

Disclaimer: The translation of this summary of the judgment of the Supreme Court is solely intended to provide information. The text of the translation is an unofficial translation. The Dutch text of the judgment is the only authentic and formal text (ECLI-numbers: ECLI:NL:HR:2020:712 and ECLI:NL:HR:2020:713)

6. Summary, conclusion

6.1 Further to the Procurator General's appeal in cassation in the interest of the law, the Supreme Court explained several premises based on which a physician is permitted to comply with a written euthanasia request from a patient suffering from advanced dementia. Briefly put, the key premises entail the following.

The law provides for the possibility that a person may record a request for termination of life in a written statement that anticipates a situation in which they are no longer capable of expressing their will. A physician may grant such a request if all the legal requirements in respect of euthanasia are met. In that event, the act of the physician is not a criminal offence.

An earlier written request for termination of life may also be granted if the patient becomes incapable of expressing their will due to advanced dementia. All the requirements imposed by law in respect of euthanasia must be satisfied in that event, as well. These requirements guarantee that the physician is acting with due care and they must therefore be imparted substance in a way that does justice to the special nature of situations involving advanced dementia.

Those statutory requirements entail, among other things, that the written request in such cases must specifically ask for termination of life in a situation in which the patient can no longer express their will as a result of advanced dementia. In addition, the request must not only be interpreted based on its wording, but also on other circumstances from which the patient's intentions can be inferred. There is thus room to interpret the written request.

Even when it is clear that the request is intended for the situation of advanced dementia and that that situation has now arisen, such that the patient is no longer capable of forming and expressing their will, there may be circumstances in which the request cannot be granted. These may include, for example, behaviour or verbal expressions on the part of the patient from which it must be inferred that the patient's actual condition does not correspond to the situation provided for in the request.

In addition, the law requires that a written request for termination of life is only granted if the patient is facing a future of unbearable suffering without prospect of improvement. The requirement of unbearable suffering in particular requires special attention in cases of advanced dementia. The legislative history indicates that unbearable suffering primarily involves a patient's physical suffering as a result of another physical condition. However, even in the absence of another condition, there may be signs that the patient is suffering from advanced dementia to such an extent that their suffering may be considered unbearable.

As is already common practice in cases involving the termination of life of a patient with advanced dementia, there is reason to consult not one but two independent physicians beforehand to determine whether the request can be granted.

When carrying out the termination of life, the physician will have to consider potentially irrational or unpredictable behaviour on the part of the patient. This could be a reason to administer medication to the patient in advance.

The statutory system implies that compliance with the requirements of due care in a case in which a physician has performed termination of life is first assessed by Regional Euthanasia Review Committees. If a case is submitted to the criminal court, that court may interpret the statutory rules, but it must exercise reticence when assessing the physician's medical actions.

The Supreme Court then assessed the District Court's decision on the basis of the premises it had formulated. The District Court ruled that in the present case, the physician had acted with due care and was thus not subject to criminal prosecution. The Supreme Court finds that the District Court did not err in its assessment. For that reason, the appeal in cassation fails.

- 6.2 In conclusion, the Supreme Court notes that at the time euthanasia legislation was enacted, it was foreseen that questions about the follow-up to an earlier written statement of will by a patient with advanced dementia will always lead to very difficult considerations, the outcome of which will never be self-evident. Nevertheless, the law has created this possibility and there are cases in which an earlier written request to be released from having to endure unbearable suffering in a situation of advanced dementia can be respected by implementing it in accordance with the high level of due care required by law.