Opinion

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Will Euthanasia In The Netherlands Be Legalised?

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In The Netherlands euthanasia and aid in suicide are criminal offenses, prohibited in articles 293 and 294 of the Penal Code.

The first serious attempt to regulate euthanasia by law was the draft bill of the Cabinet Lubbers II, submitted to Parliament in December 1987. This bill contained a compromise: while euthanasia would still be prohibited in the Penal Code, requirements for careful medical practice in the performance of euthanasia would be included in the Medical Practice Act. Physicians who performed acts of euthanasia in accordance with these requirements could be almost certain that the Court would accept the physician's appeal to a 'defence of necessity'.

The essential requirements for the performance of euthanasia were to be:

- a voluntary, persistent and well-considered request of a well-informed patient
- the patient suffers unbearably and rejects alternatives to euthanasia.
- the physician must consult a colleague.

The debate on this proposal began in 1989 in the Second Chamber, but was not completed because the Cabinet fell on an unrelated issue. The new Cabinet, Lubbers III, set up a committee to investigate the practice of 'medical decisions concerning the end of life'. This committee, chaired by Professor J. Remmelink, then Attorney-General at the Supreme Court, presented its report on September 10, 1991.[1]

The main results of the report are: annually (in 1990) in The Netherlands there are 2300 cases of euthanasia (termination of life on the request of the patient; 1,8% of all deaths), 400 cases of aid in suicide, and 1000 cases of termination of life without specific request.

It was also found that in 7100 cases, physicians intensified pain relief and symptom relief treatment with the concomitant or explicit intention to shorten life, and, in 78775

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[1] PJ van der Maas, JJM van Delden, L Pijnenborg. **Euthanasia and other medical decisions concerning the end of life**. Health Policy 1992;22 (1/2):1-262; also published as hardback edition by Elsevier Science Publishers, Amsterdam 1992.

cases, treatments were either not started or were withdrawn with the concomitant or explicit intention to shorten life. The physician had not obtained an explicit consent from the majority of these two groups of patients.
The Cabinet and political parties favouring legalisation of euthanasia considered the, in their opinion, low number of cases of euthanasia proof of a so-called 'civilised practice of euthanasia'. The 1000 cases of unrequested termination of life caused some worry, but it was reckoned that a legal regulation obliging physicians to report these actions as well would bring this under control.

In November 1991 the Cabinet presented to the Second Chamber a new proposal for the legal regulation of euthanasia, aid in suicide, and the termination of life without a request, while at the same time maintaining the prohibition of euthanasia and aid in suicide in the Penal Code.

However, the law on the Disposal of the Dead is to be amended. As the law now stands, the physician notifies death by reference to one of two categories, natural or unnatural death. In the latter case, the legal authorities initiate an investigation. The Cabinet has proposed a change to that procedure such that, in the case of a life-termination action, the physician will no longer check either natural death or unnatural death, but will send to the coroner the written answers to a number of check points concerning the condition of the patient and the circumstances in which the life-terminating action was performed. This change in law would, in fact, give a legal basis to the obligation of the physician to report to the coroner all cases in which a patient's life was terminated. The coroner would then externally inspect the dead patient and send his or her conclusion, together with the information provided by the attending physician, to the prosecutor. It is then up to the prosecutor, after he or she has received the coroner's report, to decide whether or not to prosecute. If the physician is to be prosecuted, he or she can appeal to a 'defence of necessity' involving a conflict of duties. Formally, the legal regulation does not guarantee that the physician's appeal will succeed. In reality, however, it is clear that under such circumstances physicians will not be punished.

New in this proposal is that life-terminating actions without specific request should be reported in the same way as euthanasia. The Cabinet's intention is that every case of termination of life without request will be brought before the Court. According to the Cabinet it will be up to the judge to decide whether in these cases an appeal to the defence of necessity will succeed.

The Cabinet's position was discussed in the Second Chamber in April 1992. In February 1993 the draft Bill was debated and passed by the majority formed by the coalition parties. The bill is now before the First Chamber for its consideration. Whether or not it will be passed there is, at the moment, uncertain.

I conclude by making a few critical observations.

1.
In additon to the 2300 cases of euthanasia (active termination at the request of the patient) the Remmelink report refers to a large number of cases which seem to fall between what has been traditionally thought of as good medical practice and the intentional shortening of life (either with or without request). Physicians may believe that they can distinguish the intensification of pain and symptom treatment and stopping treatments with the intention to hasten death, from euthanasia and the termination of life without request. However, it is the intention to shorten life which makes these actions ethically suspect. It may in practice blot out the boundary between euthanasia and adequate, proportional pain treatment.

2.
At least until 1992 the large majority of cases of euthanasia were not reported; of the cases of the termination of life without request virtually none was reported, making it impossible for the legal authorities to evaluate and judge what happened. Although in the last two years the number of reported cases has increased significantly, the cases that are reported represent a selection of all cases in which the requirements are met. It is highly unlikely, therefore, that precisely those cases in which the requirements were not met, will ever come before the Court.

3.
When physicians report a case of euthanasia, they choose formulations that are known to satisfy legal authorities, formulations which may well conceal what really has happened.[2] Apparently the reporting procedure does not guarantee the effective control of life-terminating actions by the legal authorities. It is doubtful whether this situation will change by giving the reporting procedure a legal basis. It must be realised that by reporting, a physician is providing the legal authorities with data that may lead to his or her own prosecution and conviction, which nobody is obliged to do.

4.
Although it can be maintained that acceptance of this bill does not imply the legalisation of euthanasia in the formal juridical sense, it will, in my opinion, in fact legitimate the present practice of life-terminating actions by physicians. To some extent this practice is condoned by case law judgments, thus reinforcing a permissive attitude towards euthanasia in society and in the medical profession. However, to a large extent this practice escapes control by the legal authorities and is establishing a slippery slope towards less serious cases and towards the killings of incompetent patients. It is

[2] G van der Wal et al. Medisch Contact 1992;47, nr.2, p.43-47; nr.31/32, p.905-909, nr.36, p.1023-1028.

astonishing that so many people in this country do not seem to realise how much this situation erodes the basis of our constitutional state.

There may sometimes be situations that are so hard that there does not seem to be any proper solution. But hard cases make bad laws, and bad ethics, too.