

## Bioethica

Vol 6, No 2 (2020)

Bioethica



### Euthanasia in the Netherlands: A legal perspective and the public debate

*Malgorzata Wistuba*

doi: [10.12681/bioeth.24844](https://doi.org/10.12681/bioeth.24844)

Copyright © 2020, Malgorzata Wistuba



This work is licensed under a [Creative Commons Attribution 4.0](https://creativecommons.org/licenses/by/4.0/).

#### To cite this article:


Wistuba, M. (2020). Euthanasia in the Netherlands: A legal perspective and the public debate. *Bioethica*, 6(2), 41-51. <https://doi.org/10.12681/bioeth.24844>

# Πρωτότυπη Εργασία

## Ευθανασία στην Ολλανδία: η νομική σκοπιά και ο δημόσιος διάλογος

**Malgorzata Wistuba**

Φοιτήτρια, Bachelor of Laws LLB., Πανεπιστήμιο Λέιντεν, Λέιντεν, Ολλανδία.

 [gosiawistuba@gmail.com](mailto:gosiawistuba@gmail.com)

### Περίληψη

Η ευθανασία και η υποβοηθούμενη αυτοκτονία καθίστανται νόμιμες μόνο σε τέσσερις χώρες στην Ευρώπη, αυτές είναι οι εξής: η Ολλανδία, το Βέλγιο, το Λουξεμβούργο και η Ελβετία. Η ευθανασία και η υποβοηθούμενη αυτοκτονία δεν είναι μόνο ένα νομικό ζήτημα, για το πώς θα μπορούσε να είναι η νομοθεσία από τεχνικής άποψης, αλλά είναι επίσης, ένα αμφιλεγόμενο θέμα, για το οποίο πολλές χώρες δεν είναι έτοιμες να συζητήσουν. Εκτός από τη νομική πλευρά, υπάρχουν κι άλλες πτυχές που σχετίζονται με αυτό το ζήτημα. Το ερώτημα που πάντα εγείρεται, είναι εάν η κοινότητα αισθάνεται την αναγκαιότητα ύπαρξης μιας τέτοιου είδους νομοθεσίας.

Ο σκοπός αυτού του άρθρου είναι να εξοικειώσει τον αναγνώστη, με τη νομοθεσία περί ευθανασίας στην Ολλανδία και με τη δημόσια συζήτηση που την περιβάλλει. Το άρθρο επιχειρεί να δώσει μια γενική εικόνα και μια επεξήγηση της ισχύουσας νομοθεσίας.

**Λέξεις κλειδιά:** ευθανασία, Ολλανδία, νομοθεσία, υποβοηθούμενη αυτοκτονία, προηγμένες οδηγίες, πλήρης ζωή.

## Euthanasia in the Netherlands: A legal perspective and the public debate

**Malgorzata Wistuba**

Student, Bachelor of Laws LLB., Leiden University, The Netherlands.

### Abstract

Euthanasia and assisted suicide is made legal only in four countries in Europe, the countries being: The Netherlands, Belgium, Luxembourg and Switzerland. Euthanasia and assisted suicide is not only a legal question, how would the legislation look like technically speaking, but it is also a controversial topic which many countries are not ready to discuss. In addition to the legal aspects, other aspects are also associated with this issue. The question that always arises is whether the community feels the necessity for this kind of legislation. The aim of this article is to familiarise the reader with the euthanasia legislation in The Netherlands and the public debate surrounding it. The article will give an overview and explanation of the current legislation.

Firstly, the creation of the current legislation will be discussed, followed by an explanation of the current legislation on the basis of two cases that will be discussed in greater detail. In addition, attention will also be paid to other ending of life possibilities and concluded with the public debate on the legislation.

**Keywords:** euthanasia, The Netherlands, legislation, assisted suicide, advanced directives, complete life.

## 1. Introduction

Euthanasia and assisted suicide is made legal only in four countries in the world, the countries being The Netherlands, Belgium, Luxembourg and Switzerland. Euthanasia is still a very debatable topic all over the world. The term euthanasia legally covers cases in which medical professionals administer lethal injections, as well as cases in which doctors provide drugs to patients to end their life on their own. Assisted suicide prevents the doctor from continuing with a medically pointless action.

Many factors and opinions are involved in legalizing these forms of life ending. Still this is seen as a controversial topic that most people are not willing to discuss. Important is to note that this legislation is about euthanasia performed only on request by the patient itself, the patient is the only person that can request the legal euthanasia.

The purpose of this article is to give an overview of the legislation concerning euthanasia in The Netherlands. Euthanasia has been legal here since 2002, when the new legislation entered into force, after a long period of debate.

