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THE NETHERLANDS

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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.

2. This report focuses on the Netherlands' failure to adequately protect the right to life of its citizens, as per Article 6 of the International Covenant on Civil and Political Rights, Article 6 of the Convention on the Rights of the Child, and Article 3 of the Universal Declaration of Human Rights. In particular, the report focuses on the Netherlands' euthanasia law.

(a) The Law on Euthanasia

Background

3. In 2002, the Netherlands was the first European state to legalize euthanasia. The Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2002 (the 2002 Act) regulates the practice of euthanasia and assisted suicide in the Netherlands.

4. Chapter II, Article 2, of the 2002 Act provides that:

> 1. The requirements of due care, referred to in Article 293 second paragraph Penal Code mean that the physician:
> a. holds the conviction that the request by the patient was voluntary and well-considered,
> b. holds the conviction that the patient's suffering was lasting and unbearable,
> c. has informed the patient about the situation he was in and about his prospects,
> d. and the patient holds the conviction that there was no other reasonable solution for the situation he was in,
> e. has consulted at least one other, independent physician who has seen the patient and has given his written opinion on the requirements of due care, referred to in parts a - d, and
> f. has terminated a life or assisted in a suicide with due care.

5. The decisive element is whether the suffering is 'lasting' and 'unbearable', with the 'unbearable suffering' to be defined by the patient. The illness does not have to be terminal. It is commonly accepted that persons suffering from psychological illnesses are covered by this provision.

6. Furthermore, the 2002 Act allows euthanasia of children between the ages of 12 and 16 years, teenagers between 16 and 18, and incompetent persons.

7. Children between 12 and 16 can request to be euthanized with the agreement of the parent or guardian in accordance with Chapter II, Article 2, 4 of the 2002 Act:

> If the minor patient is aged between twelve and sixteen years and may be deemed to have a reasonable understanding of his interests, the physician may carry out the patient's request, provided always that the parent or the parents exercising parental authority and/or his guardian agree with the termination of life or

> the assisted suicide. The second paragraph applies mutatis mutandis.

8. Teenagers between 16 and 18 can request to be euthanized with the parent or guardian being involved in the decision-making in accordance with Chapter II, Article 2, 3 of the 2002 Act:

> If the minor patient has attained an age between sixteen and eighteen years and may be deemed to have a reasonable understanding of his interests, the physician may carry out the patient's request for termination of life or assisted suicide, after the parent or the parents exercising parental authority and/or his guardian have been involved in the decision process.

9. Persons aged 16 or older who lack capacity to express their will can be euthanized if they have made a prior request, in accordance with Chapter II, Article 2, 2 of the 2002 Act:

> If the patient aged sixteen years or older is no longer capable of expressing his will, but prior to reaching this condition was deemed to have a reasonable understanding of his interests and has made a written statement containing a request for termination of life, the physician may carry out this request. The requirements of due care, referred to in the first paragraph, apply mutatis mutandis.

10. Any request of euthanasia must be voluntary and carefully considered, and be an informed decision. The patient must also be competent to make the request.[1]

11. An independent physician must see the patient and provide a written opinion.[2] The due medical care requirement obliges the physician performing euthanasia to do so with due care and attention. This includes using life-ending substances approved by the Royal Dutch Pharmacological Association and being present during the whole procedure.[3]

12. Only physicians are allowed to provide euthanasia. Initially, only the patient's treating physician was able to provide euthanasia. Currently, the physician must know the patient 'sufficiently well' to be able to assess the request of euthanasia.[4]

13. After the fact, the physician must report each case of euthanasia to a pathologist. The pathologist then transfers the file to a monitoring committee. If the monitoring committee considers that the physician did not act with due care criteria, it forwards the case to a public prosecutor.[5] Only approximately 80% of euthanasia cases are reported.[6] Only 0.21% of all euthanasia cases between 1999 and 2009 were referred to a public prosecutor, but no prosecution has been brought.[7]

14. The 2014 Netherlands euthanasia report revealed that in 2014 there were 5,306 assisted deaths (by way of euthanasia and assisted suicide), an increase of over

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[1] Lewis Penney and Isra Black, *The Effectiveness of Legal Safeguards in Jurisdictions that Allow Assisted Dying. The Commission on Assisted Dying: Briefing Paper* (London, Demos, 2012) 23.
[2] Ibid., 24.
[3] Ibid., 24.
[4] Ibid., 8.
[5] Ibid., 10.
[6] Ibid., 14.
[7] Ibid.

