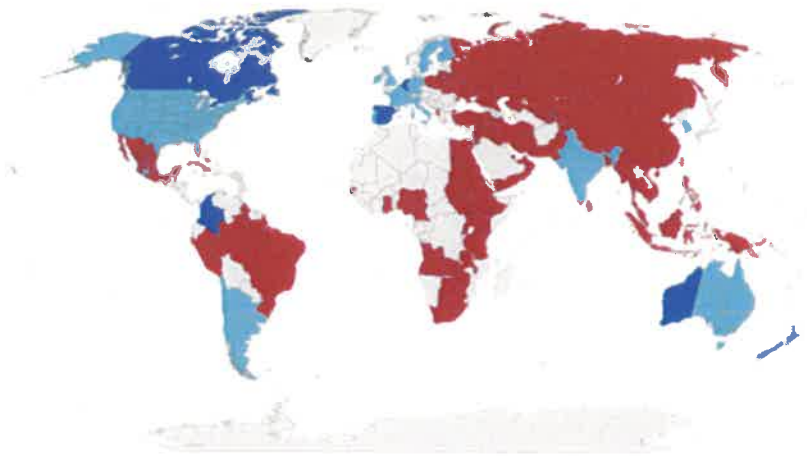
THE REGULATION OF EUTHANASIA IN SPAIN

For some decades now, part of Spanish society has been demanding the regulation of euthanasia, as has happened in other countries around us. Specifically, **on 25 June 2021, Organic Law 3/2021 of 24 March** on the regulation of euthanasia will come into force, **making Spain the fourth country in Europe and the seventh country in the world to decriminalise euthanasia, along with the Netherlands (2002), Belgium (2002), Luxembourg (2009), Canada (2016), Colombia (2014) and New Zealand (2020).**

In contrast, countries such as Switzerland, Germany, Austria, Finland, the Australian state of Victoria and the US states of California, Colorado, Hawaii, Maine, New Jersey, Oregon, Vermont and Washington and also the District of Columbia allow assisted suicide under specific scenarios, while Sweden, England, Italy, Hungary and Norway allow passive euthanasia under strict circumstances.

Status of euthanasia in the world



- Legal active euthanasia
- Legal passive euthanasia (refusal of treatment)
- Euthanasia is illegal
- Unknown

Films such as "Mar adentro" (2004), by director Alejandro Amenábar, starring Javier Bardem, based on the life of the quadriplegic Ramón Sampedro, as well as media reports on similar situations, such as the arrest in 2019 of Ángel Hernández for helping his wife, who had been suffering from multiple sclerosis for decades, to die, have moved public opinion and have made part of society consider whether the right of incurable patients with a very deteriorated quality of life to end their lives should be regulated.

At the beginning of 2020, the Congress of Deputies approved a bill to regulate euthanasia, presented on the initiative of the PSOE, with the vote in favour of all the parties in the Chamber except the Partido Popular, Foro de Asturias, UPN and Vox.

The Explanatory Memorandum of this law states that it aims to respond to the aforementioned social demand. It recalls that "euthanasia" etymologically means "good death" and defines it as the deliberate act of ending the life of a person, produced by the express will of the person himself and with the aim of avoiding suffering.

It refers to the fact that today's bioethical and penal doctrine limits the concept of "euthanasia" to that which is produced actively and directly, so that actions by omission (non-adoption or interruption of life-prolonging treatments or the use of drugs that alleviate suffering, although they accelerate the patient's death) are currently outside the concept of euthanasia.

The debate on euthanasia brings together various causes, such as the increasing lengthening of life expectancy, with the consequent delay in the age of death, in conditions that are often marked by significant physical and psychological deterioration, the increase in medical means capable of prolonging a person's life without achieving a cure, the secularisation of society and the recognition of people's autonomy in the field of health. And it is the legislator's obligation to respond to the demands and values of society.

Thus, the legalisation and regulation of euthanasia is based on the compatibility of fundamental principles enshrined in the Spanish Constitution. On the one hand, the rights to life and to physical and moral integrity, and other constitutionally protected rights such as dignity, freedom and autonomy of will. The purpose of the Law is to make these rights compatible.

