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FAQ

EUTHANASIA 2010

The Termination of Life on Request and Assisted Suicide (Review Procedures) Act in practice

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Question 1: Why legislate on euthanasia?

Answer: In the Netherlands, euthanasia is understood to mean termination of life by a doctor at the request of a patient. Euthanasia does not mean simply desisting from treatment when further intervention is pointless and allowing nature to take its course. This is accepted medical practice, as is the administration of drugs necessary to relieve pain even in the knowledge that they will have the side effect of hastening death.

The Dutch government does not want to turn a blind eye to the fact that euthanasia happens. The question of whether – and how – criminal liability for euthanasia should be restricted has been the subject of broad political and public debate for the past thirty years.

The inclusion in the Criminal Code of a special ground for exemption from criminal liability means that doctors who terminate life on request or assist in a patient's suicide can no longer be prosecuted, provided they satisfy the statutory due care criteria (see question 3) and notify death by non-natural causes to the appropriate regional euthanasia review committee (see question 8).

The main aim of the policy is to bring matters into the open, to apply uniform criteria in assessing every case in which a doctor terminates life, and hence to ensure that maximum care is exercised in such exceptional cases.

Question 2: Are doctors not punished for performing euthanasia?

Answer: Euthanasia (termination of life on request and assisted suicide) is still a criminal offence, but the Criminal Code has been amended to exempt doctors from criminal liability if they report their actions and show that they have satisfied the due care criteria formulated in the Act. The actions of doctors in such cases are assessed by review committees appointed by the Minister of Justice and the State Secretary for Health, Welfare and Sport.

Where a doctor has reported a case and a review committee has decided on the basis of his report that he has acted with due care, the Public Prosecution Service will not be informed and no further action will be taken. But where a review committee finds that a doctor has failed to satisfy the statutory due care criteria, the case will be notified to the Public Prosecution Service and the Healthcare Inspectorate. These two bodies will then consider whether the doctor should be prosecuted (see question 7).

Question 3: What are the criteria for assessing whether a doctor has acted with due care?

Answer: When dealing with a patient's request for euthanasia, doctors must observe the following due care criteria. They must:

a. be satisfied that the patient's request is voluntary and well-considered;

b. be satisfied that the patient's suffering is unbearable and that there is no prospect of improvement;

c. inform the patient of his or her situation and further prognosis;

d. discuss the situation with the patient and come to the joint conclusion that there is no other reasonable solution;

e. consult at least one other physician with no connection to the case, who must then see the patient and state in writing that the attending physician has satisfied the due care criteria listed in the four points above;

f. exercise due medical care and attention in terminating the patient's life or assisting in his/her suicide.

Question 4: Do doctors in the Netherlands always comply with requests for euthanasia?

Answer: No. Two thirds of the requests for euthanasia that are put to doctors are refused. Treatment frequently provides relief, while some patients enter the terminal stage of their illness before a decision has been reached. Doctors are not obliged to comply with requests for euthanasia. Experience shows that many patients find sufficient peace of mind in the knowledge that the doctor is prepared to perform euthanasia and that they ultimately die a natural death.

Question 5: Are doctors obliged to comply with requests for euthanasia?

Answer: No. Doctors can refuse to perform procedures to terminate life, and can never be censured for failing to comply with requests for euthanasia. Nursing staff are not permitted to perform procedures to terminate life; they may only make limited preparations for the procedure. They may also refuse to be involved in such preparations.

The ability to refuse a request for euthanasia or assisted suicide guarantees doctors' freedom of conscience. The basic principle underlying the legislation is that patients have no absolute right to euthanasia and doctors no absolute duty to perform it.

Question 6: Why do patients request euthanasia if good palliative and terminal care is available?

Answer: The Dutch health care system is accessible to all and guarantees full insurance cover for terminal and palliative care. Unfortunately, even where patients are receiving palliative care of the highest quality, they may still regard their suffering as unbearable and plead with their doctors to terminate their lives. In such cases, euthanasia could represent a dignified conclusion to good palliative care.

