

DEATH IN TIMES OF SARS-CoV-2 PANDEMIC. LEGAL REGULATIONS OF THE BURIAL OF THE COVID-19 DECEASED IN POLAND

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“you are no more than a mist
That appears for a little while and then disappears”
(Jm, 4, 14)

ABSTRACT

The article discusses the issues of death in times of the SARS-CoV-2 pandemic and burial of the COVID-19 deceased. It also presents some currently binding legal regulations as well as restrictions and obligations for the organizers of the funeral connected with the infection of the deceased with COVID-19. Moreover, it shows the influence of state law on funeral regulations in the denominational form and the cult of memory of the dead.

Keywords: SARS-CoV-2 pandemic, COVID-19, death, corpse, funeral, religious cult

1. INTRODUCTION

Sickness and death have been present in human life since the very beginning of man's existence. For years, death has been the subject of interest not only in medicine, anthropology, theology or law, but also in

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other fields of science¹. Death is also often a common motif present in literature and paintings², as people have always searched for an appropriate way to express its mystery with words and images. The outbreak of the SARS-CoV-2 virus pandemic at the end of 2019, which started in the Chinese city of Wuhan, presented mankind with new challenges³. The COVID-19 pandemic revived questions about dignified death⁴, dying, access to the sick, contact with family members dying in hospitals and care facilities, as well as manners and forms of burial.

The article attempts to answer questions about the scope of duties related to the organization of burial in the pandemic. It analyzes some restrictions which were introduced to the burial of the Sars-CoV-2 deceased, the effect of state legal regulations on funeral regulations in denominational form and the cult of memory of the deceased.

¹ Jan Perszon, *Na brzegu życia i śmierci, zwyczaje, obrzędy oraz wierzenia pogrzebowe i zaduszkowe na Kaszubach* (Lublin: Towarzystwo Naukowe KUL, 1999); Jacek Sobczak and Maria Gołda-Sobczak, "Prawo do grobu jako problem kulturowy i prawny," *Zeszyty Naukowe KUL* 60, no. 1 (241) (2018): 198.

² For example the anonymous Medieval text "De morte prologus, Dialogus inter Mortem et Magistrum Polikarpum," (in Polish: "Rozmowa Mistrza Polikarpa ze Śmiercią,") in *Historia Literatury Polskiej w Dziesięciu Tomach*, t. 1: *Średniowiecze*, ed. Anna Skoczek, (Bochnia-Kraków-Warszawa: Prowincjonalna Oficyna Wydawnicza, 2002), 389–399, William Shakespeare's *Romeo and Juliet* (1597), and Albert Camus' *The Plague* (Paris: Gallimard, 1947). Among world's commonly known painting there are: *The Triumph of Death* by Pieter Bruegel the Elder, (1562); *Death* by Jacek Malczewski (*Śmierć*, 1902), and *Crawling Death* by Zdzisław Beksiński (*Petząjąca śmierć*, 70s of the 20th century).

³ For some information on one of the first pandemics in the 20th century (which claimed from 30 to 50 million victims) go to: Łukasz Mieszkowski, *Największa. Pandemia hiszpanki u progu niepodległej Polski* (Warsaw: Wydawnictwo Polityka, 2020).

⁴ Marcin Śliwka and Anita Gałęska-Śliwka, "Prawo do godnej śmierci pacjentów niezdolnych do podjęcia decyzji," *Medycyna Paliatywna w Praktyce* 6, no. 1 (2012): 15–22, accessed August 10, 2021, https://journals.viamedica.pl/palliative_medicine_in_practice/article/view/28512/23282.

2. COVID-19 AND SARS-CoV-2 VIRUS. TERMS AND DEFINITIONS. DEMOGRAPHIC EFFECTS

The term “COVID-19” refers to the disease caused by the SARS-CoV-2 virus. The name was given by the World Health Organization (WHO) as applicable worldwide because previously some descriptive forms were used, such as “2019 novel coronavirus (2019-nCoV)”, “disease caused by coronavirus” and “Wuhan coronavirus infection”. The WHO recommended this name to prevent social stigma of the geographical location of the place where the virus was first reported, as well as to avoid some negative political consequences related to this fact. Additionally, the guidelines of the International Committee on Taxonomy of Viruses (ICTV)⁵ were applied. The individual elements of the name consist of abbreviated lexical forms derived from the following English words: “CO” for corona, “VI” for virus, “D” for disease, and number 19 is for 2019, the year in which the outbreak was first identified. The full name of this new disease is *Corona-Virus-Disease-2019*. The name of the SARS-CoV-2 virus is an acronym of the English words *severe acute respiratory syndrome coronavirus 2*, as opposed to SARS-CoV. SARS-CoV-2 is a newly discovered pathogen which belongs to coronaviruses⁶, with a single strand of positive polarity

⁵ The International Committee on Taxonomy and Viruses (ICTV) is concerned with naming of viruses. On February 11, 2020 ICTV announced “severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)” as the name of the new virus. The decision was based on the fact that the virus is genetically related to the coronavirus responsible for the 2003 SARS outbreak, see: <https://talk.ictvonline.org/>, accessed August 8, 2021; [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it), accessed August 10, 2021. Also on February 11, 2020 the WHO announced “COVID-19” as the name of the new disease, following guidelines previously developed with the World Organization for Animal Health (OIE) and the Food and Agriculture Organization of the United Nations (FAO), see: [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it), accessed August 8, 2021; Marlena Kostyńska, *Koronawirus SARS-CoV-2 – słowniczek pojęć, które warto znać*, published March 16, 2020, accessed August 12, 2021, <https://www.medonet.pl/zdrowie,koronawirus-sars-cov-2---słowniczek-pojec--ktore-warto-znac,artykul,70847711>.

