic sciences.

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