Question 7: What is the notification procedure?

Answer:

- The doctor is obliged to notify the municipal pathologist of every instance of death from non-natural causes. In the case of euthanasia or assisted suicide, he compiles a report based on a special model, which can be found at www.toetsingscommissieseuthanasie.nl, www.minvws.nl or www.knmg.nl.
- The pathologist also compiles a report establishing that the patient's death was due to non-natural causes. He sends this to the Public Prosecutor, who must give consent for burial.
- The regional euthanasia review committee receives these two reports, plus a statement by the independent physician consulted by the doctor and any written directive by the deceased (see question 10).
- The committee assesses whether the doctor has acted in accordance with the due care criteria (see question 3). If it concludes that he has, he is exempt from criminal liability and no further action will be taken against him.
- If the committee finds that the doctor has not acted in accordance with the due care criteria, it reports its findings to the Public Prosecution Service and the regional health inspector. These two agencies will then consider what action, if any, should be taken against the doctor.

An important feature of the legislation is that the regional review committees (each of which includes a doctor) have discretion to decide whether or not a doctor has satisfied the due care criteria. The reason for this is that research has shown that doctors are more likely to report cases of euthanasia if their own peers have a hand in the initial review of them. Otherwise, they feel that they face the threat of an assessment made exclusively by the Public Prosecution Service (see question 9).

Question 8: What is the procedure for consulting an independent physician?

Answer: Before the attending physician complies with a request for euthanasia, he must first consult a colleague who has no personal or other connection with him and is not involved in treating the patient. The independent physician must see the patient for himself and establish whether all the due care criteria have been fulfilled, including whether the request for euthanasia is both voluntary and well-considered, and communicate his findings in writing.

A network has been set up in the Netherlands of general practitioners and other physicians trained to provide expert assessments. The network is known as the Euthanasia in the Netherlands Support and Assessment Project (*Project Steun en Consultatie bij Euthanasia in Nederland*, SCEN) and is attached to the Royal Dutch Medical Association (*Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst*, KNMG). Attending physicians dealing with requests for euthanasia should preferably consult one of these doctors.

Question 9: Who sits on the regional review committees and how do they operate?

Answer: There are five regional review committees[1] dealing with reported cases of euthanasia or assisted suicide. Each has three members and three alternate members, including in any event one legal expert (who also chairs the committee), one physician and one expert on ethical issues (see section 3 of the Act). The committees reach their decisions by majority vote. The chairs and the ordinary members are all appointed by the Minister of Justice and the State Secretary for Health, Welfare and Sport for a period of four years with the possibility of being reappointed for another four years. If a committee finds that a doctor has failed to meet the due care criteria, the Public Prosecution Service and the Healthcare Inspectorate are informed. Each then assesses, from its own perspective, whether further action is required.

[1] The five regions are: Groningen, Friesland and Drenthe; Overijssel, Gelderland, Utrecht and Flevoland; North Holland; South Holland and Zeeland; North Brabant and Limburg.

Question 10: Does a written directive have the same status as an oral request?

Answer: The Act recognises both written directives (living wills) and oral requests as legitimate. The recognition of written directives is especially important where a doctor decides to comply with a request for euthanasia in circumstances where the patient is no longer able to express his wishes orally. In such circumstances, a written directive counts as a well-considered request for euthanasia, but its existence can never discharge the doctor from his duty to reach his own decision on the request in the light of the statutory due care criteria.

The doctor must normally give serious consideration to any written directive. The only exception is where he has reason to believe that the patient was not competent to make a reasonable appraisal of his own interests when he signed it. In that case, the directive will not constitute a request for euthanasia within the meaning of the Act. It is important that the doctor and patient discuss the terms of the directive, if at all possible.

The statutory provision for written directives makes it possible for patients to indicate in advance that they wish their lives to be terminated if they eventually find themselves experiencing unbearable suffering with no prospect of improvement, in circumstances which render them incapable of expressing their wishes personally.

