A Presentation of the Belgian Act on Euthanasia Against the Background of Dutch Euthanasia Law

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Introduction

In this article a presentation of the Belgian act on euthanasia of 28 May, 2002 that entered into force on 23 September, 2002 is given (see for a not-official translation of this Act, p. 329). In order to make this presentation less formal and more lively, I will make a comparison with the Dutch euthanasia law (see the translation in European Journal of health law, 2001, 183-191; see also note 11 of this article).

In Belgium, there is no relevant jurisprudence on euthanasia and no guidance is offered by self-regulation made up by the medical profession itself before or after the enactment of the act although some guidance may be derived from the advice on euthanasia of the Advisory Commission on Bioethics, mentioned below. Thoughtful comments on the act are, understandably, lacking up to now while the discussions in parliament have been often unclear and even contradictory. In other words, the law on euthanasia in Belgium almost coincides with the act on euthanasia.

In this respect the situation in the Netherlands is totally different. The law on euthanasia is first of all governed by the “Termination of life on request and assisted suicide act” of 10 April, 2001 that entered into force on 1 April, 2002. This act is generally considered as the codification of the norms and procedures that have governed the practice of euthanasia in the Netherlands for almost three decades. These norms and procedures have largely emerged from within the medical profession itself and were later adopted by the courts in the context of criminal prosecutions. There also exists a very important legal doctrine that offers guidance in understanding this act. In other words, studying the law on euthanasia in the Netherlands is more than merely studying the act on euthanasia. The act is only the ‘tip of the iceberg’.
While the Dutch act aims to **codify** existing practices, the Belgian act mainly aims to **modify** the behaviour of physicians when ending the life of their patients. It is hoped that a law that pretends to offer legal security to physicians and patients will stimulate patients to express a voluntary and explicit request and that physicians will abandon their practice of ending the lives of patients without their request. Research indeed had pointed out that Belgian (or at least Flemish) physicians frequently ‘forget’ to obtain the patient’s request before ending his life.²

Is should be made clear from the outset that a comparison of the Belgian and the Dutch law regulating the practice of euthanasia is a hazardous undertaking. Just comparing both acts – at first sight the Belgian act, although much more detailed, could be considered a ‘clone’ of the Dutch act – will lead to misleading and even incorrect results. Not only the acts, but also medical practice and legal practice (jurisprudence and doctrine) have to be considered when we try to compare the law on euthanasia in both countries. In this article I will make an attempt to do this. Lack of space requires omitting many details from the comparison.

1. The field of application of the Belgian and Dutch acts on euthanasia

First, I will compare both acts from the point of view of their field of application: what practices are regulated and whose behaviour is regulated?

1.1. Practices regulated

a) Euthanasia

Section 2 of the Belgian act defines euthanasia as intentionally terminating life by another person than the person concerned, at this person’s request. This definition had been proposed in the recommendation of the Belgian Advisory Committee on Bioethics of 12 May, 1997.³ The great merit of this recommendation is that it ended the lack of clarity regarding the term ‘euthanasia’. By offering a clear, strict and authorative definition of euthanasia, the committee fulfilled one of the necessary conditions for a fruitful ethical and legal discussion regarding this matter.⁴ The definition opted for in the recommendation and confirmed in section 2 of the act is commonly known as the ‘Dutch’ definition of euthanasia because it was also used by the Dutch State Commission on euthanasia in 1985.⁵ Ironically, the Dutch act on euthanasia does not contain this definition and even the notion ‘euthanasia’ is not mentioned. This act always refers to ‘the termination of life