

IHF FOCUS: euthanasia legislation; international humanitarian law; religious intolerance; women's rights.

The primary human rights concern in the Netherlands in 2001 was the implementation of the new law on the termination of life upon request and assisted suicide. This law was one of the main subjects of discussion and criticism both in the Netherlands and abroad. Another issue that caused international criticism to be levelled against the Netherlands was the position of women. The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) made several critical remarks on the position of Dutch women in the labour market and on the Dutch policy as regards prostitution. Special concerns were expressed over the fact that there was a political party represented in Parliament that excluded women from its membership.

The District Court of Zwolle's rejection of a female applicant for the post of registrar based on the fact that she wore a headscarf, gave rise to public debate about the position of ethnic minority groups in the Netherlands.

The Dutch Euthanasia Legislation

After intensive public discussions, on 10 April, the First Chamber of the Dutch Parliament approved a bill concerning the "Review for Termination of Life Upon Request and Assisted Suicide". The law will enter into force in 2002.

For at least fifteen years, the practice of euthanasia has, under strict conditions, been legally accepted by the Supreme Court (*Hoge Raad*). According to its judgments, a physician may justify his/her actions in the case of euthanasia carried out with care. In such a case, the Court decided on several occasions that the physician in question had not committed a crime. This case law was also recognised by the prosecution and in several legal provisions such as the Burial and Cremation Act. Thus, long

before the acceptance of the new legislation, euthanasia was, subject to certain conditions, legally accepted under Dutch law. The aforementioned bill also explicitly incorporated this legal policy in the Dutch Criminal Code (*Wetboek van Strafrecht*), which additionally has at least a far-reaching symbolic meaning. During the occasionally heated debate in Parliament preceding the approval of the bill, the Minister of Justice pointed out that the legal policy concerning euthanasia could count on broad support within Dutch society. He concluded, that „the law is an expression of the scrupulous way in which our society deals with the genuine wish of patients enduring unbearable suffering, to end their life.“²

Summary of the Law

The new law amended the Dutch Criminal Code by inserting a provision on the extraordinary ground for excluding the criminal responsibility of physicians committing euthanasia. Euthanasia and assisted suicide will no longer be punishable provided that a physician has satisfied the due care criteria laid down in the law and reports immediately to the municipal pathologist that the cause of death is euthanasia or assisted suicide, in accordance with the relevant provisions under the Burial and Cremation Act. When these two conditions have been met, the municipal pathologist reports the physician's actions to a regional review committee to determine whether or not this was performed with due care.

Until the enforcement of the new law, the physician's assistance in the termination of life upon request or suicide had to be immediately reported to the public prosecutor and to a regional review committee, consisting of a lawyer, physician and an ethicist. Under the new law, a physician will not report his actions directly to the prosecutor but only to one of the regional

review committees. These committees are no longer obliged to forward a case of euthanasia to the prosecutor when all the standards of due care have been complied with. Therefore, the notification of an act of euthanasia is essential if doctors wish to invoke the exemption from criminal responsibility under Dutch law. If the due care requirements have not been adequately met, the review committee reports the physician's actions to the Board of Procurators-General. Thus, in some ways this law removes euthanasia from the criminal law domain.

The new law in no way diminishes the criminality of other forms of voluntary euthanasia and assisted suicide, in particular those acts which do not meet the requirements of due care or those involving assistance by a person other than a physician.³ The Dutch Government has also stressed that it will not be possible to administer justifiable euthanasia to those persons who are simply "tired of life" or "ready to die" without medical reasons.⁴

According to the new bill, a physician executing euthanasia or assisted suicide must fulfil certain requirements. These requirements are also, to a large extent, codifications of existing case law. In the first place, the physician must be convinced that the patient's request is voluntary and well-considered; that the patient's suffering is unbearable and that there is no prospect of improvement; and he/she must inform the patient of his/her situation and further prognosis and discuss the situation with the patient. The physician and the patient must come to the joint conclusion that there is no other reasonable solution. The physician must consult at least one other physician who is not connected with the case who must see the patient and state in writing that the attending physician has satisfied the due care criteria listed above. Finally, he or she must exercise due medical care and attention in terminating the patient's life or assisting in his/her suicide.

