Legalization of Euthanasia in the Netherlands

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On November 28, the Second Chamber of the Dutch Parliament accepted the proposal for a law regarding legalization of euthanasia and assisted suicide. The proposal will now go to the First Chamber, which will probably discuss it in early 2001. It will only become effective if it is also accepted by the First Chamber.

This legalization is a significant step on the path towards the acceptance of euthanasia as part of medical practice. Since 1994, a legal regulation has existed for dealing with cases of euthanasia and assisted suicide in which the courts accepted these actions as long as certain conditions were met.

The proposal accepted by the Second Chamber essentially contains the following provisions:

1. In order to be deemed legal, acts of euthanasia must be performed according to "careful medical practice." Requests for euthanasia must be voluntary, well considered and persistent, and be made by patients who are experiencing unbearable suffering without hope of improvement. More than one physician must be involved in the decision, and both patient and physician must agree that euthanasia is the only reasonable option.

2.
All cases of euthanasia must be reported to and evaluated by regional committees composed of a lawyer, physician and an ethicist/philosopher. Each position also has a deputy member.

3. Acts of euthanasia and assisted suicide will not be punishable if performed by a physician who has complied with the conditions in (1) and has reported the action to the coroner.

4. The coroner attending to a euthanasia case must send his or her report to the Public Prosecutor, as well as to the regional euthanasia committee. The report must demonstrate that all the requirements for legal euthanasia have been observed. In the event of severe infraction, the Prosecutor will not give consent for burial or cremation until further investigations have been conducted.

5. Also minors between the age of 12 and 16 can request and receive euthanasia or assisted suicide provided their parents consent to it.

6. The proposal also establishes a legal basis for advance euthanasia declarations via a type of "living will" in which a patient would request euthanasia in the event he or she became mentally incompetent. Though such a statement does not imply that a physician has a duty to perform euthanasia at any moment, it provides the legal opening to intentionally end the life of an incompetent patient who had signed such a document.

A number of objections can be raised against this ominous proposal for legalizing euthanasia.

First, the proposal does not adequately safeguard the public. The depenalization of intentional killing by physicians constitutes, in itself, a serious violation of the legal protection of the life of all citizens. Moreover, whenever the committee rules favourably on a case by deeming an act of killing legal, the Public Prosecutor's ability to monitor physician conduct will be compromised, because the Prosecutor will not even see the report of the physician involved in the case. Furthermore, it is likely that cases in which the legal requirements have not been fulfilled will go unreported, since that precedent has already been set. Data on reported cases are provided by the physician who performed the euthanasia; therefore, determinations of whether the legal requirements have been met may very often be biased as well. Adequate control will be impossible.

Second, such legalization will lead to a broader acceptance and increased practice of euthanasia, which will dramatically change the nature of the patient-physician relationship and terminal/palliative care. Once euthanasia becomes a legal option, a patient afflicted with terminal illness or unbearable suffering may have to justify not asking to be euthanized. The recent case of Mr. Brongersma demonstrates the elasticity of the requirement of unbearable suffering, implying that a substantial group of people could become vulnerable to such pressure. (Brongersma was an 86 year old person who wanted and received help in committing suicide because he felt his life had become meaningless and too heavy a burden. The physician was
acquitted by the court; see British Medical Journal 2000; 321:1174 [http://www.bmj.org/cgi/content/full/321/7270/1174/a]). At the same time, legalization will undermine the efforts and creativity of those committed to providing palliative care to a terminal patient. Such unintended outcomes seem inevitable in a health care system characterized by increasing costs and the need to make choices regarding resource allocation.

Third, legalized euthanasia is incompatible with the fundamental role of the physician as healer. Since this role and the extent of the physician's competence is regulated by law, such a fundamental change in the physician's competence concerns society as a whole and cannot be considered as a private matter for only patients and physicians.

Fourth, accepting the euthanasia of minors 12-18 years of age seriously overestimates the capacity of such persons to evaluate the meaning and consequences of a request to be killed. It places an unacceptable burden on these young people.

Fifth, legalizing the euthanasia declaration designed to permit a competent patient to request euthanasia in advance, should he or she later become incompetent, is likely to foster a broadening of the requirement of 'unbearable suffering' to 'loss of dignity'. Furthermore it is likely to increase the pressure on the physician to terminate a patient's life when a patient has become severely demented, especially when the patient's family insists on doing that. Such a practice may likely lead to a blurring of the distinction between voluntary and involuntary euthanasia. It is no wonder that the Dutch Association of Nursing Care Physicians has voiced their unhappiness with this part of the proposal.

Finally, although the responsible ministers have admitted during the debate in parliament that a physician who does not want to perform euthanasia to a patient insisting on having it is not obliged to formally refer to a colleague who may be willing to do so, in practice physicians will feel pressured to either perform euthanasia themselves or refer to a colleague. If they refuse to do either, they may run into trouble unless they have indicated in an early stage of the terminal phase of the disease that they object to performing euthanasia. Furthermore, health care professionals who reject euthanasia will likely find it difficult to obtain jobs in certain areas of the health care field.

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