The Act does not apply if a patient is not competent to make a reasonable appraisal of his own interests at the time when he signed the directive.

Question 11: What is the definition of ‘unbearable suffering with no prospect of improvement’?

Answer: Suffering is without prospect of improvement if this is the prevailing medical opinion. In other words, if doctors agree that the patient’s condition will not improve. The doctor and patient must discuss every possible alternative treatment. As long as a feasible alternative is available, there is, in a medical sense, a prospect of improvement.

It is difficult to establish objectively whether suffering is unbearable. The review committee examines each individual case to establish whether the doctor could reasonably conclude that the patient was suffering unbearably.

Question 12: Are doctors allowed to comply with a request for euthanasia made by a chronic psychiatric patient?

Answer: In many cases, the expression of a wish to die by chronic psychiatric patients can be interpreted as a cry for help. The first priority in responding to such requests is to explore the prospects of an improvement in the patient's quality of life. This does not, however, mean that physician-assisted suicide at the request of a chronic psychiatric patient is prohibited in all cases. In some cases, a voluntary and well-considered request for assisted suicide may be prompted by a persistent wish to die resulting from unbearable suffering with no prospect of improvement caused by a psychiatric condition. In such cases, assisted suicide may be permissible under the Act, as long as all the other due care criteria have been fulfilled. Around two thirds of Dutch psychiatrists believe that assisting the suicide of a psychiatric patient can be acceptable in certain situations, although not all of them would be willing to actually do so.

Question 13: Are doctors allowed to comply with a request for euthanasia made by a person suffering from dementia?

Answer: No, not in principle. In exceptional circumstances, however, such a request may be granted. In such cases, the patient will be in the early stages of dementia and able to understand his illness and the symptoms of disorientation and personality change. If the patient is able to understand the consequences of a request for his life to be terminated he can, in certain circumstances, be considered competent to make a reasonable appraisal of his own interests. The unbearable nature of the patient's suffering consists in his awareness that he is already beginning to lose his personality, skills and ability to function, and that this will only worsen, resulting in profound dependence and total loss of self.

Generally speaking, the review committees take the view that doctors should exercise great caution when responding to patients in this situation who request euthanasia. In such situations, the doctor's assessment needs to be conducted with particular care. It is advisable for the doctor to consult one or more specialists, e.g. a geriatrician or other dementia specialist, in addition to another independent physician. Extremely careful deliberation is required in assessing whether the request is voluntary and well-considered and in determining that there is no prospect of improvement and, in particular, that suffering is unbearable. A patient's awareness of his illness and the prognosis can, in itself, give rise to great suffering. Fear of future suffering may constitute a realistic assessment of how the illness is likely to progress. Here, too, the specific circumstances of the case will determine whether the doctor is satisfied that the patient's suffering is unbearable.

Question 14: But is it not the duty of the doctor to preserve life?

Answer: Yes. A doctor's main duty is indeed to preserve life. In the case of euthanasia a doctor's duties conflict: on the one hand, doctors have a duty to do all they can to keep the patient alive. On the other hand, they have a duty to relieve the patient's suffering.

Question 15: Can people come from other countries to seek euthanasia in the Netherlands?

Answer: This is impossible, given the need for a close doctor-patient relationship. The legal procedure for the notification and assessment of each individual case of euthanasia requires the patient to have made a voluntary, well-considered request and to be suffering unbearably without any prospect of improvement. In order to be able to assess whether this is indeed the case, the doctor must know the patient well. This implies that the doctor has treated the patient for some time (see question 3).

Granting a request for euthanasia places a considerable emotional burden on the doctor. Doctors do not approach the matter lightly. From this point of view too, longstanding personal contact between the doctor and the patient plays an important role.

Question 16: Can a minor request euthanasia?