Minors

The new bill contains specific provisions on requests from minors to have their lives terminated or for assistance in their suicide. As the two ministers indicated, even young people are in the position to make the necessary judgment to arrive at a well considered decision to request euthanasia. As regards to the various age groups, the new legislation follows existing legislation concerned with medical conduct as regards minors. Children aged 16 or 17 can, in principle, make their own decision. Their parents, however, must be involved in the decision-making process regarding the ending of life. For children aged 12 to 16, the approval of the parents or guardian is required. The doctor must always comply with the due care requirements mentioned above.

Foreign Criticism

From 9-10 July, the United Nations Human Rights Committee thoroughly discussed the Dutch law on euthanasia in its third report concerning the Kingdom of the Netherlands as party to the International Covenant on Civil and Political Rights.⁵ The Committee acknowledged that the new law was the result of extensive public debate addressing a very complex legal and ethical issue. It recognised that the law seeks to provide legal certainty and clarity in a situation that has evolved from case law and medical practice over a number of years. The Committee did not so much doubt the act's legitimacy, but was concerned as to how the act will operate in practice. In addition, the Committee expressed its serious concerns on some aspects of the law.

First of all, the Committee was concerned that the new law is also applicable to minors who have reached the age of twelve. The Committee considered it very difficult to reconcile a reasoned decision to terminate life with the evolving and maturing capacities of minors. In view of the irreversibility of such a decision, the Commit-

tee was convinced that minors are in particular need of protection.

Secondly, the Committee doubted the clarity and the correct implementation in practice of some of the due care requirements. The Netherlands was asked to provide a further report with detailed information as to what criteria are being applied in order to determine the existence of a "voluntary and well-considered request" (requests which lack undue pressure), "unbearable suffering" and "no other alternative".

The Committee was also concerned that, with the passage of time, such a practice may lead to a set routine and insensitivity as regards the strict application of the requirements, a fact that had not been anticipated. The Netherlands has been asked to strictly monitor the law and to continue to observe it.

Thirdly, the Human Rights Committee, having taken full note of the monitoring task of the review committees, expressed its concerns about the fact that the review committees only exercise *ex post* control, not being able to prevent the termination of life when the statutory conditions have not been fulfilled.

The Dutch Government stated in reaction to the observations of the Committee⁶, that most of the considerations had already been dealt with during the debates in Parliament. They will again be given the fullest attention. There are no indications whatsoever that physicians involved in performing euthanasia do not act with the utmost care, it added. It is admitted that *ex post* and *ex ante* control are required to the same extent. According to the Government, the obligation to consult another physician before performing euthanasia by and large meets this requirement. The Ministers also agreed with the Committee's comment that minors are in need of particular protection, but in practice a request by minors to have their lives terminated hardly ever occurs and when it does, the parents consent is nearly always given.

Seventy-five members of the Parliamentary Assembly of the Council of Europe (which in total consists of 582 members) fully condemned the law.⁷ In a written declaration issued on 14 May, those members who signed the declaration, argued that the legislation on euthanasia violates one of the most fundamental rights and values which the Council of Europe believes in: human dignity and the right to life. The parliamentarians were very concerned that the law would open the door to practices, which would endanger the fundamental protection of life. The euthanasia law in the Netherlands was said to contradict Article 2 of the European Convention on Human Rights (ECHR) which states: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally..."

