

Recommendations on the treatment of human remains in collections, museums and public places

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Working Group on Human Remains in Collections

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Prefatory note

Current legislation regulating the treatment of human remains held in collections, museums and public places is highly fragmentary, and is insufficient for the resolution of the legal and ethical problems associated with them. The recommendations presented here are intended as guidelines regarding the treatment of such remains.

A. Introduction

1. Scope

(1) These recommendations cover the treatment of human remains for the purposes of presentation and display to those with a professional interest and to the general public. They apply, in particular, to anatomical, anatomical-pathological and forensic medical collections and, likewise, to anthropological collections. They do not apply to post-mortem examinations, insofar as they are governed by relevant federal state legislation.

(2) Neither do these recommendations apply to the treatment of human remains held in places of memorial to the dead.

2. Definitions

(1) Human remains are to be understood as objects whose fundamental structure consists, wholly or in part, of organic human material which, by means of specialist procedures, has been permanently preserved. This includes bodies or parts of bodies, and organs or parts of organs of a deceased person, dead fetuses or parts thereof, or body parts, organs, parts of organs or tissue that have been severed or removed from a living person, which have no direct clinical use, but which are, rather, prepared and permanently preserved.

(2) The treatment of specimens of human remains includes, in particular, their creation, preservation, collection, preparation, presentation and display.

B. General Obligations

1. Principles

(1) The creation, preservation, collection and preparation of specimens of human remains for the purposes of presentation and display to those with a professional interest and to the general public is permissible under law. This applies in particular for the purposes of the communication of biological-medical, cultural, historical or otherwise significant facts.

(2) The dignity of the person shall be respected at all stages of the creation, storage and presentation of the specimens. The specimens shall be treated with respect.

2. Consent

Under the constitution, the treatment of human remains (as defined in A, 2.1) is generally only permissible with the express written consent of the deceased. Permission may be revoked at any time and for any reason during the person's lifetime. For permission to be legally binding, the person entitled to give permission must possess the mental capacity to understand and to give consent, must have been informed of the intended use of the specimen and have given written consent. Exceptions to this arise most frequently in the case of post-mortem examinations ordered by the competent authorities (see Point E, IV 4).

C. Legal considerations in the treatment of human remains

(1) Difficulties surrounding the treatment of human remains used for presentation and display to a professional or lay audience arise predominantly in the following circumstances:

- The use of human remains specimens created before it was general practice or a legal requirement for the donor to give their express consent
 - The use of human remains whose origin is unknown
 - The collection, preparation and presentation of specimens of human remains created legally under the terms of earlier rules and/or a different legal system, but which would be considered to be unlawful by current standards
 - Human remains from jurisdictions and cultures in which consent as outlined in Point B, 2 is not deemed necessary.
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(2) The criteria and points that follow shall be taken into consideration when deciding whether human remains are to be held in collections, museums and public places, and if so, how they are to be treated.

D. Ethical considerations

(1) General Procedures

- a) Insofar as it is possible to do so, the origin of the human remains shall be identified.
- b) If there is just cause to believe that particular human remains have been acquired unlawfully (cf. point D, 2 below), then these remains shall be removed from display during the period of the identification process. Any such human remains shall be entered into the same inventory and their details recorded in the same manner as all other human remains, and for the duration of the identification process they shall be stored in appropriate conditions.
- c) In order to identify the origin of the human remains and to date them, a separate investigation shall take place (cf. the recommendations on the investigation of the circumstances of acquisition of the human remains in Appendix 1). The results of this investigation shall be scrutinised by an independent expert, whose recommendation shall form part of the final decision-making process in respect of how to proceed. In the event that doubt remains, or that it has not been possible to resolve the issues, it is recommended that a panel of experts be consulted. The members of the Working Party that has drawn up these recommendations are willing to act in such a capacity.
- d) In the case of particularly complex investigations, additional financial resources shall be necessary. These should be made available by the governing body of the institution concerned.

(2) Special procedures in the event of the violation of human dignity

The circumstances of death determine the way in which the deceased is viewed by the living. If the deceased lost their life because of their ethnicity, their beliefs or for political reasons as a result of state-organised and directed violence, or if the facts point towards this being a possibility, then this is a serious violation of the deceased's human dignity. Should any human remains be identified as originating in unlawful circumstances such as these, they shall be removed from the collection concerned and interred in a dignified manner, or otherwise treated in a similarly dignified way. The decision of 25-26 January 1989 of the Standing Conference of the Ministers of Education and Cultural Affairs of the German federal states (NS [Minutes]112, AK [meeting of the deputy

ministers]25/26.1.1989, NS [minutes] No. 1, 4, see Appendix 3), shall apply with the necessary modifications (cf. Point E, II).