⁶ See: International Institute of Molecular and Cell Biology (IIMCB, Międzynarodowy Instytut Biologii Molekularnej i Komórkowej) in Warsaw, information as of

ssRNA (+) that causes acute respiratory disease – COVID-19. There are many already known coronaviruses that cause cold and respiratory diseases in human and animals – some of them are mild, but other variants may cause severe illnesses and kill an infected person. One of such illnesses is SARS (severe acute respiratory syndrome) caused by the SARS-CoV virus. Most common symptoms of COVID-19 include: fever, dry cough and breathing difficulties (shortness of breath). SARS often produces flu-like symptoms such as fatigue and muscle pains. People can also experience diarrhea, sore throat, runny nose and loss of smell and taste. The above mentioned symptoms are variable, ranging from mild symptoms to severe illnesses, whereas in some cases the infection may be asymptomatic.

An epidemic occurs when on a given area there are infections or cases of an infectious disease in a significantly higher number than in the previous period, or there are infections or infectious diseases that previously did not occur⁷. The term “pandemic” is used when an epidemic of an infectious disease simultaneously affects several countries. These countries may be located on a single continent or worldwide. In a pandemic, there is high contagiousness of the disease and its asymptomatic form at the initial stage of infection⁸.

November 10, 2020, *Struktura RNA genomu koronawirusa SARS-CoV-2 szczegółowo zbadana*, accessed August 20, 2021, <https://www.iimcb.gov.pl/pl/aktualnosci/aktualne-informacje/1205-struktura-rna-genomu-koronawirusa-sars-cov-2-szczegolowo-zbadana>; Danuta Kruszevska, “Współczesne zoonozy – klątwa XXI wieku,” *Życie Weterynaryjne* 95(7) (2020): 405–413, accessed August 10, 2021, <https://www.vetpol.org.pl/dmdocuments/ZW-07-2020-02.pdf>; Zuzanna Drulis-Kawa, “Koronawirus SARS-CoV-2 – biologia, wykrywanie i zwalczanie,” *Przegląd Uniwersytecki On-line*, accessed August 14, 2021, <https://uni.wroc.pl/koronawirus-sars-cov-2-biologia-wykrywanie-i-zwalczanie/>.

⁷ The definition of an epidemic is specified in the *Act on preventing and combating infections and infectious diseases in humans of December 5, 2008* (Ustawa o zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi z dnia 5 grudnia 2008 r.), Journal of Laws 2008, No. 234, item 1570 in art. 2 point 9. The legislator defined a number of terms related to the occurrence of infectious diseases, including “state of the epidemic” and “state of epidemic threat”, see Art. 2 points 22 and 23.

⁸ In Germany, due to COVID-19, the life expectancy loss of the population in 2020 was estimated at 305,641 years. These calculations were presented by a team of scientists – Alexander Rommel, Elena von der Lippe, Dietrich Plass, Thomas Ziese, Michaela Diercke, Matthias An der Heiden, Sebastian Haller, and Annelene Wengler, and published in the article “The COVID-19 Disease Burden in Germany in 2020—Years

The first known infection from SARS-CoV-2 was discovered on November 17, 2019 in the city of Wuhan in southern China. After two months it spread to Iran, South Korea and Italy, and then it was soon reported in other European countries. The WHO recognized Europe as the center of the pandemic in March 2020. In European Union countries, health protection is the responsibility of the Member States. The Decision of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health determines the rules on epidemiological surveillance, monitoring serious cross-border threats to health, early warning and combating emerging threats, including preparedness and response planning to coordinate and complement the national policies of the Member States⁹. The Decision defines such terms as “communicable disease”, “epidemiological surveillance” and “serious cross-border threat to health”¹⁰. Moreover, an Early Warning and Response System (EWRS) was established (Art. 8), as well as Health Security Committee, to support the exchange of information between the Member States and the Commission regarding the implementation of the Decision of the Parliament and the Council, and to coordinate the preparedness and response planning and to coordinate the risk and crisis communication and responses

of Life Lost to Death and Disease Over the Course of the Pandemic,” accessed August 12, 2021, <https://pubmed.ncbi.nlm.nih.gov/33634787/>; Agata Wawrzyniak, Karolina Kuczborska, Agnieszka Lipińska-Opalka, Agata Będzichowska, and Bolesław Kalicki, “Koronawirus 2019-nCoV – transmisja zakażenia, objawy i leczenie,” *Pediatr Med Rodz* 15, no. 4 (2019), accessed August 10, 2021, https://www.pfizerpro.com.pl/sites/default/files/pediatratria_4_2019_wawrzyniak_koronawirus_2019-ncov_pl.pdf; Jerzy Duszyński, Aneta Afelt, Anna Ochab-Marcinek, Radosław Owczuk, Krzysztof Pyrc, Magdalena Rosińska, Andrzej Rychard, and Tomasz Smiatacz, *Zrozumieć Covid-19. Opracowanie Zespołu ds. Covid-19 przy Prezesie Polskiej Akademii Nauk*, published September 14, 2020, accessed August 18, 2021, https://informacje.pan.pl/images/2020/opracowanie-covid19-14-09-2020/ZrozumiecCovid19_opracowanie_PAN.pdf.

⁹ Under Art. 168 of the Treaty on the Functioning of the European Union, the European Union complements national health policies of particular member states, see the Decision of the European Parliament and the Council No. 1082/2013/UE of 22 October, 2013 on serious cross-border threats to health, and repealing the Decision No. 2119/98/WE, OJ L 293/1.