Answer: The Act contains special provisions dealing with requests from minors (12 to 17 years of age) for termination of life and assisted suicide. The age groups to which it applies mirror the existing statutory provisions regarding consent for medical treatment. A request for euthanasia can only be made by a patient who is competent, and not by his parents or legal representatives.

Additionally, in the case of patients who are 12 to 15 years of age the parents or guardians need to agree to the request. Patients who are 16 or 17 years of age can make the request without their parents' permission, although the parents do need to be involved in the discussions.

Euthanasia is not permitted in the case of minors aged 11 or under. All reports of euthanasia in this age group are referred to the Public Prosecution Service. One exception is the termination of life of newborn infants suffering extreme pain and discomfort. Reports of such cases are initially reviewed by the central committee on late-term termination of pregnancy and termination of life in newborn babies. More information can be found at www.minvws.nl or www.lza-lp.nl (in Dutch only).

Experience shows that in practice the vast majority of cases of euthanasia (almost 90%) relate to patients with terminal cancer. This is equally true of young people's requests for euthanasia. In these extremely rare cases, the parents or guardian should normally be able to reconcile themselves with the wishes of the child. The attending physician, the patient and his parent or guardian usually discuss the question at length, and failure to reach agreement is almost unknown.

Question 17: Is Dutch law on euthanasia compatible with international conventions guaranteeing the right to life?

Answer: Dutch law on euthanasia is not incompatible with international conventions and the fundamental human rights they enshrine, such as the right to life laid down in article 6 of the UN's International Covenant on Civil and Political Rights (ICCPR) and article 2 of the European Convention on Human Rights (ECHR). What underlies both provisions is respect for life. The Dutch government vigorously endorses these rights, but does not believe that a request to end life made by someone experiencing unbearable suffering without the prospect of improvement should be refused solely on those grounds.

Question 18: How willing are doctors to report cases of euthanasia?

Government-commissioned research carried out between 1991 and 2005 into the termination of life showed that greater openness had led to greater care. By 2005 the notification rate had increased to 80%. In 2010 the legislation will again be reviewed, and the willingness of doctors to report euthanasia examined.

The 20% of cases that are not reported can be attributed to the fact that the doctors did not regard the procedure involved as euthanasia, even though they administered a substance with the express purpose of hastening the end of life. In doing so they did not use the recommended euthanatics. When doctors did consider that their actions constituted euthanasia, they used the recommended euthanatics and reported having done so. The actual willingness to report is therefore estimated at 99%.

Information regarding the number of cases of termination of life on request was compiled from confidential surveys completed by doctors. The Public Prosecution Service guaranteed that none of the information volunteered would be used for investigatory purposes.

Further information

Please contact your doctor if you have any personal questions regarding euthanasia. For more general information, contact:
Postbus 51 information line 0800 8051 (free, from within the Netherlands only)
Monday to Friday 09.00 – 21.00
www.postbus51.nl
vragen@postbus51.nl

If you have any questions regarding government policy on euthanasia, contact:
Ministry of Health, Welfare and Sport
Information and Communication Department
Postbus 20350
2500 EJ Den Haag
+31 (0)70 340 7890
Monday to Friday 10.00 – 16.00
www.minvws.nl

Ministry of Justice
Communication Department
Internal and External Communication Division
Postbus 20301
2500 EB Den Haag
Tel: +31 (0)70 370 6850
Monday to Friday 09.00 – 17.00
www.justitie.nl
voorlichting@minjus.nl

If you would like to know more about advance directives, contact:
The Dutch Voluntary Euthanasia Society (NVVE)
Postbus 75331
1070 AH Amsterdam
0900 6060606 (from within the Netherlands only)
www.nvve.nl.

The Dutch Patients' Association (NPV) has set up a helpline for anyone who needs assistance in dealing with difficult issues relating to end-of-life treatment. It can be reached 24 hours a day:
+31 (0)318 547 878.

The NPV's address is:
Nederlandse Patiëntenvereniging
Postbus 178
3900 AD Veenendaal