



ASOCIACIÓN NACIONAL
DE
MÉDICOS FORENSES

Spanish Journal of Legal Medicine

Revista Española de Medicina Legal

www.elsevier.es/mlegal



EDITORIAL ARTICLE

Forensic medicine and human rights ☆

Los derechos humanos y la medicina forense

Josep Arimany-Manso^a, Amadeo Pujol-Robinat^b, Eneko Barbería^{b,*}

^a *Comisión Nacional de la especialidad de Medicina Legal y Forense, Ministerio de Sanidad, Spain*

^b *Instituto de Medicina Legal y Ciencias Forenses de Cataluña, Barcelona, Spain*



The current situation of the war in Ukraine and the alleged war crimes committed on Ukrainian territory has led us to write this editorial on human rights and forensic medicine. Moreover, a court in Ankara (Turkey) has recently ordered the remand in custody of Dr. Sebnem Korur Fincanci, forensic doctor and president of the Turkish Medical Association, for having denounced the use of chemical weapons by the Turkish armed forces in their fight against Kurdish guerrillas in northern Iraq. Dr. Fincanci has been noted for her international research on torture and human rights. Amnesty International has demanded Fincanci's "immediate and unconditional" release and an end to legal proceedings against her.¹

The editorial board of the Spanish Journal of Forensic Medicine, sensitive to the current international situation, wishes to emphasise the role of forensic medicine as a guarantor of human rights.²

The UNHCR (UN Refugee Agency) defines "war crimes" as the murder or ill-treatment of prisoners of war, forced labour, genocide or rape, among others. The protection of human rights is achieved through universal law, which obliges states to prevent, prohibit, criminalise and investigate allegations of torture, to bring all those responsible to justice and to provide reparation to the victims.³

Respect for judicial and procedural safeguards is an important step towards preventing abuse against persons deprived of their liberty and improving detention conditions.

In Spain, one of the functions of forensic medicine is the medical care of detainees at the disposal of the courts,⁴ which has its own protocol that is currently being reformed by the Ministry of Justice through a draft Royal Decree,⁵ as well as a "Working guide for the forensic medical care of persons deprived of their liberty" drawn up by the Forensic Medical Council.⁶

In all its fields, forensic and legal medicine is involved as a guarantor of human rights, whether in the field of clinical forensics, detecting ill-treatment, torture, crimes against sexual freedom, forensic age assessment of unaccompanied minors, assessment of bodily harm and medical care of detainees; or in the field of forensic pathology, with the forensic medical investigation of violent or suspicious deaths and the identification of victims.

Humanitarian forensic action can therefore be defined as the application of forensic science to humanitarian activities.⁷ Humanitarian action is defined by the International Committee of the Red Cross as activities aimed at alleviating human suffering and protecting the dignity of all victims of armed conflicts and disasters, carried out in a neutral, impartial and independent manner, free of charge and within the framework of international humanitarian law.⁷

The Rome Statute and the Geneva Convention,^{8,9} define genocide and war crimes in detail. In these circumstances, forensic medical assessment by forensic pathologists and the

☆ Please cite this article as: Arimany-Manso J, Pujol-Robinat A, Barbería E. Los derechos humanos y la medicina forense. Revista Española de Medicina Legal. 2022. <https://doi.org/10.1016/j.remle.2022.11.001>

* Corresponding author.

E-mail address: enekobarberia@gmail.com (E. Barbería).

collaboration of the judicial and scientific police, together with the judicial authorities, can provide scientific evidence of facts compatible with war crimes. The preparation of these reports is essential to enable the prosecution and trial of the perpetrators of these crimes, as well as the exhumation of mass graves in order to carry out autopsies, which allow the identification of the victims and reports on the circumstances and cause of death, as incriminating evidence for those responsible for genocide.¹⁰

Recently, the International Criminal Court (The Hague, Netherlands), together with the Ukrainian judicial authorities and the collaboration of a French team, made up of two forensic doctors and some fifteen agents from the Criminal Investigation Institute of the French National Gendarmerie (IRCGN), launched an investigation into war crimes on Ukrainian territory.^{10,11}

Today, genocide, crimes against humanity and war crimes are of great concern to the international community and most countries wish to cooperate in the clarification of the facts. Interpol, as the International Criminal Police Organisation, is an intergovernmental organisation. It helps the police of these countries to work together to make the world a safer place. Continuous training of these working groups is key to responding to the world's evolving situations. Interpol regularly conducts training on genocide, war crimes and crimes against humanity, to establish protocols and standard practices in all areas, including the collection and prosecution of evidence related to mass atrocities, and also to expand capabilities for the investigation and prosecution of sexual and gender-based violence.¹²

The Government of Spain, through the Ministries of Justice and the Interior, placed a group of Spanish experts (forensic and criminal investigation doctors, as well as a group of police and civil guards from the scientific area) at the disposal of the Office of the Prosecutor of the International Criminal Court, the European Union and the Government of Ukraine, to assess the possible war crimes committed on Ukrainian territory.¹³

