

# Dutch nursing home death: more excuses, more killing

by Paul Russell

Once you create a situation at law where killing of another person is allowed in certain circumstances, not only will the circumstances in which such killing is endorsed or allowed change over time, but the boundaries, however originally drawn, will be entirely ineffective in providing moral, legal and ethical guidance and restraint.

In Belgium and the Netherlands, of the thousands of euthanasia deaths since their laws came into effect in 2002, few cases have been referred by the review systems to justice for further scrutiny. In Belgium that number is one.

Either the practice of euthanasia works perfectly well and doctors always comply with the law, or any problems that do exist around compliance are not acted upon. With nearly 10,000 reported deaths in Belgium since 2002, I'm leaning heavily towards the second conclusion. No system is ever perfect. Besides, there have been plenty of examples over the years confirming that under-reporting remains a problem.

One could argue that even the noted problems with compliance that come to light through various studies and through the published government reports are only minor and do not require judicial review. That is certainly one possible conclusion. However, considering the fact that compliance with the law by reporting a euthanasia death provides effective immunity from prosecution, one would have thought that completing the forms would be a "no-brainer"!

The Dutch reporting system, though *post factum* like Belgium's, seems to be picking up on a few more euthanasia cases for judicial scrutiny. Even so, prosecutions are rare for reasons I will go into a little later on.

One might have expected that, after all the discussion over the past few years and intense public scrutiny, doctors would have been exceedingly careful to act within the law and report according to the law in the first years of operation. Not so.

Which brings me to a recent example from Holland that should ring alarm

bells. An unnamed woman – an octogenarian living in a nursing home and experiencing dementia – was euthanased against her will. According to reports, she had made a comment in her advanced directive that she would like euthanasia "when I myself find it the right time".

The woman had been a resident in the nursing home for only seven weeks. During that time she was noted as being "frightened and angry", wandering the halls of the facility at night and missing her family. This, the nursing home doctor concluded, meant that she was suffering unbearably. She assessed that the woman was no longer mentally competent and accepted that the written declaration she had made earlier in her advanced directive was an acceptable request for euthanasia.

The Dutch law allows for a request for euthanasia in an advanced directive to be acted upon after the satisfaction of all the other qualifying criteria. The law considers such a written statement as a "well-considered request for euthanasia".

Compounding the problem, the woman's expression of intent in her directive was not clear and should not have been accepted as an advance request, according to the Dutch Euthanasia Review Commission. She had written, concerning euthanasia, that she wanted it, "when I myself find it the right time". At the very least, this expression suggests that the woman wanted to approach the matter when she thought it was appropriate; implying that her own capacity to make a contemporary decision was important to her. Paradoxically, the doctor's determination that capacity had been lost should have rendered her statement null.

Media reports point out that the woman was provided with a sedative in her coffee "to calm the woman down". She was unaware that the sedative had been provided. The *Trouw* newspaper's editorial discussed the issue of the provision of a pre-euthanasia sedative without the person's knowledge, pointing to a recent case where a similar sedative was provided without consent in a bowl of applesauce. They note that the Dutch Euthanasia Review Commission rightly considers such behaviour as "deceptive".

The *Trouw* editor concluded that the problem was really that the coffee-carried dose was too low. Why? Because the woman resisted when the doctor moved to apply the lethal dose via syringe.

The *NLTimes* described it this way: "But when the infusion was inserted she 'pulled back', and while the doctor injected the euthanasia agent, she moved as if to get up. The doctor decided to continue while family members held the patient down. The woman died shortly afterwards."

According to the UK *Mirror*, this story came to light via a report prepared by a Dutch Coroner for review by the Dutch Euthanasia Regional Review Committee. The *Mirror* says that the woman had said clearly several times, "I don't want to die", in the days before her death.

The Euthanasia Review Committee is charged with reviewing the file and making a recommendation that would need to be endorsed by a second review committee.

The *Mirror* concludes: "The committee concluded though the doctor had acted in good faith, she should have stopped when the patient resisted.

"Committee spokesman Jacob Kohnstamm added he was in favour of the case going to court: 'Not to punish the doctor, but to get judicial clarity over what powers a doctor has when it comes to the euthanasia of patients suffering from severe dementia.'"

So, what happens after a euthanasia or assisted-suicide death occurs and the doctor is found not to have fulfilled one or more of the criteria set down in the law? There should be a charge of homicide.

Euthanasia or assisted-suicide laws create an exception to the laws prohibiting homicide if certain criteria are observed. They were not observed in this case; therefore the exception should not be applied. In Holland it would seem that "good faith" is enough to be let off with a little less than a slap on the wrist.

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