¹⁰ Art. 3 of the Decision of the European Parliament and the Council No. 1082/2013/UE of 22 October 2013.

to serious cross-border threats to health (Art. 17 point 2). The Decision also emphasizes the role of the European Centre for Disease Prevention and Control (ECDC)¹¹. In the initial phase of the pandemic in Europe, the European response and coordination system did not fulfill its role, also due to the deteriorating health situation in northern Italy, especially in the Lombardy region. Italy reported the first positive coronavirus test on January 31, 2020 and on February 1, 2020 the Italian government introduced a state-wide state of emergency. Italy was the first European country to face the outbreak of the epidemic and had to deal with it basically alone. It was only on March 10, 2020 that the European Commission and the president of the European Council called on the Member States to coordinate their actions¹². During the video conference on COVID-19 the following four priorities were identified: limiting the spread of the virus, provision of medical equipment, promotion research and tackling socio-economic consequences. The Member States expressed sympathy with Italy and other states which were severely hit by the pandemic¹³.

As of August 15, 2021, since the first recorded death in France on February 15, 2020, a total of 1,221,930 deaths due to COVID-19 have been registered in Europe. The highest number of deaths has been reported in the United Kingdom, that is 131,260 (data as of August 19, 2021). So far there have been 210,135,054 infections with the virus and 4,405,954 deaths¹⁴ worldwide. The official number of deaths is: 75,324 for Poland,

¹¹ For more on the responsibilities of the ECDC go to: https://europa.eu/european-union/about-eu/agencies/ecdc_pl.

¹² See: Melchior Szczepanik and Jolanta Szymańska, "Reakcja Unii Europejskiej na epidemię koronawirusa," *Biuletyn*, no. 48 (1980), 17 March 2020, (Polski Instytut Spraw Międzynarodowych), accessed August 20, 2021, https://pism.pl/publikacje/Reakcja_Unii_Europejskiej_na_epidemie_koronawirusa.

¹³ The European Council, *Conclusions by the President of the European Council following the video conference on COVID-19*, March 10, 2020, accessed August 21, 2021, <https://www.consilium.europa.eu/en/press/press-releases/2020/03/10/statement-by-the-president-of-the-european-council-following-the-video-conference-on-covid-19/>.

¹⁴ For statistics and facts see: *Coronavirus (COVID-19) disease pandemic – Statistics & Facts*, accessed August 20, 2021, <https://www.statista.com/statistics/1093256/novel-coronavirus-2019ncov-deaths-worldwide-by-country/> and <https://www.statista.com/topics/5994/the-coronavirus-disease-covid-19-outbreak/>, accessed August 14, 2021.

53,521 for Ukraine, 12,547 for Slovakia¹⁵, 30,387 for the Czech Republic, 92,522 for Germany and 128,855 for Italy¹⁶.

In Poland, on March 2, 2020 the Act on special solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them¹⁷ was issued in order to provide the basics for the regulation of extraordinary situations related to the pandemic. The first case of an infection with the SARS-CoV-2 virus was recorded on March 4, 2020, and this day is considered the beginning of the pandemic in the country. Then, on March 14, 2020, a few days after declaring a state of pandemic in the world by the World Health Organization, an epidemic emergency was introduced¹⁸. First, educational institutions and care facilities were closed from March 12 till 25, 2020. The first death from COVID-19 in Poland was on March 12, 2020, and on March 20, 2020 until further notice, due to the SARS-CoV-2 virus infections, the epidemic has been introduced throughout the whole country¹⁹. Under

¹⁵ Łukasz Ogrodnik, *Slowacja w walce z pandemią COVID-19 i jej skutkami dla gospodarki*, accessed August 12, 2021, https://pism.pl/publikacje/Slowacja_w_walce_z_pandemia_COVID19_i_jej_skutkami_dla_gospodarki.

¹⁶ See: *Number of novel coronavirus (COVID-19) deaths worldwide as of August 25, 2021, by country*, accessed August 20, 2021, <https://www.statista.com/statistics/1093256/novel-coronavirus-2019ncov-deaths-worldwide-by-country/>.

¹⁷ Journal of Laws 2020, item 374. The Act entered into force on March 8, 2020 and is commonly known as “specustawa” (“special act”).

¹⁸ The state of the epidemic emergency was introduced with the *Regulation of the Minister of Health of 13 March 2020 on the declaration of an epidemic threat in the territory of the Republic of Poland* (Rozporządzenie Ministra Zdrowia z dnia 13 marca 2020 r. w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu zagrożenia epidemicznego), Journal of Laws 2020, item 433, par. 1.

¹⁹ *Regulation of the Minister of Health of 20 March 2020 on the declaration of an epidemic in the territory of the Republic of Poland* (Rozporządzenie Ministra Zdrowia z dnia 20 marca 2020 r. w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu epidemii), Journal of Laws 2020, item 491; see: <https://www.gov.pl/web/koronawirus/wprowadzamy-stan-epidemii-w-polsce>, accessed June 4, 2021; see: Art. 1, 22) of the *Act of 5 December 2008 on preventing and combating infectious and infectious diseases in humans* (Ustawa z dnia 5 grudnia 2008 r. o zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi), Journal of Laws 2008, No. 234, item 1570 with further amendments. Under Art. 46 point 2 of this act if an epidemic threat or an epidemic occurs in more than one voivodship, the state of an epidemic threat or an epidemic is introduced or dismissed by

the Act on preventing and combating infections and infectious diseases in humans of December 5, 2008, the state of pandemic is understood as a legal situation introduced in a given area in connection with the occurrence of an epidemic in order to take the anti-epidemic and preventive measures specified in the Act to minimize the effects of the pandemic.

