ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

UNIVERSAL PERIODIC REVIEW

Submission to the 41st Session of the Human Rights Council's Universal Periodic Review Working Group

March 2022

Geneva, Switzerland

THE NETHERLANDS

Submission by:

ADF International
Rue Pré-de-la-Bichette 1
1202 Geneva, Switzerland

Web: www.ADFinternational.org
Email: UN@ADFinternational.org

Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions.

2. This report outlines how the Netherlands' regulation of euthanasia and assisted suicide undermines respect for human dignity and violates the rights to life and to health, particularly of older persons and persons with disabilities. It also highlights how the introduction of so-called "buffer zones" around abortion facilities constitutes an illegitimate restriction on the exercise of the freedoms of expression and assembly.

(a) Right to Life

Background

3. In 2001, the Netherlands was the first European State to legalize euthanasia and assisted suicide. The Termination of Life on Request and Assisted Suicide (Review Procedures) Act of 2001 (hereafter, "the Act") regulates the practice of euthanasia and assisted suicide in the country.[1]

4. The Act permits medical professionals to end a patient's life if: a) the request was voluntary and well-considered; b) the patient's suffering is "lasting and unbearable"; c) the patient is well informed of his or her situation and other possible options; and d) a second independent physician is formally consulted.[2] The assessment of what constitutes "unbearable suffering" is not based on objective criteria, but rather on a subjective assessment of the patient, involving both physiological and psychological circumstances. There is no requirement for the patient's condition to be terminal.

5. Only licensed physicians are allowed to provide euthanasia, and they must know the patient "sufficiently well" to be able to assess whether the abovementioned conditions are met.[3]

6. Furthermore, the Act provides that persons aged 16 or older, who are no longer capable of expressing their will, may be euthanised if prior written consent is provided. Minors aged 12 or older may also be euthanised with the involvement and, if under 16 years of age, the consent of their parents.[4]

7. Since the introduction of the Act, the number of persons being euthanised has been consistently rising, reaching a total of almost seven thousand cases in 2020, a 9% increase from the previous year.[5] This represents roughly 4% of all deaths in the Netherlands, up from 2% in 2002. A study of regional differences in euthanasia cases

---

[1] Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2001 <https://wfrtds.org/dutch-law-on-termination-of-life-on-request-and-assisted-suicide-complete-text/>.
[2] Id., Art.2.1.
[3] P. Lewis; I. Black 'The Effectiveness of Legal Safeguards in Jurisdiction that Allow Assisted Dying' (January 2012) Commission on Assisted Dying <https://www.demos.co.uk/wp-content/uploads/2016/09/Penney-Lewis-briefing-paper.pdf>, 23.
[4] Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2001, Art. 2.2-4.
[5] S. Boztas 'Highest ever number of euthanasia procedures in 2020' (23 April 2021) Dutch News <https://www.dutchnews.nl/news/2021/04/highest-ever-number-of-euthanasia-procedures-in-2020/>.

revealed that higher rates of euthanasia were correlated to a number of social factors, including the lack of availability of community volunteers in the region.[6]

Recent Developments

8. In 2020, a Dutch member of parliament introduced a bill to allow so-called "completed life" euthanasia for persons over the age of 75. This would allow for individuals to seek legal euthanasia or assisted suicide without requiring any notable medical conditions or "unbearable suffering" whatsoever, as long as they demonstrate "a persistent wish to die".[7] The proposal emerged amid an ongoing debate on euthanasia in Dutch society.

9. In general, the discourse surrounding euthanasia in the Netherlands has shifted away from prioritising physicians' professional responsibility towards guaranteeing a person's alleged "right" to autonomy and self-determination with regard to the decision to die. Among other things, this has made it increasingly difficult for medical professionals to provide patients with appropriate palliative or psychosocial care in cases where the patient insists on ending their life.[8]

10. Several studies indicate that the majority of medical professionals do not support euthanasia or assisted suicide in cases of mental suffering, and express concern at the ambiguity of the law as is currently in force, as it applies to physically healthy patients with psychiatric conditions.[9] This entails uncertainty, inter alia, as to how to assess "unbearable suffering", the possibility of pursuing alternative, life-preserving options and the degree to which patients are able to give voluntary, informed and well-considered consent, as required by the Act.[10]

11. A 2018 study of euthanasia cases among persons with intellectual disabilities concluded: "The Dutch euthanasia and assisted suicide due care criteria are not easily applied to people with intellectual disabilities and/or autism spectrum disorder, and do not appear to act as adequate safeguards."[11]

12. Similarly, a 2020 study on advance-request euthanasia cases among persons with dementia concluded that the cases "were complicated by ambiguous directives, patients being unaware of the euthanasia/ assisted suicide procedure, and physicians'

---

[6] S. Groenewoud; F. Atsma; M. Arvin; G. Westert; T. Boer 'Euthanasia in the Netherlands: a claims data cross-sectional study of geographical variation' (14 January 2021) BMJ Supportive & Palliative Care.