The Dutch Government, on the contrary, does not believe that the new law conflicts with its duty under international law to defend its citizens' right to life against violation by Government or by individuals.⁸ The provisions of the ECHR are not intended to perpetuate unbearable suffering where there is no prospect of improvement, but rather to offer the individual protection against the violation of his right to life, it said. Performing euthanasia in response to a voluntary request from a patient does not constitute intentional deprivation of life within the meaning of the ECHR. The Dutch Government noted that it endorses fundamental human rights, but does not go so far as to forbid individuals from deciding for themselves whether or not their lives are worth living.

International Humanitarian Law

On 18 September, the Supreme Court of the Netherlands decided not to prosecute the former Surinam military leader Desi Bouterse, who has been held responsible for the killings of 15 political opponents of the Surinam Government in 1982.⁹ In November 2000, the Court of

Appeal in Amsterdam decided that a person who has committed crimes against humanity in another country can indeed be prosecuted in the Netherlands for such acts. The Court of Appeal based its judgement on the Convention against Torture, which only entered into force in the Netherlands on 20 January 1989, six years after the murders took place. The Court of Appeal considered the retroactive application of the Convention to be admissible.

The Board of Procurators-General, however, requested the Supreme Court's judgement in this case.¹⁰ It transpired that the Supreme Court did not agree with the Amsterdam Court of Appeal's supposition that the Convention against Torture could be applicable to Bouterse's acts in 1982 because Article 6 of the Constitution prohibited retroactive application (*non puna sine legem*).

Mr Bouterse will now only be prosecuted and stand trial in Surinam.

Religious Intolerance

In February 2001, the District Court of Zwolle rejected a female law student who had applied for the post of registrar. In its explanation of this decision, the District Court stated that the student, who is of Islamic faith, had indicated that she would not be prepared to remove her headscarf during public court sessions. The Court in Zwolle considered that a headscarf contravened the clothing requirements applicable to the Dutch judiciary in order to express the court's independence, impartiality and dignity.¹¹

In reaction to the Court's decision, the woman in question requested the Equal Treatment Commission to investigate whether or not the Court had made a distinction on the basis of religion.

In June, the Commission concluded that the court in Zwolle had actually made an unjustified indirect difference on the basis of religion and had therefore acted contrary to the law.¹²

The Commission explained its judgement by saying that in its opinion, in basing its rejection on clothing rules, the Court had not rejected the woman because she was a Muslim. The Commission was of the opinion that forcing the woman to remove her headscarf did not automatically arise from clothing rules for the judiciary; many judges of the sub-district courts did not regularly wear a gown. Besides, in 2001, a registrar with a headscarf was employed at the Amsterdam court.

According to the Commission, the way in which the Zwolle Court applied the clothing rules prejudices people who wear a headscarf because of their religious conviction. This prejudice violates the Law on Equal Treatment, so an indirect difference on the basis of religion was made.

As a response to the critics, the Minister of Justice stated that he would set the Commission's judgement aside.¹³ This was possible, since the Commission's judgements are not binding. The Minister retained the opinion that a judge should never give expression to personal convictions: "It is of great significance, particularly in a multicultural society, that everybody concerned can trust a judge being objective about his personal convictions." The Minister decided to implement an explicit legal settlement to clarify the existing clothing rules.

Women's Rights

CEDAW's Conclusions

On 6 July, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) discussed at its 25th meeting the second and third Dutch reports on the implementation of the UN Convention on the Elimination of all Forms of Discrimination against Women.¹⁴

The Committee criticized the fact that a political party represented in Parliament excluded women from its membership; the position of Dutch women in the labour market; and the policy pertaining to prostitution.