On September 19, 2020 the number of daily infections exceeded 1,000 and the highest number of cases (27,875) was reported on November 7, 2020. November 25, 2020 was the day with the highest number of deaths, namely 674²⁰. According to the data published by the Statistics Poland (GUS), as of the end of June 2021 Poland had about 38,162 inhabitants. In 2020, a total of 477,335 people died and it was an increase of approximately 68,000, as compared to 2019. The highest number of deaths was recorded in the fourth quarter of 2020. Over 60% more of deaths were registered than in the corresponding period of the previous year. The Ministry of Health announced that the main cause of the increase in the number of deaths was the SARS-CoV-2 pandemic, with its highest intensity in fall 2020. Mortality surpluses were and are generated by people burdened with comorbidities and those who died as a result of the limited access to diagnostics and planned medical services. Moreover, with the introduction of lockdown in Poland online doctor consultations²¹

the regulation of the minister responsible for health in agreement with the minister responsible for public administration, at the request of the Chief Sanitary Inspector.

²⁰ For more information on death rates go to: <https://www.medonet.pl/koronawirus/koronawirus-w-polsce,rok-epidemii-covid-19-w-polsce—eksperci-mowia—co-nas-czeka,artykul,90113652.html>, accessed August 2, 2021; the *Regulation of the Minister of Health of 6 April 2020 on infectious diseases resulting in the obligation of hospitalization, isolation or isolation at home and the obligation to quarantine or epidemiological supervision* (Rozporządzenie Ministra Zdrowia z dnia 6 kwietnia 2020 r. w sprawie chorób zakaźnych powodujących powstanie obowiązku hospitalizacji, izolacji lub izolacji w warunkach domowych oraz obowiązku kwarantanny lub nadzoru epidemiologicznego), Journal of Laws 2020, item 607.

²¹ Art. 42 of the *Medical Profession Act of 5 December 1996* (Ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentysty), Journal of Laws 1997, No. 28, item 152, consolidated text Journal of Laws 2021, item 790 stipulates that the doctor decides about the health of a particular person after prior personal examination of this person or examination via IT or communication systems, as well as after analyzing the available medical documentation of this person.

became a common practice, which significantly reduced the detection and prevention of life-threatening diseases. In the first half of 2021, the actual decline in the population was -0,27%, which means that for every 10,000 people 27 people died in Poland (as compared to 8 people the year before), and the number of deaths increased to about 271,000 people. The highest increase in mortality was in April and May 2021, with over 40% and over 60% more registered deaths, respectively, than in the corresponding months of last year. As a result of excessive mortality, the overall death rate increased from 10.9‰ in 2020 to 14.2‰ in the first half of 2021²². At the end of June 2021, the population of Poland was smaller than at the end of both June and December last year. Between January and June this year there were also fewer births than a year ago, with a significant increase in deaths. As a result of the lower number of births than deaths, the population growth rate remained negative by about 192,000 less than in the same period last year.

3. RESPONSIBILITIES CONNECTED WITH THE BURIAL OF THE COVID-19 DECEASED

Each death implies certain obligations related to a person's burial, especially when the death occurred due to an infectious disease. They are borne by various entities, especially hospitals, funeral companies, family or institutions responsible for organizing the funeral. The Regulation of the Ministry of Health of 3 April 2020²³ specifies in detail the procedure

²² Statistics Poland (Główny Urząd Statystyczny), "Analizy statystyczne 06/2021, Sytuacja społeczno-gospodarcza kraju w pierwszym półroczu 2021," Warsaw: July 2021, accessed August 3, 2021, <https://stat.gov.pl/covid/opracowania-covid-19/>, and <https://stat.gov.pl/obszary-tematyczne/inne-opracowania/informacje-o-sytuacji-spoeczno-gospodarczej/sytuacja-spoeczno-gospodarcza-kraju-w-pierwszym-polroczu-2021-r-1,110.html>, accessed August 8, 2021.

²³ The *Regulation of the Ministry of Health of 3 April 2020 amending the regulation on handling human corpses and remains* (Rozporządzenie Ministra Zdrowia z dnia 3 kwietnia 2020 r. zmieniające rozporządzenie w sprawie postępowania ze zwłokami i szczątkami ludzkimi), Journal of Laws 2020, item 585 amended the *Regulation of the Ministry of Health of 7 December 2001 amending the regulation on handling human corpses and remains*

of dealing with the SARS-CoV-2 deceased. It states that the corpses of people who died from COVID-19 have to be disinfected with a disinfecting liquid with a virucidal effect, whereas the usual procedure of washing the corpse should be abandoned, unless it is necessary, and then some special preventive measures should be taken. Dressing up the body and its presentation should be avoided. The corpse should be placed in a protective, airtight bag along with the clothing or hospital cover that is put next to it, and in the case of transferring the corpse for incineration, the first bag with the corpse should be placed in the second bag. Next, the outer surface of each bag should be disinfected by spraying it with a disinfectant with a virucidal effect. If transported to the crematorium, the protected corpse is to be placed in a transport capsule made of materials enabling its washing and disinfection, which, after transferring the corpse to the incinerator, is subject to standard decontamination with surfactants. However, if the corpse is to be buried in the cemetery, it is placed in a coffin, except that a layer of fluid-absorbing substance with a thickness of 5 cm should be placed at the bottom of the coffin. Immediately after placing the body in a transport coffin or capsule, it is sealed tightly and sprayed with a virucidal disinfectant fluid. Transportation of the body, if possible, should be carried out with one transportation unit, which means that the means of transport should not be changed. The rooms where the person died from COVID-19, as well as any items with which they came into contact, should be decontaminated.

