In anticipation of a future period of incapacity: The Dutch 'levenstestament' from a legal, empirical and comparative perspective
Stelma-Roorda, Henderika Neeltje

2024

DOI (link to publisher)
10.5463/thesis.431

document version
Publisher's PDF, also known as Version of record

Link to publication in VU Research Portal

citation for published version (APA)
Stelma-Roorda, H. N. (2024). In anticipation of a future period of incapacity: The Dutch 'levenstestament' from a legal, empirical and comparative perspective. [PhD-Thesis - Research and graduation internal, Vrije Universiteit Amsterdam]. https://doi.org/10.5463/thesis.431

General rights
Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

• Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
• You may not further distribute the material or use it for any profit-making activity or commercial gain
• You may freely distribute the URL identifying the publication in the public portal

Take down policy
If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

E-mail address: vuresearchportal.ub@vu.nl

Download date: 19. Aug. 2024
# Table of Contents

1 General introduction  
1.1 Introduction  
1.2 Legal-normative context  
1.3 Research questions  
1.4 Research delineation  
1.5 Research design  
1.6 Research overview  
1.7 Terminology  

2 A changing paradigm of protection of vulnerable adults and its implications for the Netherlands  
2.1 Introduction  
2.2 Historical context – embedding the new human rights-based paradigm  
2.3 Article 12 UNCRPD: Two conflicting interpretations  
2.4 Beyond the two conflicting interpretations: the alternate framework  
2.5 Support measures for adults unable to make their own decisions  
2.6 The Dutch adult guardianship measures  
2.7 The living will  
2.8 Conclusion  

3 The misuse or abuse of continuing powers of attorney: what are appropriate safeguards?  
3.1 Introduction  
3.2 The risk of abuse or misuse of CPAs  
3.3 Appropriate safeguards in the context of the CPA  
3.4 Safeguards in Belgium, England & Wales, Germany, the Netherlands, and Switzerland  
3.5 Conclusion
# The Legal Basis and Scope of the Levenstestament in the Netherlands

## 4.1 Origin of the Levenstestament in the Netherlands

## 4.2 Regulation in the Absence of a Statutory Framework

### 4.2.1 An Ambiguous Legal Basis

### 4.2.2 The Efforts of the Notariate

### 4.2.3 The Judiciary

## 4.3 The Levenstestament for Health and Medical Affairs

### 4.3.1 The Legal Status of Treatment Advance Directives

### 4.3.2 Research on Treatment Advance Directives in the Netherlands

### 4.3.3 Weighing the Pros and Cons

## 4.4 Conclusion

# The Levenstestament in Practice

## 5.1 Introduction

## 5.2 The Application of the Levenstestament by the Notariate

### 5.2.1 Research Questions

### 5.2.2 Methods

### 5.2.3 Results

### 5.2.4 Discussion

## 5.3 An Analysis of Court Cases Featuring the Levenstestament

### 5.3.1 A Brief Overview of the Legal Framework

### 5.3.2 Methods

### 5.3.3 The Deliberations of the Court When Issuing an Adult Guardianship Measure

### 5.3.4 Discussion

## 5.4 Overall Conclusion

# Decision-Making by and for Adults with Impaired Capacity: The Potential of the Dutch Levenstestament

## 6.1 Introduction

## 6.2 Decision-Making by and on Behalf of Adults with Impaired Capacity

### 6.2.1 The Dutch Levenstestament

### 6.2.2 The Normative Aspirations of the UNCRPD

### 6.2.3 Supported and Substitute Decision-Making in Practice

## 6.3 Current Study

## 6.4 Methods

### 6.4.1 Research Design

### 6.4.2 Procedure

### 6.4.3 Analytic Strategy
### Table of Contents

6.5 Results

6.5.1 Sample

6.5.2 Expectations of adults who had recently made a levenstestament

6.5.3 Expectations of nominated attorneys

6.5.4 Experiences of active attorneys

6.6 Discussion and conclusion

6.6.1 Discussion

6.6.2 Limitations and strengths

6.6.3 Conclusion

7 Continuing powers of attorney – different legal rules, similar problems and solutions: What can the Netherlands learn from Belgium, England and Wales, Germany and Switzerland?

7.1 Introduction

7.2 Methods

7.3 The Netherlands: an exploration of the existing problems

7.4 Belgium: the zorgvolmacht

7.4.1 Regulatory framework

7.4.2 Form and registration

7.4.3 Entry into force and appointment of the attorney

7.4.4 Rights and duties of the attorney

7.4.5 Supervision

7.4.6 Law in action

7.5 England and Wales: the lasting power of attorney

7.5.1 Regulatory framework

7.5.2 Form and registration

7.5.3 Entry into force and appointment of the attorney

7.5.4 Rights and duties of the attorney

7.5.5 Supervision

7.5.6 Law in action

7.6 Germany: the Vorsorgevollmacht

7.6.1 Regulatory framework

7.6.2 Form and registration

7.6.3 Entry into force and appointment of the attorney

7.6.4 Rights and duties of the attorney

7.6.5 Supervision

7.6.6 Law in action

7.7 Switzerland: the Vorsorgeauftrag

7.7.1 Regulatory framework

7.7.2 Form and registration

7.7.3 Entry into force and appointment of the attorney
7.7.4 Rights and duties of the attorney
7.7.5 Supervision
7.7.6 Law in action
7.8 Comparative synthesis and best practices for the Netherlands
7.9 Conclusion

8 Conclusion
8.1 Introduction
8.2 Part I: a legal-normative perspective
8.3 Part II: an empirical perspective
8.4 Part III: a comparative perspective
8.5 Main conclusion
8.6 Methodological reflection: strengths and limitations
8.7 Recommendations
8.7.1 Implications for policy and practice
8.7.2 Suggestions for future research

References

Appendix 1: Questionnaire ‘Experiences of notaries with the levenstestament’

Appendix 2: Interview schedule Adult cohort 1 – interview study ‘The levenstestament in practice’

Appendix 3: Interview schedule Attorney cohort 1 – interview study ‘The levenstestament in practice’

Appendix 4: Interview schedule Attorney cohort 2 – interview study ‘The levenstestament in practice’

Appendix 5: Country report Belgium

Appendix 6: Country report England and Wales

Appendix 7: Country report Germany

Appendix 8: Country report Switzerland

Samenvatting / Dutch summary

Summary
<table>
<thead>
<tr>
<th>Table of Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dankwoord / Acknowledgements</td>
<td>467</td>
</tr>
<tr>
<td>Curriculum Vitae and Publications</td>
<td>469</td>
</tr>
</tbody>
</table>