The focus will be, mainly, on the Dutch legislation and case law. Starting from an introduction about how the law came to be and the debate concerning the implementation of the law. Followed by an explanation of the law itself, backed by examples taken from two different case laws. Other forms of end of life decisions will also be discussed here. Concluded will be with the public debate surrounding the topic. Many people still do not accept the idea of choosing your own life ending but others believe the legislation is not comprehensive enough, there should be even more freedom in choosing how to end your own life.

## 2. History of the euthanasia law

The first time euthanasia was acknowledged to be of legal importance was in the new coalition agreement of 1997-1998. There the parties agreed to work on a new law

that would make euthanasia legal in the coming four years.

Before the agreement made by the formation of the new government, euthanasia was seen as a criminal offense under article 293 of the Dutch Criminal Code<sup>1</sup> and would be liable to a term of imprisonment not exceeding twelve years or a fine of the fifth category.

The initial draft legislation was made by three parties in the Dutch government, which later decided not to continue with the legislation. This draft, however, was later used by the collation and presented before the government to be accepted as the law that we know today. The material content of the current law was exactly the same as the initial draft, the coalition only changed the outlines of the draft, this changed initial draft legislation was later accepted to become the current law. The entry into force of the legislation concerning euthanasia was an ending point of long years of policy making.

### 2.1 Before 2002

In 2002 the official legislation concerning euthanasia was established. Before that time, however, there was something called a notification procedure euthanasia, which was codified in article 7 of the Burial and Cremation law.<sup>2</sup>

In Netherlands there has to be a declaration of passing made up by a coroner with every death. This declaration can only be made if the coroner is convinced that the person died a natural death, which does not include euthanasia.

If euthanasia was performed, as stated in article 293 of the Dutch Criminal Code, then the doctor had to notify the coroner of the act that

<sup>1</sup> Dutch Criminal Code, page 127: [https://www.legislationline.org/download/id/6415/file/Netherlands\\_CC\\_am2012\\_en.pdf](https://www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf).

<sup>2</sup> Burial and Cremation law, article 7: <https://wetten.overheid.nl/BWBR0005009/2018-08-01>.

was performed together with a report stating that the euthanasia was performed taking into consideration the requirements of article 2 of the law Review Of Life Termination And Life Termination,<sup>3</sup> which has a list of requirements the doctor has to follow to be able to perform euthanasia.

The report was later handed over to the public prosecutor who reviewed the report and decided if the deceased could be buried or cremated and if the performing doctor was guilty under the criminal charge.

A report dating from 1996 changed this practise of performing the euthanasia first and looking if the requirements were met afterward. The report also made the process of deciding if the euthanasia was legal a more medical-professional decision instead of a decision made by the public prosecutor. The task of evaluating the euthanasia was put on a municipal commission and no longer on the public prosecutor.

The commission made a report where they judged if the doctor acted according to the requirements as written down in the law. The report was handed to the public prosecutor and he decided if it was necessary to convict the doctor of a criminal offence. This new rule entered into force in 1998, which was the beginning of the formation of the euthanasia law as established later.

### 3. Euthanasia and assisted suicide

The law was the final piece in the policy and debates that lasted for over thirty years in the Dutch government. It abolishes the penalisation of the end of life decision on request performed by a professional if he carries out the act diligent and in accordance with the requirements that are established by law. Furthermore, it gives a legal

base to the municipal commissions charged with evaluating the executions of euthanasia.

The decision was made to include a special ground for criminal exclusion in the Dutch Criminal Code and to put the requirements to a diligently performed euthanasia in a separate law, so the Criminal Code will remain what it was meant to be, namely prohibitions and exclusions.

In the euthanasia legislation, the due care requirements for the professional are laid down. These requirements can generally be deduced from the established case law on termination of life on request and assisted suicide, on which the prosecution policy has hitherto been based. Four of the criteria in article 9 of the Regulation on Regional Euthanasia Review Committees,<sup>4</sup> have been the basis for the assessment of reported cases of termination of life on request and assisted suicide by the regional euthanasia review committees since 1 November 1998 and are now used in the new legislation. In addition, this legislation provides a legal basis for these committees. Thus, this law contains provisions regarding the establishment and composition of the committees, their duties and powers and their working methods. The provisions in the current legislation largely correspond, in this regard, to what has been laid down in the Regulation on Regional Review Committees on Euthanasia.