If the person dies in a hospital, activities related to the preparation of the body for burial are performed by people employed by the hospital, whereas in the case of death outside the hospital, activities related to transportation to a crematorium or cemetery – by appropriately trained employees of funeral companies²⁴. In the event of the patient's death in a hospital

(Rozporządzenie ministra zdrowia z dnia 7 grudnia 2001 r. w sprawie postępowania ze zwłokami i szczątkami ludzkimi), Journal of Laws 2001, No. 153, item 1783 and 2007, No. 1, item 10 by adding §5a -5c after §5. See also the *Regulation of the Ministry of Health of 18 March 2021 amending the regulation on handling human corpses and remains* (Rozporządzenie Ministra Zdrowia z dnia 18 marca 2021 r. zmieniające rozporządzenie w sprawie postępowania ze zwłokami i szczątkami ludzkimi), Journal of Laws 2021, item 511.

²⁴ In Poland, there are currently no special regulations concerning employees of funeral homes. Such institutions are often small family businesses and establishing a funeral

the procedures are given in the Regulation of the Ministry of Health of 10 April 2012 on the manner of conduct of a healthcare entity performing medical activities such as inpatient and round-the-clock healthcare services with the patient's corpse in the event of the patient's death²⁵. The person indicated in the organizational regulations of the healthcare entity notifies a person or an institution of the death of the deceased immediately after confirming the person's death²⁶. If the hospital has doubts as to the identity of the COVID-19 deceased person, there is a problem with the personal identification of the body. In this case, the hospital may send photos by MMS or e-mail to the family of the deceased person, however such practice is not legally regulated. If the deceased person did not have any relatives or it was not possible to identify or contact them despite the attempts made, then the duty to bury the body falls on the local authority, which should be informed about the occurrence of this circumstance.

Under Art. 43 of the Medical Profession Act, the doctor can confirm the death on the basis of personally performed tests and findings²⁷. Decla-

activity does not require any special qualifications or licenses. It is enough to have the appropriate entry in the economic activity and fulfil sanitary requirements specified in the *Regulation of the Minister of Health of 23 March 2011 on the method of storing human corpses and remains* (Rozporządzenie Ministra Zdrowia z dnia 23 marca 2011 r. w sprawie sposobu przechowywania zwłok i szczątków), Journal of Laws 2011, No. 75, item 405; Cf. the Regulation of the Ukrainian Ministry of Health and the Chief Sanitary Doctor of 4 August 2020, Постанова №44, Про внесення змін до Тимчасових рекомендацій щодо безпечного поводження з тілами померлих осіб з підозрою або підтвердженням коронавірусної хвороби (COVID-19), accessed August 20, 2021, <https://moz.gov.ua/golovnij-derzhavnij-sanitarnij-likar-ukraini>.

²⁵ *Regulation of the Ministry of Health of 10 April 2012 on the manner of conduct of a healthcare entity performing medical activities such as inpatient and round-the-clock healthcare services with the patient's corpse in the event of the patient's death* (Rozporządzenie Ministra Zdrowia z dnia 10 kwietnia 2012 r. w sprawie sposobu postępowania podmiotu leczniczego wykonującego działalność leczniczą w rodzaju stacjonarne i całodobowe świadczenia zdrowotne ze zwłokami pacjenta w przypadku śmierci pacjenta), Journal of Laws 2012, item 420.

²⁶ See: Art. 28 par. 1 point 2 of the *Medical Profession Act of 15 April 2011* (Ustawa z dnia 15 kwietnia 2011 r. o działalności leczniczej), Journal of Laws 2011, No. 112, item 654, consolidated text Journal of Laws 2013, item 217, with further amendments.

²⁷ The *Act of 5 December 1996 on the profession of a physician and dentist* (Ustawa z dnia 5 grudnia 1996 r. o zawodzie lekarza i lekarza dentystry), Journal of Laws 1997,

ration of death involves preparing appropriate documentation, especially a death certificate. This document is required for burial, for the preparation of a death certificate by a competent registry office, and for statistical purposes. A death certificate is an administrative confirmation of the death of a given person. It may also be drawn up on the basis of a written notification from the institution investigating unnatural causes of death or on the basis of a court decision, which includes a decision on a declaration of death or a decision on declaring a person dead.

The bodies of the deceased in hospitals are put into closed and decontaminated coffins and transferred to the family, persons or entities that undertook to organize the funeral²⁸. As a rule, burial takes place after settling formal matters in the registry office and in a funeral home, and, if it is of a religious nature, at the priest at the Roman Catholic parish or another representative of the deceased's religious denomination, or at the cemetery administrator. There is no legal obligation to bury the COVID-19 deceased within 24 hours from death, as it is the case with other infectious diseases, regulated by the Act on preventing and combating infections and infectious diseases in humans of 5 December, 2008²⁹. The immediate burial of

No. 28, item 152, consolidated text Journal of Laws 2021, item 790, 1559. General practitioners are not formally obliged to declare death. The problem was exacerbated during the pandemic because the doctors were often afraid of contracting the coronavirus. If a person died outside the hospital, e.g. at home, it could be difficult for the family to bring a doctor to confirm death and issue a death certificate. There were also situations that the body of the deceased was left in a public place for several hours because there was no one to confirm the person's death. Moreover, the institution of a coroner has not been introduced in Poland and, under Art. 11 point 1 of the *Act on cemeteries and burying the dead* (Ustawa o cmentarzach i chowaniu zmarłych), the death and its cause should be determined by the doctor who was last treating the sick person. See: the *Act of 31 January 1959 on cemeteries and burial of the deceased* (Ustawa z dnia 31 stycznia 1959 r. o cmentarzach i chowaniu zmarłych), Journal of Laws 1959, No. 11, item 62, consolidated text Journal of Laws 2020, item 1947.

