

The Netherlands Euthanasia Legislation

Introduction

On 10 April 2001, the Upper House of the Netherlands Parliament passed legislation whereby the termination of life on request and assistance with suicide will not be treated as a criminal offence if carried out by a physician and certain criteria of due care have been fulfilled. It is expected that the legislation will come into force later this year.

This Research Note provides information on:

- existing rules in the Netherlands
- summary of new legislation
- due care requirements
- regional review committees
- minors, and
- access to termination of life on request and assisted suicide in the Netherlands for people from other countries.

Existing rules in the Netherlands

The Criminal Code of the Netherlands contains a variety of provisions prohibiting the intentional taking of human life (e.g. Articles 293 and 294).

However, termination of life on request and assistance with suicide have been de facto permitted in certain defined circumstances by virtue of a non-prosecution agreement between the Netherlands Ministry of Justice and the Royal Dutch Medical Association.

To comply with these requirements, the physician must ensure that the request for termination of life or

assistance with suicide is made by the patient and is voluntary, and establish that the patient's situation entails unbearable suffering with no prospect of improvement.

The procedural requirements include that:

- the termination of life on request and assistance with suicide be performed by a physician
- before the physician assists the patient, he or she must consult a second physician, and
- the death must be reported to the authorities as a case of euthanasia or physician-assisted suicide.

Summary of new legislation

Under the legislation a physician who terminates a life on request or assists with a suicide has to comply with two conditions to be exempt from criminal liability, namely:

- he/she must practice the due care criteria, and
- report the cause of death to the municipal coroner.

It should be noted that the incorporation of provisions on exemption from punishment in Articles 293 and 294 of the Netherlands Criminal Code does not decriminalise other forms of termination of life or assistance with suicide.

Additionally, it clearly is not the case under the legislation that patients have a right to demand termination of life or assistance with suicide, nor that physicians must acquiesce to a request.

Due care requirements

The due care criteria which must be met in order to obtain exemption from criminal liability require that the attending physician:

- be satisfied that the patient has made a voluntary and well considered request
- be satisfied that the patient's suffering is unbearable, and that there is no prospect of improvement
- has informed the patient about his or her situation and prospects
- has come to the conclusion, together with the patient, that there is no reasonable alternative in the light of the patient's situation
- has consulted at least one other physician, who must have seen the patient and given a written opinion on the due care criteria referred to above, and
- has terminated the patient's life or provided assistance with suicide with due medical care and attention.

Regional review committees

The legislation provides for the establishment of regional review committees for the termination of life on request and assisted suicide.

Each regional review committee, of which there are five, is composed of an uneven number of members. It must consist of a legal expert, a doctor and an expert in the field of ethics or philosophy.

The committees assess whether a case of termination of life on

request or assisted suicide complies with the due care criteria. The committee is required to notify the physician of its findings, giving reasons.

Where a committee is of the opinion that the physician did not act in accordance with the due care criteria, the case must be brought to the attention of the Public Prosecution Service which then has the power to launch a criminal investigation.

Regional committees have the capacity to personally discuss with the physician the assessment given and through annual reports contribute to public debate and awareness of termination of life on request and assisted suicide and the supervision exercised.

Minors

The legislation covers requests for the termination of life or assistance with suicide by minors. A physician may comply with a request by minors between the ages of 12 and 16 where they are deemed to be capable of making a reasonable appraisal of their own interests and the parent/s or guardians is/are unable to agree to the termination of life or assisted suicide.

With respect to minors aged between 16 and 18, the legislation provides that a physician may comply with a request where they are deemed to be capable of making a reasonable appraisal of their own interests and the physician consults with the parent/s or guardian of the minor.

Access to termination of life or assistance with a suicide in the Netherlands for people from other countries?

The Netherlands Ministry of Justice believes that it is not possible for people to come from other countries to seek termination of life or assistance with suicide in the

Netherlands because of the legislation's procedural requirements.

The procedure for the notification and assessment of each case requires the patient to have made a voluntary, considered request and to be suffering without any prospect of improvement. In order to be able to assess whether this is the case, it is considered that the doctor must know the patient well and implies that the doctor has treated the patient for some time. The practical effect of this procedural requirement, however, remains to be seen.

Remarks

It is a fact that the majority of Netherlands people support voluntary euthanasia. It is also a fact that willing doctors in the Netherlands have been participating in voluntary euthanasia for a considerable time. Research suggests that a majority of Australians including health professionals, support voluntary euthanasia. (See: Department of the Parliamentary Library, Information and Research Services, *Research Papers*, Nos 3 and 4, 1996–97, 'Euthanasia—the Australian Law in an International Context Part 1: Passive Voluntary Euthanasia' and 'Euthanasia—the Australian Law in an International Context Part 2: Active Voluntary Euthanasia'.)

Why then did the Australian Parliament in 1996 not reject the *Euthanasia Laws Bill 1996* (the Andrew's Bill) which overturned the Northern Territory's fledgling voluntary euthanasia law and removed the Territories' power to enact such laws in the future?

The answer is complex. It is partly contained in the fierce parliamentary debates on the *Euthanasia Laws Bill 1996*, and in the equally fierce public debates in response to that legislative initiative and the political dynamics

surrounding its passage. Perhaps part of the answer, however, lies beyond those debates.

The enactment of Netherlands legislation represents the culmination of almost thirty years of public debate in that country about legalising voluntary euthanasia. The nature and result of that discussion has been influenced by an arguably unique combination of social and cultural factors:

- a willingness to discuss difficult moral issues openly
- a profound respect for the autonomy of others
- the Royal Dutch Medical Association's approval of doctors participating in termination of life on request or assisting with suicide
- respect for the medical profession, and
- truly universal and comprehensive medical coverage.

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22 May 2001**

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