#### 3.1 Content of the law

Euthanasia and assisted suicide is officially forbidden under article 293 and 294 of the Dutch Criminal Code. The professional that performs the act can be, however, expelled from criminal charges if he does it according to the requirements codified in article 2 of the Law Review of Life Termination and Life Termination.

<sup>3</sup> Law Review Of Life Termination And Life Termination. <https://wetten.overheid.nl/BWBR0012410/2014-02-15>.

<sup>4</sup> Regional Euthanasia Review Committees Regulation. <https://zoek.officielebekendmakingen.nl/stcrt-1998-101-p10-SC14079.html>.

Furthermore, the professional is obligated to notify the authorities of his decision to perform the euthanasia or to help with assisted suicide, otherwise he loses the right to appeal for the exclusion of the criminal charges afterwards.

The suffering of the patient has to have a medical basis, for the patient to be eligible to continue with this process. A professional is not allowed to perform the euthanasia or the assisted suicide on the grounds of no more willingness to live on the side of the patient. The idea of a medical basis is put under pressure in recent times, as some politicians try to expand the grounds for euthanasia. The essence of justified termination of life upon request or assisted suicide is the patient's expressed request to that end. This request is preferably recorded in writing, although this is not in itself required for the justification of its granting, as long as the patient is able to express his will.

The requirements to perform the euthanasia are as follows, codified in article 2 par. 1:

- The doctor has to be convinced that the request for euthanasia was a voluntary and well-considered choice of the patient.
- He has to believe that there is hopeless and unbearable suffering.
- He consulted the patient on his situation and his prospects.
- He has to come to the conclusion, together with the patient, that there is no other alternative.
- At least one other independent doctor has seen the patient and gave their opinion about the patient in a written form.
- The euthanasia is performed diligent.

While paragraph 1 of article 2 lays down the requirements that need to be honoured by the professional before performing the euthanasia, the other paragraphs of the same article discuss the situation where the patient is under the age of eighteen.

Paragraph 2 speaks of patients between the age of sixteen and eighteen. If the patient of sixteen years of age is no longer able to express his will but has been deemed capable of a reasonable appreciation of his or her interests in the state prior to becoming incapable, and has provided a written declaration of termination of life, the professional is allowed to comply with

this request. The requirements referred to in the first paragraph apply also in these cases.

Paragraph 3 contains an extra requirement for a patient between the age of sixteen and eighteen. If the minor patient is between sixteen and eighteen years of age and can be considered capable of reasonably appraising his interests in this matter, the professional may respond to a patient's request for termination of life or assisted suicide after the parent or the parents exercising custody or his guardian are involved in the decision-making process.

Paragraph 4 is reserved for the patients between twelve and sixteen years of age. If the minor patient is between the ages of twelve and sixteen and can be considered capable of reasonably appreciating his interests in this matter, the professional can comply with the patient's request, if a parent or the parents exercising custody or the guardian, agree with the termination of life or assisted suicide. This in addition to paragraph 2.

The system the euthanasia law follows, partly in line with the Council's advice, is that of the Medical Treatment Contracts Act: sixteen and seventeen year olds can in principle decide independently and for twelve to sixteen year olds, the main rule is the consent of the parental parent or guardian is required. If one or both parents, or guardian, refuse, the minor's request may nevertheless be met if the professional is convinced that complying with the request could avoid some serious disadvantage to the patient. Euthanasia for patients under the age of twelve is only possible in very exceptional cases.

A request that is the result of a spur of the moment, a sudden, violent mood, should not be accepted. The durability of the request is evidenced by its repetition, even after the professional has spoken to the patient about his request and his state of health. A request is made voluntarily, if it is made without pressure or influence of others on the patient. Voluntary also means that the patient must have been able to determine his will completely freely. The basic principle is that the patient must request euthanasia himself. It is his own voluntary decision. After the professional has ascertained that the death wish is voluntary, explicit and sustainable, it can be concluded that the

application of euthanasia is a decision that the patient and the professional have taken together.

It is also important for the consideration of the request that the patient had full insight into his illness, the diagnoses made, the prognoses and the options for treatment. The professional ensures that the patient is fully informed about these matters. The professional should also discuss with the patient what alternatives are still available to lighten the patient's suffering. This two elements are essential to the decision-making process regarding the application of termination of life on request or assisted suicide. On the one hand, this due care requirement expresses that this decision-making process is a matter for the professional and the patient together. The consultation between professional and patient is of great importance, especially when it comes to weighing up whether the conditions under which euthanasia is possible, in particular the question whether there is no other way out for the patient.