²⁸ For more on entities entitled to organize funerals see: Sobczak and Gołda-Sobczak, "Prawo do grobu jako problem kulturowy i prawny," 202–203; Jan Gołąb, *Prawo do pogrzebu i jego wykonanie w prawie kanonicznym i polskim* (Rzeszów: Poligrafia Wyższego Seminarium Duchownego, 2004), 222–247.

²⁹ The *Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans* (Ustawa z dnia 5 grudnia 2008 r. o zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi), Journal of Laws 2008, No. 234, item 1570. However, then

the body³⁰, referred to in the Regulation of the Ministry of Health of 3 April 2020 does not mean that the body cannot be transported to the funeral home or chapel for the funeral ceremony prior to burial in the cemetery. The term “immediate burial” (Polish “bezpośrednie pochowanie”) used in the Regulation refers to burial without prior cremation³¹. The fact that the body of the deceased does not have to be buried within 24 hours is due to the fact that COVID-19 was not entered on the list of infectious diseases specified in this regulation. In accordance with the Regulation of the Ministry of Health of 6 December 2001 on the list of infectious diseases for which the declaration of death requires special treatment of the corpse of those who died of these diseases, such corpses must be immediately removed from the flat and buried at the nearest cemetery within 24 hours from death. The Regulation includes the following diseases: 1) cholera, 2) typhoid fever and other rickettsial diseases, 3) plague, 4) relapsing fever, 5) poliomyelitis, 6) glanders, 7) leprosy, 8) anthrax, 9) rabies, 10) yellow fever and other viral hemorrhagic fever³². The fact that COVID-19 was not entered on the list of infectious diseases may be explained by several reasons, including the fear that too many deaths per day will cause problems with the organization of burial within 24 hours from death. Moreover, not every virus infection causes acute respiratory failure referred to

the act was consolidated and published in 2020 (Journal of Laws 2020, item 1845), and to this text some further amendments were introduced in the following positions: 2112, 2401, and in 2021: items 159, 180, 255, 616, 981.

³⁰ Under the *Regulation of the Ministry of Health of 3 April 2020 amending the regulation on handling human corpses and remains* the body secured in the manner specified in the regulation should be placed in a coffin for burial if there is an immediate burial in the cemetery, see §1, point 6.

³¹ See: Państwowy Wojewódzki Inspektor Sanitarny w Bydgoszczy, “Pochówek i ceremonia pogrzebowa w dobie pandemii koronawirusa,” accessed August 18, 2021, http://pliki.diecezja.sosnowiec.pl/20210318/Poch%C3%B3wek_i_ceremonia_pogrzebowa_w_dobie_pandemii_koronawirusa.pdf.

³² The *Regulation of the Ministry of Health of 6 December 2001 on the list of infectious diseases for which the declaration of death requires special treatment of the corpses of people who dies of these diseases* (Rozporządzenie Ministra Zdrowia z dnia 6 grudnia 2001 r. w sprawie wykazu chorób zakaźnych, w przypadku których stwierdzenie zgonu wymaga szczególnego postępowania ze zwłokami osób zmarłych na te choroby), Journal of Laws 2001, No. 152, item 1742.

in the Regulation, and not every infected person requires hospitalization. The virus can also cause an asymptomatic condition in the infected person.

4. RESTRICTIONS ON THE ORGANIZATION OF FUNERAL CEREMONIES

Under the 1959 Act on cemeteries and burial of the deceased³³ there are two possible ways of burying the deceased in Poland, namely in a cemetery in a grave (this also applies to urns and ashes) and by sinking the body into the sea³⁴. The funeral may be either denominational or secular in its form. The coffin with the body of the deceased is transported to the cemetery chapel or to the funeral home, where religious or secular ceremonies are held, eulogies and condolence letters are read, and then the coffin is interred in the grave or the urn with ashes is placed in the columbarium. In the case of the denominational ceremony, e.g. a Catholic ceremony, the celebration may take place first in the cemetery, then in a church or chapel, or vice versa. As a rule, the funeral begins with the holy mass in a church, without bringing the coffin inside, and then continues in the cemetery. There are also practices of first interring the coffin in the grave, preceded by appropriate prayers, and then performing the holy mass. Due to the coronavirus pandemic, restrictions were introduced in Poland in order to limit the number of mourners and the customary consolation ceremonies.

³³ *Act of 31 January 1959 on cemeteries and burial of the deceased*, Journal of Laws 1959, No. 11, item 62, consolidated text from 2020, item 1947.

³⁴ Art. 12.1. of the *Act on cemeteries and burial of the deceased* specifies that “corpses can be buried in earthen graves, built tombs, catacombs or they can be sunk in the sea. The remains from incineration can also be put in columbaria”. The terms “human corpses” and “human remains from incineration” are used in the regulation the *Regulation of the Ministry of Health of 7 December 2001 amending the regulation on handling human corpses and remains*, Journal of Laws 2001, No. 153, item 1783, and §2 stipulates that human corpses are understood as bodies of the deceased and still born children. In §8, human remains include ashes from the incineration of a corpse, remains of a corpse excavated while digging a grave or in other circumstances, as well as other parts of human body separated from the rest of the body. See: Teresa Gardocka, *Czy zwłoki ludzkie są rzeczami co z tego wynika?*, accessed August 20, 2021, https://www.repozytorium.uni.wroc.pl/Content/77834/17_T_Gardocka_Czy_zwloki_ludzkie_sa_rzeczami_co_z_tego_wynika.pdf.