[7] M. Cook 'Dutch concern over bill for 'completed life' euthanasia' (26 July 2020) Bio Edge <https://bioedge.org/uncategorized/dutch-concern-over-bill-for-completed-life-euthanasia/>.

[8] P. Kouwenhoven et al. 'Developments in euthanasia practice in the Netherlands: Balancing professional responsibility and the patient's autonomy' (1 November 2018) EJGP 25(1), 44-48.

[9] P. Kouwenhoven et al. 'Opinions of health care professionals and the public after eight years of euthanasia legislation in the Netherlands: a mixed methods approach' (March 2013) Palliat Med. 27(3), 273-280.

P. Kouwenhoven et al. 'Opinions about euthanasia and advanced dementia: a qualitative study among Dutch physicians and members of the general public' (January 2015) BMC Med Ethics 16(7).

[10] D. Denys 'Is Euthanasia Psychiatric Treatment? The Struggle With Death on Request in the Netherlands' (1 September 2018) AJP 175(9), 822-823.

[11] I. Tuffrey-Wijne et al. 'Euthanasia and assisted suicide for people with an intellectual disability and/or autism spectrum disorder: an examination of nine relevant euthanasia cases in the Netherlands (2012–2016)' (March 2018) BMC Medical Ethics 19(17).

difficulty assessing 'unbearable suffering'."[12] In the same year, a decision by the Supreme Court of the Netherlands resulted in a change in the medical code of conduct, with the new provision stating that, in the case of patients with severe dementia who had expressed advance consent to being euthanised, "it is not necessary for the doctor to agree with the patient on the time or manner in which euthanasia will be given."[13]

13. With regard to so-called "completed life" euthanasia, a recent study revealed that the majority of medical professionals disagree with this proposal due to fears of a "slippery slope" effect, resulting in increased pressure on physicians to approve euthanasia requests, even when life-preserving treatment options exist.[14]

14. A broad survey of elderly persons conducted by the Ministry of Health in 2020 revealed that among those desiring euthanasia for "completed life", 56% cited loneliness, 42% felt themselves to be a burden to others, and 36% claimed financial problems as motivating factors. Additionally, a considerable proportion of the group expressed a desire for greater social contact, recognition and understanding of their feelings, access to meaningful activities, meditation, professional counselling, and improved financial stability. The report concludes that the term "completed life" is inappropriate, as it is "too rosy" and obscures the reality of the situation of the affected persons. It concludes that the presence of a death wish is often linked to conditions that are not untreatable, and that there is therefore a need to focus on improving the living situation of elderly persons.[15]

15. Most cases of psychiatric euthanasia in the Netherlands are carried out by the Euthanasia Expertise Centre, formerly the End-of-Life Clinic, a network of physicians affiliated with the Dutch Right to Die Society, the largest pro-euthanasia advocacy organization in the country, which regularly take cases that are refused by other physicians.[16] The organization claims to act as a "safety net" for those patients who "cannot be helped by their own physician".[17]

The right to life, health and non-discrimination in international law

16. There is no "right to die" under international law. Rather, the state has an obligation to protect the right to life of all without discrimination, as well as to ensure the highest quality of care to those suffering from physical or psychological causes, including palliative care for persons with chronic or terminal conditions.

---

[12] D. Mangino et al. 'Euthanasia and Assisted Suicide of Persons With Dementia in the Netherlands' (April 2020) AJGP 28(4), 466-477.
[13] D. Boffey 'Dutch euthanasia rules changed after acquittal in sedative case' (20 November 2020) The Guardian <https://www.theguardian.com/world/2020/nov/20/dutch-euthanasia-rules-changed-after-acquittal-in-sedative-case>.
[14] P. Satalkar; S. Geest 'Divergent Views and Experiences Regarding 'Completed Life' and Euthanasia in the Netherlands' (28 December 2021) OMEGA Journal of Death and Dying.
[15] E. Wijngaarden et al. 'Perspectieven op de doodswens van ouderen die niet ernstig ziek zijn: de mensen en de cijfers' (2020) PERSPECTIEF Project https://www.zonmw.nl/fileadmin/zonmw/documenten/Ouderen/Voltooid_Leven/ZonMw_A4_HPO_def-online-3_spread.pdf>.
[16] Id.
[17] Expertisecentrum Euthanasie 'Careful and Caring' <https://expertisecentrumeuthanasie.nl/en/>.

17. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”[18] Article 10 of the Convention on the Rights of Persons with Disabilities (CRPD) reaffirms the inherent nature of this fundamental human right, requiring States Parties to “take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”[19]

18. Article 12 of the International Covenant on Economic, Social, Cultural Rights (ICESCR) imposes an obligation on its States Parties to achieve the progressive realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”[20] The CRPD further specifies in its Article 25 that “persons with disabilities have the right to the enjoyment of the highest attainable standard of health, without discrimination on the basis of disability,”[21] and demands that States Parties take measures “to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.”[22]

19. The legalization of practices such as euthanasia constitutes a blatant violation of the right to life. This right is to be protected by law and is not disposable. As affirmed inter alia by the European Court of Human Rights in *Pretty v United Kingdom* and *Haas v Switzerland*, the right to life does not include a diametrically opposite right to die.[23]

20. These cases affirm that the rights invoked by proponents of euthanasia to justify its legality, such as the rights to privacy, as well as the freedom from torture or cruel, inhuman or degrading treatment or punishment, must be understood in conjunction with Article 2, which not only prohibits the State from intentionally taking life, but also imposes a positive obligation on States to take appropriate steps to safeguard the lives of individuals within its jurisdiction.[24]

21. In January 2021, a joint statement by the Special rapporteur on the rights of persons with disabilities and the Independent expert on the enjoyment of all human rights by older persons expressed alarm at the growing trend to promote medically assisted dying on the basis of disability or old age. They noted that laws permitting euthanasia for persons not terminally ill tend to rely on “ableist assumptions about the inherent ‘quality of life’ or ‘worth’ of the life of a person with a disability,” resulting in implicit pressures into ending their lives prematurely. According to the experts, “under no circumstance should the law provide that it could be a well-reasoned decision for a

[18] International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 6.
[19] Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 2 May 2008) 2515 UNTS 3 (CRPD), art. 10.
[20] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 171 (ICESCR), art. 12.
[21] Id., art. 25.
[22] Id., art. 26.
[23] Pretty v United Kingdom (2002) 35 EHRR 1; Haas v Switzerland (2011) 53 EHRR 33.
[24] Id.

person with a disabling condition who is not dying to terminate their life with the support of the State."[25]

22. The Netherland's euthanasia law stands in flagrant violation of international law as it disregards the equal dignity and right to life of all persons, including particularly older persons, persons with disabilities as well as those suffering from serious medical conditions. In practice, its ambiguous and subjective application falls short of the State's obligation to guarantee the right of those affected to the enjoyment of the highest attainable standard of physical and mental health. The slippery slope ensuing from expanded access to euthanasia further undermines human dignity and neglects the underlying social, psychological, medical, economic as well as spiritual needs of the most vulnerable.

(b) Freedom of Expression and Assembly

23. In December 2021, the Dutch Humanist Association launched a largescale email campaign to pressure local mayors to adopt stricter restrictions on gatherings around abortion clinics, claiming that pro-life activists allegedly regularly harassed women and spread "misinformation".[26] This resulted in the introduction of a new censorship zone in the city of Eindhoven. Similar restrictive areas already existed around abortion clinics in Amsterdam, Rotterdam and several other cities in the Netherlands.[27]

24. In March 2019, the Dutch Minister of Health publicly encouraged municipalities to implement more so-called "buffer zones", ranging up to several hundred meters in size, in order to prevent pro-life activists from offering support to affected women or demonstrating in the proximity of abortion clinics. Pro-life groups themselves deny any allegations of harassment or intimidation.[28]

25. A blanket ban on pro-life gatherings is both unjustified and disproportionate. In the Netherlands, local mayors are legally permitted to restrict protests and public gatherings only for the purposes of protecting public health, in the interest of traffic, or combating or preventing public disorder.[29] The establishment of these "buffer zones" is clearly not compatible with either of these criteria.