In order to do so, it is not enough to simply decriminalise conduct involving some form of assistance in the death of another person who voluntarily requests it. This would leave unprotected such persons who are only supposed to have requested such assistance.

To avoid this, the Law chooses the most restrictive path, which is to determine that euthanasia can only be practised in very specific cases and with strictly determined guarantees and requirements.

In doing so, the Law echoes the doctrine of the European Court of Human Rights, which considers that it is not acceptable for a State that has legalised the modalities of the practice of euthanasia.

In this way, the draft law configures euthanasia as a new individual right that can only be exercised by people who find themselves in what it calls a "euthanasia context", which is defined as a "chronic, serious and disabling illness associated with constant and intolerable physical or psychological suffering, where there is a certainty or high probability that such limitations will persist over time without the possibility of cure or appreciable improvement" or "a serious and incurable illness that involves constant and intolerable physical or psychological suffering and in which there is a limited prognosis for life, in a context of progressive fragility".

The decision must necessarily come from the patient and must be expressed repeatedly, i.e. euthanasia must be requested expressly and in writing, at least twice, at least 15 days apart, in the presence of a health professional who will sign it. This decision must be essentially revocable.

Specifically, in order to receive the death benefit, the person must meet all of the following **requirements**:

- *Have Spanish nationality or legal residence in Spain or a census registration certificate* accrediting a period of residence in Spanish territory of more than twelve months, be of legal age and be capable and conscious at the time of application.

- Have *written information on their medical process*, the different alternatives and possibilities of action, including access to comprehensive palliative care included in the common portfolio of services and to the benefits to which they are entitled in accordance with the regulations on care for dependency.

To have made *two applications voluntarily and in writing*, or by any other means that allows a record to be kept, and which is not the result of any external pressure, leaving a separation of at least fifteen calendar days between the two.

The request must be made in writing, and the document must be dated and signed by the requesting patient, or by any other means that allows a record to be made of the unequivocal will of the person requesting it, as well as of the time at which it is requested. In the event that, due to his personal situation or health condition, it is not possible for him to date and sign the document, he may make use of other means of recording it, or another person of legal age and fully capable of signing it may date and sign it in his presence. That person shall mention the fact that the person claiming assistance in dying is not in a position to sign the document and state the reasons.

The document shall be signed in the presence of a health professional who shall sign it. If he/she is not the responsible physician, he/she shall hand it over to him/her. The document must be included in the patient's medical record. The applicant for assistance in dying may revoke his or her request at any time and the decision shall be recorded in the patient's medical record. He/she may also request a deferral of the administration of the aid in dying.

If the responsible physician considers that the loss of the applicant's capacity to give informed consent is imminent, he/she may accept any shorter period that he/she considers appropriate in view of the clinical circumstances, which shall be recorded in the medical record.

- *Suffer from a serious and incurable illness or a serious, chronic and incapacitating condition* under the terms established in this Act, certified by the responsible physician.

- *Give informed consent prior to receiving the aid in dying benefit.* Said consent shall be included in the patient's clinical record.

The provisions of letters b), c) and e) of the previous section shall not apply in those cases in which the responsible physician certifies that the patient is not in the full use of his or her faculties nor can give free, voluntary and conscious consent to make the requests, complies with the provisions of section d), and has previously signed a document of prior instructions, living will, advance directives or legally recognised equivalent documents, in which case the provision of assistance in dying may be facilitated in accordance with the provisions of said document. If a representative has been appointed in that document, he/she shall be the valid interlocutor for the responsible physician.

PROTOCOLS:

The assessment of the situation of de facto incapacity by the responsible doctor will be made in accordance with the action protocols determined by the Interterritorial Council of the National Health System.

Upon receipt of the first application for assistance in dying, the responsible doctor, within a maximum period of two calendar days, and after verifying that the aforementioned requirements have been met, shall carry out a deliberative process with the applicant patient regarding his/her diagnosis, therapeutic possibilities and expected results, as well as possible palliative care, making sure that he/she understands the information provided to him/her. Without prejudice to this information being explained by the responsible physician directly to the patient, it must also be provided in writing, within a maximum period of five calendar days.