On March 24, 2020 a regulation of the minister of health introduced some restrictions on movement and the organization of assemblies³⁵, including the limit of the faithful at masses, services and funerals. The number of funeral participants was then limited to 5 persons, in addition to persons involved in the conduct of religious ceremonies or employees of the funeral home involved in burial, for the period of March 25, 2020 to April 11, 2020 (§1, 4), b)). Then, on March 31, 2020 the Council of Ministers issued a Regulation on the establishment of certain restrictions, orders and bans in connection to the epidemic³⁶. In accordance with this regulation, from April 1, 2020 to April 11, 2020 it was forbidden to organize assemblies within the meaning of Art. 3 of the Act of 24 July – the Law on Assemblies, as well as other assemblies organized as part of the activities of churches and other religious associations (§14.1). Under the same regulation, in the period from April 12, 2020 until further notice the ban on organizing assemblies will not apply if the number of participants does not exceed 50 persons, including the organizer and persons acting in his name (§15). Another restriction connected with the performance of religious ceremonies, including religious activities and rituals, was the maximum number of persons per square meter of a building intended for religious worship³⁷, such as a church or chapel. This limit was initially 1 person per 15 square meters until May 15, 2020, and from May 17, it was 1 person per 10 square meters. If the building did not exceed 75 square meters, and from May 17 – 50 square meters, the maximum number of participants simultaneously taking part in

³⁵ *The Regulation of the Ministry of Health of 24 March 2020 amending the regulation on the declaration of an epidemic in the territory of the Republic of Poland* (Rozporządzenie Ministra Zdrowia z dnia 24 marca 2020 r. zmieniające rozporządzenie w sprawie ogłoszenia na obszarze Rzeczypospolitej Polskiej stanu epidemii), Journal of Laws 2020, item 522.

³⁶ Journal of Laws 2020, item 566.

³⁷ *The Regulation of the Council of Ministers of 16 May 2020 on the establishment of certain restrictions, orders and bans in connection with an epidemic* (Rozporządzenie Rady Ministrów z dnia 16 maja 2020 r. w sprawie ustanowienia określonych ograniczeń, nakazów i zakazów w związku z wystąpieniem stanu epidemii), Journal of Laws 2020, item 878, see §8.

religious worship was 5, not including persons conducting the worship³⁸. Further restrictions were introduced as a result of the increasing number of infections during the so-called “second wave of SARS-CoV-19” in the fall of 2020. The country was then divided into three zones: red, yellow and green. Depending on the number of infections there were various restrictions³⁹ applied, which were changed in the following months. In all Polish dioceses there was a limited possibility of taking part in holy masses – only the people booking the mass intention were allowed to participate, and in the case of a funeral only the immediate family. Appropriate regulations in this matter were issued by diocesan bishops. However, for the first time in Polish history, all cemeteries in the country were closed from October 31 to November 2, 2020, except for burial of the deceased. It was possible to enter the cemetery only for the time of the funeral and conducting related activities⁴⁰. The improving pandemic situation in the country in the spring of 2021 made it possible to increase limits and from June 13, 2021 half of the places designated for the faithful could be occupied in churches and places of worship. Therefore, on

³⁸ There could be no more than 50 participants during a single funeral in the cemetery, except for people conducting the ceremony and the burial, and employees of a funeral institution or a funeral home.

³⁹ The *Regulation of the Council of Ministers of 16 May 2020 on the establishment of certain restrictions, orders and bans in connection with an epidemic*, Journal of Laws 2020, item 1758, Art. 28, point 8, 1) a) and 2. Restrictions on the presence of people in the places of religious worship were introduced several times. See: the *Regulation of the Council of Ministers of 19 March 2021* (Rozporządzenie Rady Ministrów z dnia 19 marca 2021 r.), Journal of Laws 2021, item 512, see §26 point 8; the *Regulation of the Council of Ministers of 6 May 2021* (Rozporządzenie Rady Ministrów z dnia 6 maja 2021 r.), Journal of Laws 2021, item 861, §26, point 10, 11.

⁴⁰ The *Regulation of the Council of Ministers of 16 May 2020 on the establishment of certain restrictions, orders and bans in connection with an epidemic*, Journal of Laws 2020, item 1917. Also see <https://www.gov.pl/web/koronawirus/epidemia-koronawirusa-przybiera-na-sile-dlatego-zamykamy-cmentarze-na-wszystkich-swietych>, accessed August 20, 2021. It should be emphasized that November 1 has been celebrated by the Catholic Church as *Sollemnitatis Omnium Sanctorum* since the 9th century. It is a public holiday included in and guaranteed by the Concordate; see: The *Concordat between the Holy See and the Republic of Poland*, signed in Warsaw on July 28, 1993 (Konkordat między Stolicą Apostolską i Rzeczpospolitą Polską, podpisany w Warszawie dnia 28 lipca 1993 r.), Journal of Laws 1998, No. 51, item 318, Art. 9.

June 20, 2021 Polish bishops lifted dispensation from participation in Sunday and holiday masses⁴¹.

On July 7, 2021 the government issued some rules and restrictions on participation in religious ceremonies, including the limit on the number of participants in religious worship to a maximum of 75%. This limit does not apply to people fully vaccinated against COVID-19. It was also recommended to hold religious ceremonies outdoors⁴². The pandemic not only limited the number of people participating in burial but it also led to such a situation that the family of the deceased had to postpone the funeral because there was no one to perform burial, for example because the entire family was sick with COVID-19, or the immediate family members were in quarantine. The same case is with the organization of state funerals. When the world-famous Polish composer Krzysztof Penderecki died on March 29, 2020, due to the pandemic situation, the funeral ceremony was postponed until the pandemic would subside⁴³.