---

[25] UN News 'Disability is not a reason to sanction medically assisted dying' (25 January 2021) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26687>.
[26] NL Times 'Over 5,300 people emailed mayors asking for buffer zones around abortion clinics' (10 December 2021) <https://nltimes.nl/2021/12/10/5300-people-emailed-mayors-asking-buffer-zones-around-abortion-clinics>.
[27] CNE News 'Dutch city of Eindhoven introduces buffer zone around abortion clinic' (13 December 2021) <https://cne.news/artikel/386-dutch-city-of-eindhoven-introduces-buffer-zone-around-abortion-clinic>.
[28] NL Times 'Create buffer zones for protesters around abortion clinics: Dutch Health Minister' (29 March 2019) <https://nltimes.nl/2019/03/29/create-buffer-zones-protesters-around-abortion-clinics-dutch-health-minister>.
[29] L. Reddy 'Safe access zones – What do other countries do?' (8 May 2019) L&RS Note <https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2019/2019-05-08_l-rs-note-safe-access-zones-what-do-other-countries-do_en.pdf>, 6-7.

26. Furthermore, given that harassment, intimidation, and other similar actions can be prosecuted under existing criminal laws,[30] the imposition of a permanent "buffer zone" is patently disproportionate and unjustified.

Freedom of expression and assembly in international law

27. Article 19 of the ICCPR articulates the right to freedom of expression, including the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." [31]

28. Article 19(3) allows restrictions on freedom of expression only where they are necessary "for the respect of the rights and reputations of others" or "for the protection of national security, public order or public health or morals."[32]

29. As also clarified by the Human Rights Committee in its General Comment No. 34, restrictions on free expression must be provided by law, must be imposed on one of the permissible grounds provided, and "must conform to the strict tests of necessity and proportionality."[33]

30. The Committee further defines the principle of proportionality as follows: "[the restrictions] must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected."[34] It also observes that the state must establish "a direct and immediate connection between the expression and the threat."[35]

31. Article 21 ICCPR establishes the right to freedom of assembly:

> "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."[36]

32. In addition to meeting the same requirements as with freedom of expression, restrictions on free assembly must also be "necessary in a democratic society." According to General Comment 37, "Restrictions must therefore be necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient."[37]

---

[30] See e.g. Dutch Criminal Code, Section 426bis.
[31] International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 19.
[32] Id.
[33] UN Human Rights Committee, General Comment No. 34 (2011), CCPR/C/GC/34, 22.
[34] Id., 34.
[35] Id., 35.
[36] International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 21.
[37] UN Human Rights Committee, General Comment No. 37 (2020), CCPR/C/GC/37, 40.

33. The Dutch establishment of “buffer zones” around abortion clinics does not correspond to any of the permissible grounds for restricting freedom of expression or assembly. Claims that these measures are necessary to preserve the right of women to seek an abortion are unwarranted, as the presence of demonstrators does not prevent access to the facilities, nor coerce or threaten potential visitors. The demonstrators are exercising their fundamental right to express their beliefs, including by providing information to women to persuade them to make a better decision—all of which is firmly protected under the law.

34. There is certainly a need to regulate forms of communication that can credibly and reasonably be said to constitute incitement to violence or discrimination. However, central to freedom of expression and assembly is the liberty to openly and candidly share ideas and belief systems of all varieties. Individuals cannot be censored simply because their message is perceived as offensive or insensitive. Censorship and restrictions on free assembly must remain the exception, not the rule. The persistent nature of the “buffer zones” reverses this critical dynamic by employing censorship as a given principle, rather than in response to legitimate verified threats.

35. Additionally, the introduction of blanket censorship zones fails the principle of proportionality, as it drastically exceeds the requirement to employ the “least intrusive instrument amongst those which might achieve their protective function.” Instead, existing national laws can be relied on to prevent, halt, and where necessary, prosecute specific conduct amounting to a genuine threat of violence or harassment to the affected women or staff.

(c) Recommendations

36. In light of the foregoing, ADF International suggests the following recommendations be made to the Netherlands:

    a. Repeal the 2001 Termination of Life Act, acknowledging that there is no “right to die” under international law and that the practice of euthanasia constitutes a gross human rights violation;

    b. Prohibit euthanasia and assisted suicide, and instead take measures to protect the right to life, health and non-discrimination of persons with disabilities, the elderly, sick and other vulnerable members of society;

    c. Strengthen policies and increase investments to promote the medical, psychological, social and economic well-being of elderly persons and other vulnerable members of society;

    d. Promote awareness-raising campaigns to eliminate harmful stereotypes of older persons and persons with disabilities;

    e. Ensure that all patients are provided with high-quality palliative care;

    f. Ensure full respect for the right to freedom of expression and assembly in all public spaces, including by blocking the implementation of so-called “buffer zones” around abortion facilities.

VIENNA
HEADQUARTERS

BRUSSELS

GENEVA

STRASBOURG

LONDON

NEW YORK

WASHINGTON, DC

ADF INTERNATIONAL