It is interesting to recall that the United Nations published in 1989 and then in 2016 the Minnesota Protocol on the Investigation of Potentially Wrongful Deaths, which establishes a common standard for the investigation of such deaths and principles and guidelines for states, institutions and persons participating in the investigation.¹⁴

The United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment has, among their functions, to carry out fact-finding missions to places of detention all over the world. The functions of the Special Rapporteur "are a clear example of international cooperation" and always involve the participation of a medical expert, who has "an essential role": to evaluate possible injuries and signs of abuse, to document signs of possible physical or psychological origin, to interpret possible evidence and to deduce possible causes. The involvement of forensic medical experts in such investigations is nowadays considered essential.¹⁵

Another key document in this whole process is the Manual on Effective Investigation and Documentation of Torture, Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol. It is a United Nations initiative, presented on 9 August 1999 and updated in 2022, with the aim of combating torture. This document is

now universally recognised as the most relevant guide in the investigation of these situations of human rights violations.¹⁶

In conclusion, the intervention of forensic doctors and specialists in forensic medicine and experts in other forensic disciplines is essential in humanitarian forensic action, i.e. in the investigation of war crimes, genocide or ill-treatment, both in the recovery of bodies, the practice of autopsies and the identification of victims, and in the assessment of cases of torture and physical, psychological or sexual abuse of persons, thereby fulfilling an important social and ethical function for society.

References

1. Amnistía Internacional[Page on Internet]. [Consulted 28-10-2022]. Available at: <https://www.es.amnesty.org/en-que-estamos/campanas/conflicto-rusia-ucrania/>.
2. Vieira DN. El médico forense como garante de los derechos humanos. *RevEspMed Legal*. 2011;37:49–50.
3. Naciones Unidas. Derechos humanos. Alto Comisionado para los Derechos Humanos[Page on Internet] [Consulted 28-10-2022]. Available at: <https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.
4. Ley Orgánica. 6/1985, de 1 de julio del Poder Judicial. Boletín Oficial del Estado, 2 de julio de 1985 (latest update published 28/07/2022), Núm. 157.; 2022;1–231.
5. Consulta pública sobre el proyecto de real decreto por el que se aprueba el protocolo de reconocimiento médico forense a la persona detenida [Consulted 28-10-2022]. Available at: https://www.mjusticia.gob.es/es/AreaTematica/ActividadLegislativa/Documents/Consulta%20p%C3%BAblica_Protocolo%20reconocimiento%20m%C3%A9dico%20forense%20persona%20detenida.pdf.
6. Guía de trabajo para la asistencia médico-forense a personas en régimen de privación de libertad [Consulted 28-10-2022]. Available at: https://www.mjusticia.gob.es/es/ElMinisterio/OrganismosMinisterio/Documents/1292430900358-Guia_de_trabajo_para_la_asistencia_medicoforense_a_personas_en_regimen_de_privacion_de_libertad_CM.PDF.
7. Cordner S, Tidball-Binz M. Humanitarian forensic action. Its origins and future. *Forensic Sci Int*. 2017;279:65–71.
8. Los convenios de Ginebra y sus protocolos adicionales [Page on Internet] [Consulted 28-10-2022]. Available at: <https://www.icrc.org/es/document/los-convenios-de-Ginebra-de-1949-y-sus-protocolos-adicionales>.
9. Estatuto de Roma de la Corte Penal Internacional. [Page on Internet]-[Consulted 28-10-2022]. Available at: [https://www.un.org/spanish/law/icc/statute/spanish/rome_statute\(s\).pdf](https://www.un.org/spanish/law/icc/statute/spanish/rome_statute(s).pdf).
10. Cioffi A, Cecanecchia C. Role of forensic medicine in addressing the war crimes: Perspective from Russia-Ukraine conflict during the COVID-19 pandemic. *MedSciLaw*. 2022 <https://doi.org/10.1177/00258024221125135> 258024221125135.
11. Corte Penal Internacional. Page on Internet]. [Consulted 3-11-2022]. Available at: <https://www.hrw.org/es/topic/international-justice/corte-penal-internacional>.
12. Interpol. Crímenes de Guerra [Consulted 2-11-2022]. Available at: <https://www.interpol.int/es/Delitos/Crimenes-de-guerra>.
13. La Moncloa. Gobierno de España [Consulted 28-10-2022]. Available at: <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/justicia/Paginas/2022/220422-llop-intcf-ucrania.aspx>.
14. Protocolo de Minnesota sobre la investigación de muertes potencialmente ilícitas. [Consulted 31-10-2022]. Available at:

- https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol_SP.pdf2016.
15. Naciones Unidas. Derechos Humanos. Oficina del Alto Comisionado. Relator Especial sobre los defensores de los derechos humanos [Consulted 31-1-2022]. Available at:: <https://www.ohchr.org/es/special-procedures/sr-human-rights-defenders>.
16. Naciones Unidas. Protocolo de Estambul. Manual para la investigación y documentación eficaces de la tortura y otros tratos o penas crueles, inhumanos o degradantes. Nueva York y Ginebra: Publicación de las Naciones Unidas; 2004 [Consulted 28-10-2022]. Available at:: <https://www.ohchr.org/sites/default/files/documents/publications/training8rev1sp.pdf>.