10% from 2013, when 4,829 people were euthanized or assisted in suicide.[8] In 2013, there were 45 euthanasia cases conducted due to psychiatric disorders, having increased from 14 in 2012 and 13 in 2011.[9] In 2013 alone, over 650 children were euthanized at their parents' request under the 2002 Act.[10]

15. A study conducted on 66 euthanasia or assisted suicide cases of psychiatric patients in Belgium between 2001 and 2014 revealed that:

> Most had chronic, severe conditions, with histories of attempted suicides and psychiatric hospitalizations. Most had personality disorders and were described as socially isolated or lonely. Depressive disorders were the primary psychiatric issue in 55% (n = 36) of cases. Other conditions represented were psychotic, posttraumatic stress or anxiety, somatoform, neurocognitive, and eating disorders, as well as prolonged grief and autism.[11]

16. The study concluded that the 'requests appear[ed] to involve considerable physician judgment, usually involving multiple physicians who do not always agree (sometimes without independent psychiatric input), but the euthanasia review committee generally defers to the judgments of the physicians performing'[12] euthanasia and assisted suicide.

Cases

17. In 2013, a woman suffering from a fear of contamination was euthanized as her life was 'dominated by fear.'[13]

18. A man in his 60s was euthanized in 2013 because of his depression. The man worked as a government agent, did not have a social life, never had a partner, and could not imagine continuing his life this way.[14]

19. The request of euthanasia by an autistic man in his 30s, known as Patient 2014-77, was approved and he was euthanized in 2014.[15]

20. Hannie Goudriaan, a former health care worker suffering from dementia, was 68 when she was euthanized. Around 2008, Goudriaan made wrote that if her illness

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[8] Alex Schadenberg, Netherlands 2014 euthanasia report - another 10% increase in euthanasia, available at: http://alexschadenberg.blogspot.co.at/2015/10/netherlands-2014-euthanasia-report.html.
[9] NL Times, Patients with psychiatric disorder more often euthanized, available at: http://www.nltimes.nl/2014/02/11/patients-psychiatric-disorder-often-euthanised/.
[10] Breitbart, 650 babies euthanized in the Netherlands each year under right to die law, available at: http://www.breitbart.com/london/2015/01/02/650-babies-euthanized-in-the-netherlands-each-year-under-right-to-die-law/ (see also: http://www.lifenews.com/2015/01/02/doctors-euthanize-650-babies-under-assisted-suicide-law-in-the-netherlands/).
[11] Scott Y. H. Kim, MD, PhD; Raymond G. De Vries, PhD; John R. Peteet, MD, Euthanasia and Assisted Suicide of Patients With Psychiatric Disorders in the Netherlands 2011 to 2014 http://archpsyc.jamanetwork.com/article.aspx?articleid=2491354.
[12] Ibid.
[13] NRC, Negen psychiatrische patiënten kregen vorig jaar euthanasia, available at: http://www.nrc.nl/nieuws/2014/01/11/negen-keer-euthanasie-op-patient-psychiatrie.
[14] Ibid.
[15] Washington Post, Where the prescription for autism can be death, available at: https://www.washingtonpost.com/opinions/where-the-prescription-for-autism-can-be-death/2016/02/24/8a00ec4c-d980-11e5-81ae-7491b9b9e7df_story.html.

progressed and she were not able to recognize her family, she would like to die.[16] In 2014, Goudriaan decided that it was time to be euthanized. The case was documented by Dutch television,[17] which portrayed her last moments and showed her enjoying occasional outings, driving a car, and communicating with doctors. Goudriaan was still a functioning person.

21. Around August 2014, an elderly woman requested to be euthanized after suffering a stroke, as she did not want to live in a care home.[18] The woman was left partially paralyzed after the stroke but it was reported that she was not suffering 'unbearably.'[19] Her request for euthanasia was approved nonetheless. The euthanasia review committee concluded that the medical professionals who approved the request had failed to exercise proper care when fulfilling their duties.[20] The case was then forwarded to the public prosecutor to be investigated.

