

Erasmus
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Advance directives requesting euthanasia in the Netherlands

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Introduction



“I would like to benefit from the legal possibility to be assisted in dying, when I consider the time to be right. I do not want to be placed in a nursing home for patients with dementia. I would like to say goodbye to my loved ones in dignity. My own mother was nursed for 12 years in a nursing home before she died, so I have witnessed the process. I know what I am talking about. I definitely do not want to go through this. I have been traumatized by the experience and our family has suffered because of it. I trust that when the quality of my life has become very poor, euthanasia will be provided upon my request.” (case 2016-85)

Euthanasia: a criminal act



- Section 293 Dutch Criminal Code: *“ Anyone who terminates another person’s life at that person’s express and earnest request is liable to a term of imprisonment not exceeding twelve years or a fifth-category fine”*
- Euthanasia: the **active termination** of life at a patient’s voluntary and well-considered request



Termination of life on request and assisted suicide (review procedures) act (2002)

- Euthanasia is justified if it is committed by a *physician* who fulfils the *due care criteria* set out in section 2 of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act, and if the physician *notifies* the municipal pathologist of this act
- Genuinely new provisions:
 - advance directive requesting euthanasia
 - the position of minors



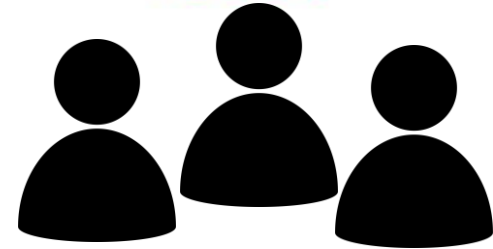
Termination of life on request and assisted suicide (review procedures) act (2002)

■ Due care criteria:

- a. Voluntary and carefully considered request*
- b. Unbearable suffering with no prospect of improvement*
- c. Patient is informed of his situation and further prognosis*
- d. No reasonable alternative available*
- e. Consultation of at least one other, independent physician*
- f. Termination of the patient's life with due medical care and attention*

- A Review Committee (physician, ethicist, lawyer) assesses in every specific case whether physician-assisted dying has been carried out in accordance with the criteria

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Termination of life on request and assisted suicide (review procedures) act (2002)

- Article 2, subsection 2 of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act:

*“if a patient aged sixteen or over, who is no longer capable of expressing his will, but before reaching this state was deemed capable of making a reasonable appraisal of his own interests, has made a written declaration requesting that his life be terminated, the attending **physician may comply with this request**. The due care criteria referred to in subsection 1 apply **mutatis mutandis**”*

Termination of life on request and assisted suicide (review procedures) act (2002)

Article 2, subsection 2: *The due care criteria referred to in subsection 1 apply mutatis mutandis*

- Royal Dutch Medical Association: physician should have had (oral) **communication** with the patient that forms- at least- a confirmation that he indeed does suffer unbearable in the present situation
- However, according to the law, **no such confirmation is necessary**. The physician can base his opinion of unbearable suffering upon the similarity of the patients current situation and the situation described in the advance directive.
- Physicians are very **reluctant** to actually carry out euthanasia on patients lacking mental capacity on the basis of an advance directive

Termination of life on request and assisted suicide (review procedures) act (2002)

- a. Voluntary and carefully considered request*
 - b. Unbearable suffering with no prospect of improvement*
 - c. Patient is informed of his situation and further prognosis*
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 - e. Consultation of at least one other, independent physician*
 - f. Termination of the patient's life with due medical care and attention*
- How to apply the due care requirements in case of a written advance directive requesting euthanasia?

Advance directive requesting euthanasia – Case law

- Advance directives play a role when patients are in a reduced state of consciousness but are still able to experience (unbearable) suffering (**reversible coma**)
- Advance directives can play a role when patients lack capacity as a result of **dementia**
- For a patient lacking mental capacity an advance directive, written when he was competent, is a *conditio sine qua non*

Advance directive requesting euthanasia – Case law

- Better **not use general clauses**: *“The clearer and more specific the advance directive and the better the records kept, the firmer the basis they provide for everyone involved.”*
- There are **no time limits** for the validity of a directive but the directive must be **updated** and **discussed** with the physician regularly



Advance directive requesting euthanasia –case law

- **Minor indications** which may lead one to conclude that a patient is confirming his previously written advance directive are taken into account:

'In the weeks before her death (...) the patient was no longer able to put her wish into words as such, but she did make clear that she wanted to die. According to the doctor she had said she "didn't want to live this way any longer" and "couldn't take it any more". She also refused to take her medication because she "wanted to die anyway". In the weeks before her death she had thanked the physician profusely and said goodbye to her loved ones. On the evening the procedure was carried out the patient had been unusually calm (Regional Euthanasia Review Committees, 2012 Annual Report, case 4)

Advance directive requesting euthanasia – case law

Case law of the Regional Euthanasia Review Committees provides an image of the way criteria of due care are assessed

- **Contra-indications:** If a patient's 'behaviour' indicates that he no longer wishes to be assisted in dying, the physician is not allowed to proceed.

“the physician ‘crossed a line’ when not stopping the process when the patient ‘reacted negatively’” (case 2016-85)

Advance directive requesting euthanasia - conclusion

- Dutch law on euthanasia based on advance directives requesting euthanasia is **complex** and in need of assessment
- Case law of the Review Committees illustrates the way criteria of due care are assessed, however misconceptions are still present among the public as well as physicians
- For a patient lacking mental capacity an advance directive, written when he was competent, is an **important**, but not the only, or the decisive factor
- The directive helps to **guarantee a careful decision**, but isn't a guarantee for euthanasia

Case 2016-85



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Thank you for your attention!

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