⁴¹ Due to the improving pandemic situation in the country, the bishops gathered at the 389th Plenary Meeting of the Polish Bishops' Conference in Kalwaria Zebrzydowska decided to lift the dispensation which was introduced for the period of the pandemic. See: *Komunikat z 389 Zebrania Plenarnego KEP*, accessed August 25, 2021, <https://archidiecezjalubelska.pl/blog/komunikat-z-389-zebrania-plenarnego-konferencji-episkopatu-polski/>.

⁴² See "Informacja," accessed August 25, 2021, <https://www.gov.pl/web/koronawirus/aktualne-zasady-i-ograniczenia>. The introduced restrictions were in force until August 31, 2021, and were then prolonged until September 30, 2021, <https://www.gov.pl/web/koronawirus/aktualne-zasady-i-ograniczenia>, accessed August 31, 2021.

⁴³ On April 2, 2020 a family celebration took place and the urn with the ashes was placed in the crypt of the Collegiate Church of St. Florian in Kraków, where it is to remain until the official funeral. The ashes of the composer are to be buried on March 29, 2022 and placed in a sarcophagus in the National Pantheon, in the crypts of the Church of Saints Peter and Paul in Kraków, see: Mska, "Państwowy pogrzeb Krzysztofa Pendereckiego za rok. W drugą rocznicę śmierci kompozytora pandemia osłabnie," published March 27, 2021, accessed August 20, 2021, <https://krakow.wyborcza.pl/krakow/7,44425,26924960,panstwowy-pogrzeb-krzysztofa-pendereckiego-za-rok-w-druga.html>.

5. CONCLUSION

Although the European Union introduced rules on epidemiological surveillance, monitoring of serious cross-border threats to health and early warning and established the Early Warning and Response System (EWRS) in 2013 no adequately coordinated actions were undertaken early enough, and Italy became an example of a country that struggled alone against the virus attack at the beginning of 2020.

On March 14, 2020 a state of epidemic crisis was declared, which from March 20, 2020 until further notice was transformed into the state of epidemic throughout the country. The procedures as regards dealing with people who died due to the SARS-CoV-2 virus infection were specified in the Regulation of the Minister of Health of 3 April 2020. Although COVID-19 is a contagious disease there is no obligation to bury the deceased within 24 hours from death. There are also no specific regulations on training employees of funeral homes connected with burial of COVID-19 deceased outside the hospital. Lack of the institution of a coroner causes problems with declaring death of a person who died outside the hospital, not only from COVID-19. Polish regulations on cemeteries and burying the dead are outdated and do not meet modern requirements⁴⁴. Also such issues as the decomposition of the bodies of people buried in tightly closed bags put into a coffin or their possible future exhumation still remain unclear.

On April 3, 2020 the Ombudsman expressed his opinion on some of the restrictions introduced with the government regulation, including restrictions on the number of people participating in religious worship, and recognized them as unconstitutional. In his view these regulations violate freedom of religion that is guaranteed in Art. 53 sec. 1 of the Constitution

⁴⁴ Cf. in Slovakia the binding act on cemeteries is from April 2, 2010, which came into force on January, 2011; *Zákon o pohrebníctve, Zákon č. 131/2010 Z. z.*, (v znení č. 398/2019 Z. z.), accessed August 18, 2021, <https://www.zakonypreludi.sk/zz/2010-131>. In Germany the binding act is *Gesetz über das Friedhofs- und Bestattungswesen* (Bestattungsgesetz - BestG NRW) of 17 June 2003 with further amendments, accessed August 18, 2021, https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=5320141007092133713.

of the Republic of Poland⁴⁵. Under Art. 233 of the Constitution, freedom of religion is one of the freedoms that may not be restricted in states of emergency⁴⁶. A body of executive power, including the Council of Ministers, may not define the limits of freedom to manifest religion. Moreover, any restriction of the freedom to manifest religion may not be in the form of a prohibition.

Statistical data indicate the excessive mortality of citizens in Poland in 2020 and the first half of 2021. Thousands of people died due to difficulties with the access to doctors and medical services or a proper diagnosis, connected with the introduction of online doctor consultations and limited admissions to hospitals of people suffering from diseases other than COVID-19. The sick in hospitals died without contact with their immediate family and without access to a priest. No requests of the sick or their families as regards the spiritual needs of the dying were fulfilled. Restrictions on the number of participants in burial were also recommended by diocesan bishops and the funeral was often attended only by a small group of the closest family at the cemetery and the funeral mass. Moreover, the pandemic forced a change in the ways of burying the dead and also influenced the existing traditions and customs connected with burial and the cult of memory of the dead.

Translation by dr Anna Bysiecka-Maciaszek

⁴⁵ Rzecznik Praw Obywatelskich, "Koronawirus. Rozporządzenie rządu z 31 marca o ograniczeniach poruszania się – krytyczna ocena RPO," published April 3, 2020, accessed August 20, 2021, <https://bip.brpo.gov.pl/pl/content/koronawirus-rozporzadzenie-rzadu-z-31-marca-krytyczna-ocena-rpo%C2%A0>; Katarzyna Myszone-Kostrzewa, "Wolność uprawiania kultu religijnego w Polsce w czasie zarazy – analiza przypadku," *Studia Iuridica* 86 (2020): 191–194, accessed August 25, 2021, file:///tmp/pdf-01.3001.0014.9748.pdf.

⁴⁶ Art. 233.1 of *The Constitution of the Republic of Poland*: "The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in [...] Article 53 (conscience and religion) [...]," transl. from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>, accessed August 12, 2021. See Jarosław Krzewiecki, "Relacje Kościół-Państwo w Polsce wobec Covid-19," *Kościół i Prawo* 9(22), no. 1 (2020): 83–100.

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