

Belgian law vs Dutch law.

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Scope of the presentation

A lot of similarities, what are the differences?

The practices regulated

- The Act on euthanasia of May, 28th 2002 in Belgium; no formal amendments in the Criminal Code
- The Act on termination of life and assisted suicide of April, 10th 2001 in the Netherlands; amended article 293 of the Criminal Code

The practices regulated

The Belgian Act regulates intentionally terminating life by another person than the person concerned, at this person's request (= definition of euthanasia)

The Dutch Act regulates the termination of life on request (= euthanasia)

The practices regulated

- The Dutch Act regulates assisted suicide under the same conditions as termination of life on request
- The Belgian Act is silent regarding assisted suicide. This creates a lot of uncertainty and discussion

The persons regulated

- Both the Belgian and the Dutch Act explicitly limit the legal competence to perform euthanasia to “physicians” without further requirements
- Makes this requirement euthanasia a “normal medical act”? What are the legal consequences?

The persons regulated

- Article 3 § 2 of the Belgian Act provides that the physician may require additional conditions next to the (already very detailed spelled out) legal conditions
- The Dutch Act that in general is less detailed than the Belgian Act does not contain a comparable provision

The persons regulated

- The Dutch Act stipulates that the physician has to terminate a patient's life “with due medical care and attention”
- According to the Belgian legislator such a requirement was superfluous

The persons regulated

- The Belgian Act has been amended in 2004 to offer legal security to pharmacists: they do not commit a crime when they provide an *euthanaticum* prescribed by a physician who explicitly states that he (the physician) is acting in conformity with the law
- The Dutch Act does not contain a similar provision

The persons regulated

- The Belgian Act provides that euthanasia may be requested by competent adults (= 18 years or older and “emancipated” minors). Since 2014 also by non-emancipated, competent minors
- The Dutch Act provides that euthanasia may be requested by competent adults (= 18 years or older) and competent minors aged 12 years or older

The persons regulated

Differences regarding competent minors:

- The Belgian Act requires, next to the request of the minor, the written approval of both parents regardless of the age of the minor;
- The Dutch Act requires that when the minor is between 16 and 18, to involve his parents in the decisionmaking; between 12 and 15 it is required that the parents can reconcile themselves with the request of the minor

Types of request for euthanasia

Both the Belgian and the Dutch Act make a distinction between:

- A current (or actual) request
- An advance request/declaration

Validity of the advance request

- In Belgium only adults and “emancipated” minors can make a valid advance request, not the non-emancipated, competent minors
- In Belgium the validity is limited to 5 years and has to be renewed if still possible
- In Belgium euthanasia after an advance request is only possible when the patient is “irreversibly unconscious according to the current state of science”). This excludes patients in a late stage of dementia
- In the Netherlands no difference is made with regard to the health status regardless whether a current or advance request is at stake

Health status in case of a current request

Apart from minors (the Belgian Act requires physical suffering and a terminal illness whereas the Dutch Act does not provide different conditions for minors and adults) there are no important differences between both Acts in this respect

Health status in case of a current request

Basically both Acts provide two conditions:

- Physical and/or mental “unbearable” suffering and
- “Hopeless”/”untreatable” medical condition

No terminal illness is required although additional conditions in the Belgian Act in case of non-terminal illness

Reporting and review system

- In both countries there is an obligation to notify each case of euthanasia through a registration document to a review committee (one national in Belgium; several regional in the Netherlands)
- In both countries “suspicious” cases (where there is doubt that the legal requirements have been followed) are referred to the public prosecutor (it only happened once in Belgium, in 2015)

Reporting and review system

- In both countries the review committee functions as a kind of buffer between the physician and the judicial system in order to make the reporting rate as optimal as possible
- In both countries the public prosecutor remains empowered to launch an independent investigation

Reporting and review system

- The dutch reporting system is build on the physician's duty to report suspected deaths that existed already before the Act on euthanasia
- A similar system has never existed in Belgium. Moreover, in Belgium euthanasia is considered to be a natural cause of death
- The Dutch review system is considered to be more transparent than the Belgian one

Some concluding remarks

Thank you for your attention