(3) Determining factors

Furthermore, the following general criteria shall be amongst those taken into consideration when determining the appropriate treatment of specimens of human origin in collections, museums and public places.

a) The reason motivating the creation of a specimen of human remains for presentation and display, and the purpose it is intended to serve, shall be examined.

- Is its primary function to illustrate an anatomical, anatomical-pathological, forensic-medical, cultural-historical, ideological or other important point? Or does it stand primarily as an independent art object?
- Are the remains displayed by themselves, with or without accompanying explanatory notes, as part of a collection or in an exhibition organised around a particular theme?
- Are the remains on display and/or the collection as a whole of particular public, professional or private interest?
- What is the relative importance of these interests, and what is their importance compared with other public, professional or private interests? Does satisfying these interests infringe the legitimate interests of third parties?

b. Further, the process of deciding on the ethics of a particular specimen of human remains shall include consideration of the manner in which it was created and how it is exhibited. The preservation techniques used and the condition of the remains are important factors in this.

- Are the remains tissue, organs, parts of organs, or whole bodies or body parts?
 - Is the specimen anonymous when presented and displayed? Are there good grounds for the specimen not to comply with the principle of anonymity? Does the specimen retain elements, such as facial features or obvious distinguishing marks, which are intended to reveal the identity of the deceased?
 - How old are the remains? Has all memory of the deceased been lost? Are these the remains of an anonymous person who died in the dim past, or the remains of someone to whom people still have direct or indirect personal connections?
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If, on application of these or similar criteria and considerations, the human remains are adjudged to be of particular significance, either to professionals or to the general public, they shall be permitted to be used for the purposes of presentation and display. The manner in which they are presented and displayed shall be considered separately (see Point 4 below). If the human remains are deemed, on evaluation, not to be of sufficient significance to warrant their being presented and displayed, they shall be stored in the proper manner and with due dignity or, if appropriate, interred.

(4) The manner of presentation

Much of the power human remains possess to attract the attention of spectators lies in the fact that they are genuine 'remains' of a human body. This does not of itself prohibit their being used in public presentations and displays. However, it does mean that there are limits determining how they may be used in both professional and public arenas. Also, that measures need to be in place to ensure these objects are handled in a dignified manner in collections and exhibitions. Issues to be taken into consideration include the following:

- a. The primary aim of the aesthetic preparation, arrangement and display is to present the information the remains reveal accurately, whilst preserving the dignity of the deceased.
- b. Although the concept of the human dignity of the deceased can only be understood by analogy, any presentation and display shall not wilfully demean the human corpse. Human remains altered for artistic purposes shall be neither created nor stored nor put on show to the public.
- c. It is particularly important when presenting and displaying human remains to be clear about the nature of the target audience. If the remains are being presented to the general public, it is imperative to take into consideration the visitor's need for identification and distancing.

(5) Symbolic remembrance

There is an ethical dimension to any presentation of human remains, whether to a professional audience or to the general public. Despite careful investigation of the origin of the remains and a manner of presentation and display that is respectful, questions may still remain. For this reason, a

symbolic act of remembrance is desirable. This might be realised in the following ways:

- a public act of thanksgiving of an appropriate nature for all the persons, known and unknown, whose remains are to be found in the collection;
- the creation of a suitable place to remember the dead;
- communicating, perhaps during guided tours or by means of special events, the processes involved in preserving the remains.

E. Recommendations for existing collections

From the ethical and legal considerations discussed above, it follows that different recommendations apply according to the nature of the individual holdings in any one collection.

1. The treatment of human remains of such an age that all memory of the deceased person has been lost

By virtue of the fact that after a certain time, the dignity of the deceased fades (see the federal state laws regarding interment; the Mephisto rulings of the Constitutional Court [Bundesverfassungsgericht] NJW [Neue Juristische Wochenschrift] 1971, 1645 ff., Federal Supreme Court [Bundesgerichtshof] NJW 1968, 1773), to the point where today, no memory of the life of that person remains, it is often the case that relatively recent human remains (except for those from the Nazi era) have not been subject to a critical assessment process that would meet current standards. Until recently, for instance, consent was rarely sought for post-mortem examinations, clinical dissections or the creation and exhibiting of specimens of human remains. In the case of human remains from a more distant past there is usually no longer any connection with living descendants. On the grounds of their age, the techniques used to create them, and the specific evidence they contain, but also because of the way they have been prepared and arranged, they constitute, for the most part, irreplaceable, unique artefacts of significant value in the history of medicine, science and culture. It would, therefore, appear to be imperative to retain human remains and collections of human remains originating from this era, ensure they are preserved in an appropriate manner and, taking into consideration the categories set forth in Point D (4), grant (professionals and) the public reasonable access to them. In doing so, the following overarching principles shall apply - in addition to the considerations, procedures and criteria laid out in Point D:

- the anonymity of human remains used in presentations and displays shall be maintained or, where necessary, restored unless, in individual cases, there are strong grounds not to do so;
- the human remains shall be displayed in an optimal state of conservation.

II. The treatment of human remains from the Nazi era

The treatment of human remains from the Nazi era is governed by both criminal law (e.g. § 189 of the Criminal Code [Strafgesetzbuch] 1 i.V. § 194 Section 1, p. 2, Section 2, P. 2, of the Criminal Code 2), and by the decision of 25-26 January 1989 of the Standing Conference of the Ministers of Education and Cultural Affairs of the German federal states (NS [minutes] 112, AK [meeting of the deputy ministers] 25/26.1.1989, NS No. 1, 4 3), to which readers are referred. In accordance with the decision of the Standing Conference of the Ministers of Education and Cultural Affairs, in the early 1990s all German federal states carried out their own investigations into medical establishments in which remains of human origin were used for research or teaching purposes. In accordance with the communiqué of 22.12.1994 from the Secretariat of the Standing Conference of the Ministers of Education and Cultural Affairs of the German federal states (Memorandum no. III A 10/95), any human remains found to be from the Nazi era, or of unidentified origin, were removed from the collection concerned. However, this present document, 'Recommendations on the treatment of human remains in collections, museums and public places', favours a more nuanced approach to individual specimens: rather than a blanket removal from collections of all human remains originating between 1933 and 1945, a detailed investigation into the provenance of each specimen is proposed.

III. The treatment of remains of unknown origin, which cannot be dated

Remains whose origins it is not possible to establish on initial assessment, and which appear to date from the twentieth century, shall be removed and subjected to a more rigorous investigation. If this investigation fails to reveal any clear indication of their origins, the remains shall be interred, unless there exist overriding objections, in which case these shall be set out, documented and justified for each individual case. This applies equally to remains originating from other jurisdictions and cultures in which consent as defined in point B, 2 has not been deemed necessary. Where such remains are on public display, comprehensive information shall be provided at the site of the display regarding the results of investigations into their origins, and the institution

concerned shall provide ways for visitors to engage in acts of commemoration (cf. 'Symbolic Remembrance', point D, 5).

IV. The need for legislation

- (1) In view of the fact that legislation regulating the treatment of human remains in collections, museums and public places is highly fragmentary, it is recommended that legislation be enacted, based on the guidelines in this document, in order to create a legal framework for the dignified treatment of human remains.
 - (2) Until such time as such legislation is adopted, the relevant institutions shall be required to obtain and record the necessary consent prior to the creation of a specimen deriving from human material, thereby meeting an essential prerequisite of the preservation of the deceased person's dignity.
 - (3) Until recently the legal community has tolerated, at least, the practice of creating, storing and displaying specimens of human remains without the consent of the deceased. In order to find an appropriate solution to the ethical difficulties raised by each individual case, it is recommended that the wishes of the deceased's close relatives in respect of the removal and dignified interment of identifiable remains be immediately taken into consideration, on condition that no other relevant considerations (e.g. criminal investigations) take precedence over these legitimate wishes. For the purposes of these recommendations, close relatives are defined as the spouse, adult children, parents or, if the deceased was a minor at the time of death and was in the care of only one parent or guardian or carer, the person charged with the child's care, adult siblings and grandparents. An adult who has clearly been in a close personal relationship with the deceased until the time of his or her death is considered to enjoy the same rights as a close relative.
 - (4) The treatment of body parts removed as part of a post-mortem examination carried out in accordance with §87 of the Code of Criminal Procedure has hitherto been governed by individual federal state laws and by supplementary customary law. After the period of retention for the purposes of providing evidence has expired, the human remains are permitted to be retained in collections if there are compelling grounds to suppose that it is in the public interest to do so. Objections from close relatives (see IV, Section 3) to such retention must be taken into
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consideration. Otherwise, the recommendations on the treatment of remains of human origin apply accordingly.

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