22. Gaby Olthuis, 47, was euthanized because she was suffering from tinnitus (ear ringing). The euthanasia review committee reprimanded the doctors who approved the euthanasia request as the doctors had failed to consider other treatment options adequately and had failed to establish the required threshold of unbearable suffering.[21]

23. In April 2015, a mentally incompetent woman was euthanized after a court order was obtained by her family. The 80-year-old woman was not able to express her wishes. The clinic where the woman was staying fought against the emergency proceeding initiated by the woman's family and asked for an independent enquiry in relation to the conditions of the woman. This request was refused by the court. The clinic appealed against the decision. However, as the euthanasia was meant to be conducted very shortly, the clinic then initiated second emergency proceedings to stop the euthanasia until the appeal. This request was rejected. The woman was removed from the clinic and euthanized shortly afterwards. This was the first time a court order overrode a medical professional's decision not to approve euthanasia.[22]

Challenges

24. There are no procedural safeguards that would ensure that the Dutch law on euthanasia is followed before euthanasia is carried out. The review of a euthanasia case is conducted after the euthanasia takes place. Therefore, the review is not an adequate safeguard protecting the most vulnerable from abuse. The euthanasia review committee considers only the information provided by the doctors.

25. As it is clear from the above cases, there is a noticeable shift in the Netherlands: from allowing euthanasia of patients in a medically futile condition of constant and

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[16] Dutch News, Dutch documentary awakens euthanasia debate about wider rules, available at: http://www.dutchnews.nl/features/2016/02/a-huppekeeeuthanasia/?utm_source=newsletter.

[17] NPO, Levenseindekliniek, available at: http://www.npo.nl/2doc-levenseindekliniek/15-02-2016/VPWON_1248719.

[18] Dutch News, Euthanasia clinic reprimanded for death of stroke victim, available at: http://www.dutchnews.nl/news/archives/2014/08/euthanasia_clinic_reprimanded.

[19] Ibid.

[20] Ibid.

[21] NL Times, Clinic reprimanded for tinnitus euthanasia, available at: http://www.nltimes.nl/2015/01/19/clinic-reprimanded-tinnitus-euthanasia/.

[22] Life Site News, Dutch court allows family to euthanize incapacitated 80-year-old woman against doctor's protest, available at: https://www.lifesitenews.com/news/court-allows-family-to-euthanize-incapacitated-80-year-old-woman-against-do.

unbearable physical or mental suffering that cannot be alleviated, to euthanasia of children, euthanasia of patients with dementia, and euthanasia of people with psychological conditions. This may be due to the lack of understanding of the law, uncertainty in relation to labeling of euthanasia and other end-of-life decisions, inadequate consultations and lack of an independent specialist consultation.

26. The inadequacy of the protections offered by the domestic law are amplified by the rising number of euthanasia-induced deaths and abuse of the system. In *Haas v. Switzerland,* the European Court stated that 'when a country adopts a liberal approach, appropriate measure to implement such liberal legislation and measures to prevent abuse are required', and 'the risk of abuse inherent in a system which facilitates assisted suicide cannot be underestimated.'[23]

Right to Life in International Law

27. Article 6(1) of the ICCPR states, 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.' Furthermore, Article 6(2) of the ICCPR sets out the conditions for applying the only exception to the general rule section 1:

> Article 6(2): In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide.

28. The Netherlands should affirm the right to life as the supreme right requiring protection until natural death and therefore also repeal its euthanasia law. The Netherlands should focus on providing patients with quality medical care and treatment and not ending their lives. The Netherlands should ensure that patients have access to high-quality, comprehensive palliative care to control pain and other symptoms, and to provide psychological, social, and spiritual assistance.

(b) Recommendations

29. In view of the above, ADF International recommends the following:

- Take steps to follow national and international obligations to protect the right to life from conception to natural death;
- Affirm the protection of life at every stage of human development;
- Ensure that patients are provided with high-quality palliative care;
- Repeal the liberal euthanasia law, namely the 2002 Act;
- At a minimum, introduce effective safeguards that would prevent abuse of the provisions allowing euthanasia and, in particular, reviews that must be conducted prior to the carrying out of euthanasia.

[23] *Haas v. Switzerland*, (2011) 53 E.H.R.R. 33, 58.