Once the second request has been received, the responsible physician shall, within two calendar days, resume the deliberative process with the requesting patient in order to address, within a maximum period of five calendar days, any doubts or need for further information that the patient may have had following the information provided after the submission of the first request.

Twenty-four hours after the deliberative process, the responsible physician shall seek the patient's decision to continue or withdraw the application.

If the patient decides to continue, the doctor in charge shall consult with a consultant doctor who, after studying the clinical history and examining the patient, shall corroborate the fulfilment of the conditions for euthanasia to be carried out within a maximum period of ten calendar days from the date of the second request, for which purpose he shall draw up a report which shall form part of the patient's clinical history. The conclusions of this report must be communicated to the requesting patient within a maximum period of twenty-four hours.

Likewise, the doctor in charge shall inform the care team of this circumstance, especially the nursing professionals, as well as, should the patient so request, the family members or relatives indicated by the patient. Likewise, the patient should be asked to sign the informed consent document. In the event that the patient decides to withdraw his or her request, the responsible physician shall also inform the care team of this fact.

In the event of refusal of the aid in dying, either by the doctor in charge or by the unfavourable report of the consultant doctor on the fulfilment of the requirements, the patient may appeal to the Assurance and Assessment Committee.

Prior to the provision of the aid in dying, the responsible doctor shall inform the competent Assessment and Monitoring Committee so that it may also check, through two of its members, whether the requirements and conditions laid down in the Act for the patient to receive the aid in dying benefit are met.

Within a maximum period of seven calendar days, the Assessment and Monitoring Committee shall approve or reject the application for the provision of assistance in dying. It shall appoint, within a maximum period of two days, a medical professional and a lawyer to verify whether, in their opinion, the requirements and conditions established for the correct exercise of the right to request and receive the aid in dying benefit are met. Within a maximum period of seven calendar days, they will issue a report. If the decision is favourable, the report issued will serve as a resolution for the purposes of the provision of the benefit. If the decision is unfavourable to the application, there will be the possibility of lodging a complaint with the Evaluation and Control Commission. In cases where there is no agreement between the two aforementioned members, the verification shall be submitted to the plenary of the Guarantee and Evaluation Commission, which shall take a final decision.

The decisions of the Commission that issue an unfavourable report on the application for the aid in dying benefit may be appealed before the contentious-administrative jurisdiction.

The aid in dying benefit will be included in the common portfolio of services of the National Health System and will be publicly funded. It shall be provided in public, private or subsidised health centres, and in the home, and access to and quality of care shall not be impaired by the exercise of conscientious objection to health care or by the place where it is provided. Those who have a conflict of interest or who would benefit from the practice of euthanasia may not be involved in any of the professional teams.

Healthcare professionals directly involved in the provision of assistance in dying may exercise their right to conscientious objection. The refusal or refusal to perform the aforementioned service for reasons of conscience is an individual decision of the health professional directly involved in its performance, which must be expressed in advance and in writing.

In this regard, the health administrations will create a register of health professionals who are conscientious objectors to providing aid in dying, in which declarations of conscientious objection to the provision of aid in dying will be recorded, the purpose of which will be to provide the necessary information to the health administration so that it can guarantee adequate management of the provision of aid in dying.

Once a positive decision has been obtained, the provision of aid in dying must be carried out with the utmost care and professionalism by healthcare professionals, applying the corresponding protocols, which will also contain criteria as to the form and time of the provision of the aid in dying. If the patient is conscious, he/she must inform the doctor responsible of the manner in which he/she wishes to receive the aid in dying.

Once the aid in dying has been provided, and within a maximum period of five working days after this, the responsible doctor must send the Guarantee and Evaluation Commission of his/her Autonomous Community or Autonomous City two reports on the applicant's details and all the details of the procedure for the provision of the aid in dying.

The health centres that provide aid in dying shall adopt the necessary measures to ensure the privacy of the persons requesting the benefit and the confidentiality in the processing of their personal data.

Barcelona, 27th April 2021