Euthanasia in the Netherlands: The state of the legal debate

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1. Introduction

On November 30, 1993 the Dutch Senate has passed Bill 22572. Although the Act only contains a small technical change in the formerly existing Burial Act, its importance can hardly be underestimated. The change was necessary to create a legal basis for a procedure to notify the legal authorities of a case of euthanasia and assisted suicide. Although euthanasia and assisted suicide remain in the Criminal Code, the effect of the new Act is that euthanasia and assisted suicide will not be prosecuted if performed according to particular guidelines. This moral and juridical acceptance of euthanasia is quite unique, and has drawn much attention, both from opponents of euthanasia and from those who interpret the developments in the Netherlands as a worthwhile example.

This paper outlines the state of the legal debate in the Netherlands regarding euthanasia. It will place the practice of euthanasia in the Netherlands in a wider perspective. Some empirical data will be summarized, and in addition legal recent legal developments concerning and procedural issues will be discussed. This paper will deal primarily with euthanasia and assisted suicide as defined in paragraph 2. In the last paragraph some attention will be paid to other medical decisions concerning the end of life.

2. The Definition of Euthanasia

For a proper understanding of the situation in the Netherlands one should be aware of some conceptual demarcations concerning euthanasia. In the Netherlands euthanasia is defined as intentionally taking the life of a person upon his or her explicit request by someone other than the person concerned.
It is this type of decision which has been the object of many debates concerning the legalisation of euthanasia in The Netherlands. This definition implies three important points: firstly, euthanasia is an act, it is defined as doing something (usually giving a drug), and it is not defined as refraining from action (i.e. stopping a treatment). Secondly, euthanasia is defined as voluntary. Newborns or comatose patients, are therefore excluded from the category of euthanasia. Of course, these patients might be subject to decisions to treat pain, to forego useless treatments, to stop life-sustaining procedures, and even to decisions which guide the process of death by pharmacological means. These are complicated problems, and they must be addressed, but preferably not under the heading of euthanasia. Thirdly, the term intentionally is usually interpreted as 'with the sole intention of'. Therefore acts with an 'oblique intention' to cause the death of an individual (referring to the principle of double effect) are not considered to be euthanasia. This implies that pain treatment, with the secondary effect of shortening the lifespan, is not considered to be euthanasia.

Although in the Netherlands the legal consequences of euthanasia and assisted suicide differ, a moral distinction between the two is usually not made. In both cases the physician has to meet the same substantive and procedural requirements (see paragraph 4 below).

3. Empirical Data

In 1991, the results of the study by Van der Maas and co-workers concerning 405 physicians, a sample of 7000 death cases, and a prospective study of six months were published. The results of the Van der Wal group were published earlier. These were based on a large scale survey of general practitioners and nursing home physicians, using a questionnaire. The results of both groups are similar. Both studies are based on self reports by physicians, obtained in strict anonymity, without any possibility that the data were communicated to the legal authorities.

According to the study by van der Maas et al. there were 2,300 cases of euthanasia in the Netherlands in 1990. This amounts to 1.8% of all deaths. A total of 1,550 cases occurred in general practice, i.e. when the patient was at home. Assisted suicide occurred in almost 400 cases (0.3% of all deaths). In almost all cases the patients were terminally ill, and in 75% of all cases the shortening of life was estimated to amount to less than four weeks. The number of initial requests for euthanasia was much higher, around three times as high, indicating that alternatives were found, and/or that the patient changed his mind.