Labour Market

Although a genuine revolution has taken place in the labour market during the last decades (in 2001, the number of employed women was at 52 % while in 1988, it was only at about 33%), there was still evidence of a "male breadwinner society model" as indicated by the low numbers of women in senior and technical professions, and by the large number of women in part-time jobs which did not provide for economic independence.¹⁵ In reaction to CEDAW's observations on this issue, the State Secretary of Social Affairs stated that she had given a great deal of attention to this issue in the long-term Emancipation Plan. She said she was planning to invest more in provisions that facilitate the combination of paid labour and unpaid care duties. According to her, the participation of women in the labour market would increase significantly if women were encouraged to return to the labour market after, for example, having cared for children for a long period of time. The long-term Emancipation Plan aims at attaining the correct balance between men and women in the labour market as well as to neutralize the, still noticeably large, differences in wages between men and women.¹⁶

Prostitution and Trafficking in Women

CEDAW commented positively as regards the Dutch Government's programme to combat trafficking in women, particularly concerning the appointment of a National Reporter on Trafficking in Human Beings, whose aim is to provide the Government with recommendations on how best to tackle the problem of trafficking. The Government's commitment to combat this phenomenon at the European Union level was also positively evaluated.

On the other hand, CEDAW found some areas of concern. For example, it pointed to many non-EU women in the Netherlands who had been trafficked there and feared expulsion to their countries of

origin. These women, often engaged in prostitution, lacked residence permits.

In 2000, the Dutch Government decided to legalize brothels in order to protect prostitutes from exploitation and the abuse of power. In this way, according to the Dutch Government, it may also be possible to combat the trade in women. However, the Employment of Foreigners Act (*Wet Arbeid Vreemdelingen*, WAV), which regulated the employment of non-EU citizens in the Netherlands, remained closed to prostitutes.¹⁷ In accordance with the WAV, every employer had to apply for a work permit before being able to employ a foreigner for this kind of work. However, it turned out to be impossible for non-EU prostitutes or their employers to apply for a work permit in accordance with the WAV because the Dutch Government appeared to be trying to prevent non-EU prostitutes from settling independently and/or legally in the Netherlands. In this way, prostitutes from both non-EU countries as well as Association countries will never be able to obtain a residence permit or appeal to the WAV when trying to settle independently and legally in the Netherlands.

The main reason for preventing non-EU prostitutes from plying their trade was said to be the fight against the trade in women. The Dutch Government stated that non-EU women were more vulnerable to trade, violence and abuse and that they should therefore be refused access to legal prostitution.

However, many independent institutions on women's rights such as the Clara Wichmann Instituut and the Mr A. de Graaf Stichting pointed out that, in this way, non-EU prostitutes were not prevented from coming to the Netherlands, but were instead being forced to operate in illegal areas where they were very vulnerable to exploitation.¹⁸ Migrant prostitutes should therefore be granted a legal position in order to be protected.

The CEDAW asked the Dutch Government to begin monitoring the effects of the

law on the legalisation of brothels immediately, especially keeping in mind the effect on those women prostitutes without residence permits and without the permission to work on a legal basis.

Staatkundig Gereformeerde Partij

In its Concluding Observations, the CEDAW drew attention to the fact that the *Staatkundig Gereformeerde Partij* (SGP), a small orthodox Calvinist political party represented in Dutch Parliament, excluded women from its ordinary membership. According to CEDAW, this exclusion was in violation of Article 7c of the Convention on the Elimination of all forms of Discrimination against Women. The Article states: "state parties shall take all appropriate measures to eliminate discrimination against women in the political life of the country and, in particular, shall ensure to women on equal terms with men, the right to [...] participate in non-governmental organizations and associations concerned with the public and political life of the country." Furthermore, CEDAW recommended that the Dutch Government take urgent measures to address this situation, preferably through the adoption of legislation that brings membership of political parties in line with those obligations under Article 7.¹⁹

As a reaction, the State Secretary of Social Affairs stated that she did not think that the law should be amended so as to

accommodate the CEDAW recommendations.²⁰ In her opinion, any amendment would rapidly result in the total prohibition of the SGP, which would not be appropriate in a democratic society. Although she fully disagreed with the SGP policy, she believed that it would be possible to resolve the question by existing means. She recognized the fact that fundamental human rights were at issue here, namely equal opportunities for men and women.

