

Public Prosecution Service: doctor in euthanasia case found guilty, but no sanction imposed

26 augustus 2019 - Arrondissementsparket Den Haag

How does the duty to protect vulnerable life relate to the right to self-determination of incapacitated persons? That is the key question in the euthanasia case that will be heard today and Wednesday, 28 August. This case concerns euthanasia performed on a person suffering from dementia who was incapacitated at the time of implementation, but who was approachable. With this first euthanasia case since the introduction of the "Termination of Life on Demand Review Act", the OM wants to contribute to more clarity about euthanasia for incapacitated persons. Especially if they are still able to communicate.

On 22 April 2016, a now 68-year-old and retired nursing home doctor performed euthanasia on a woman with dementia who had been admitted to a nursing home in The Hague. The 74-year-old woman had written an advance directive stating that she wanted euthanasia if she was to be admitted to a nursing home due to dementia and if she personally would think the time was right for it. But once she had been admitted, the patient gave mixed signals about her death wish. Nevertheless, in close consultation with the family, the nursing home doctor performed the euthanasia.

The Public Prosecution Service assumes that the nursing home doctor has acted with the best intentions, but according to the public prosecutor this case raises an important question that must be submitted to the court. Namely, how do doctors have to deal with euthanasia with regard to incapacitated patients who can still communicate and who thereby indicate (contrary to their earlier advance directive) that they have a desire to live. In this case, the Regional Review Committee on Euthanasia and the Central Disciplinary Board for Healthcare also ruled that the advance directive was ambiguous. This question will also be submitted to the court.

The Public Prosecution Service finds the advance directive clear, but also finds that, as long as the woman was able to communicate, the nursing home doctor should have kept talking to her about her desire to live or to die. And as long as that conversation gave cause for doubt, the nursing home doctor should have refrained from euthanasia.

Euthanasia is radical and irreversible. This involves serious accountability for the doctor involved. It is then very important that the correct procedures are followed. In this case, the public prosecutor concluded that the nursing home doctor had not met all due care requirements for euthanasia and had not been sufficiently careful. Earlier, the Regional Review Committee on Euthanasia and the Central Disciplinary Board for Healthcare had drawn the same conclusion.

Nevertheless, the public prosecutor did not demand to impose a punishment on the nursing home doctor, but he did demand the court to declare that she was found guilty. He took into account her good intentions, her full cooperation and the fact that she had already been affected by the prosecution and the previous disciplinary proceedings.

The court will pronounce judgment in two weeks.

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