The SGP did not seem very surprised at the CEDAW decision. The chairman of its parliamentary fraction stated that the party had reached a compromise concerning the participation of women after long discussions in 1997²¹ when it decided to accept women only as associate members, without the possibility of fulfilling representative functions. A majority of members was said to have supported this compromise. "The women and girls within our circle support this, tolerate this. But I have to admit there is no uniformity on this issue. Anyway, this is not a matter of discrimination. For biblical reasons, we see a different mission for women."

Many women's rights organizations such as the Clara Wichmann Instituut welcomed the CEDAW's recommendations and said they will carry on campaigning for compliance with the Committee's recommendations. Several female members of Parliament asked the Government to take drastic action against the SGP.²²

Endnotes

- ¹ Based on information from the Netherlands Helsinki Committee to the IHF.
- ² Ministry of Justice, "Bill for testing requests for euthanasia and assisting with suicide passed by Dutch Parliament", press release, 10 April 2001, at www.minjus.nl.
- ³ Heleen van Maurik, "Green Light for Dutch Legislation on Euthanasia", *Medisch Contact*, Vol. 56, No. 4, January 2001.
- ⁴ In 1998, an 86-year-old former member of Parliament, who was tired of life, requested an assisted suicide. Initially, the physician who gave the man a deadly drink was acquitted on this charge. However, in April 2001, the public prosecutor reopened the case and again demanded a verdict of guilty without punishment. He argued that the physician,

- who administered the deadly drink, should have looked for different solutions to the man's weariness with life which did not have urgent medical reasons. At the time of writing it was not yet clear whether or not the physician would lodge an appeal with the Supreme Court. (www.nvve.nl/informatie/brongersma.htm).
- ⁵ United Nations Human Rights Committee, *Concluding Observations of the Human Rights Committee: Netherlands*, 20 July 2001.
 - ⁶ Letter from the Minister of Health to the Chairman of the Lower Chamber, in which she phrases the reaction on the observations and recommendations of the UN Human Rights Committee, published on 6 September 2001.
 - ⁷ Council of Europe Parliamentary Assembly, *Legislation of euthanasia in the Netherlands is a violation of human rights*, written declaration No. 326, 14 May 2001.
 - ⁸ Ministry of Foreign Affairs, *Ethical Issues: the Dutch euthanasia legislation in an international context*, www.minbuza.nl.
 - ⁹ For further details see IHF, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2001*, p. 233.
 - ¹⁰ *Trouw*, "Hoge Raad: Bouterse niet vervolgd," 19 September 2001.
 - ¹¹ "Vrouwe Justitia: blinddoek of hoofddoek?" *NJCM-Bulletin*, Vol. 26 (2001), No. 7, pp 890-902.
 - ¹² Commission for Equal Treatment, press release, 26 June 2001.
 - ¹³ Letter from Minister Korthals to the Lower Chamber in which he responded to questions tabled in Parliament, 30 August 2001.
 - ¹⁴ CEDAW, *Concluding Observations of the CEDAW: The Netherlands*, 31 July 2001.
 - ¹⁵ *Ibid.*, conclusion 2-4.
 - ¹⁶ *SZW-Nieuws*, "Werk en Inkomen," 20 September 2001.
 - ¹⁷ Based on R. Haveman and M. Wijers, "Sekswerk. De moraal van seks voor geld," *Nemesis. Tijdschrift over vrouwen en recht*, No. 6, November-December 2001, pp. 190-202.
 - ¹⁸ *De Volkskrant*, "Migrantenprostitutie verdient legale status," 31 July 2001.
 - ¹⁹ CEDAW, *op.cit.*, conclusions 34, 35.
 - ²⁰ *Algemeen Dagblad*, "VN: SGP discrimineert," 1 October 2001.
 - ²¹ *De Volkskrant*, "De vrouwen in onze kring verdragen uitsluiting," 3 October 2001.
 - ²² *De Volkskrant*, "Vrouwen in politiek willen verbod SGP," 23 November 2001.