The professional is still free to choose if he is willing to perform the euthanasia. Not everybody is willing to do so, since the professional needs to decide on his own if the necessary requirements are met, if afterwards the commission would decide they are not met, the professional then faces a possibility of a criminal charge. For this reason many professional are hesitant to perform euthanasia.

If the professional executes the euthanasia, he does not draw up a death certificate, in accordance with the provisions of the Burial and Cremation law, but reports an unnatural death to the municipal coroner and hands him a reasoned report regarding his application of termination of life on request or assisted suicide. The municipal coroner, in turn, informs the registry office and the public prosecutor to obtain a declaration of no objection to burial or burning. The municipal coroner performs the external autopsy and verifies how and by what means life ended. He then sends the professional's report to one of the regional review committees. Based on the professional's report, the committee assesses whether the professional has acted in accordance with the established due care requirements.

The committee will form an opinion within six weeks of receipt of the report. The six-week

period may be extended once for a maximum of six weeks. Their judgment of the report will be notified to the professional in writing. If the committee is of the opinion that the professional has acted with due care and according to the requirements, then the matter is settled.

If, in the Committee's opinion, the professional has not acted in accordance with the due care requirements, the Committee will send its opinion to the Board of Procurators General of the Public Prosecutor's Office as well as to the Medical Inspector for Health Care. After examining the documents, they will each decide, based on their own task and responsibility, whether and, if so, what action should be taken upon the professional's actions. The message from the regional review committee to the public prosecution service and regional inspector that the professional did not act in accordance with the due care requirements, implies that the special ground for exclusion under Article 293, second paragraph Dutch Criminal Code does not apply, or does not automatically apply. This means that there may have been a criminal offense and that the Public Prosecution Service must further assess the actions.

This legislation aims to provide professionals, and patients as well, with a high degree of legal certainty. The consequence of the inclusion of a special ground for criminal exclusion in the Dutch Criminal Code is that if the review committee decides that the professional has acted carefully, that is to say in accordance with the due care requirements, he is no longer punishable. The case is settled with such an opinion of the committee. This also means that the vast majority of reports of termination of life on request and assisted suicide are no longer sent to the Board of Procurators General of the Public Prosecutor's Office for evaluation. The fact that professionals, if they report termination of life on request and assisted suicide, are no longer automatically exposed to a final judicial review, will increase confidence in the reporting procedure and willingness to report.

On the ground of the Burial and Cremation law, the municipal coroner informs the public prosecutor of the death as a result of termination of life on request and assisted suicide, in order to

obtain leave for burial. If at that time there are no indications that serious irregularities have occurred, the public prosecutor will issue this leave. The municipal coroner also takes care of the notification, including the sending of the necessary documents, to the regional review committee. If there are indications that prompt the immediate initiation of a criminal investigation, for example information from the municipal coroner or a report from third parties, the public prosecutor can proceed to do this on the basis of his right to do so.

### 3.2 Assisted suicide

A medical professional is required to act as a good counsellor, this being codified in the Dutch doctor's oath and in the Medical Treatment Contracts Act. Meaning the professional is obligated to treat a patient if he or she is ill.

However, the professional may decide to discontinue treatment. This decision is made if he or she is convinced there is little that can be achieved with a treatment, as well as the treatment has many disadvantages for the patient: "medically pointless action". If possible, the patient's opinion is requested, but the professional ultimately decides. Perhaps the patient finds it important to live as long as possible. However, the doctor may decide not to treat this patient or to discontinue treatment.

The rules regarding euthanasia are applied similarly to assisted suicide. The professional has a freedom of choosing whether to continue with treatment or to terminate it. His decision must be based on the same requirements that are used by doctors for euthanasia and are stated in article 2 of the Law Review of Life Termination and Life Termination.

## 4. Advanced directives

In the Netherlands two kinds of mandates are allowed in the advanced directives, one for your financial concerns and one for your personal and medical concerns. The same individual can be appointed for both directives or the responsibility can be divided between two separate individuals. The directives can comprise

of information on how you want the individual to act on your behalf. The directive can be made as detailed as it is necessary for the person formulating the instructions.

### 4.1 Medical directive

One of the things that can be included in the advanced directive is the refusal of treatment in general or the refusal of any further treatment. Once this directive is signed, the medical professional is not allowed to treat the patient anymore unless there are good reasons for disregarding the wishes of the patient.

The rules on the advanced directives on treatment are laid down in book 7 of the Dutch Civil Code.<sup>5</sup> Individuals that pass the age of sixteen are allowed to sign this advanced directive, article 7:447 Dutch Civil Code. For individuals from the age of twelve the approval of their parents is required to sign the advanced directive, article 7:450 par. 2 Dutch Civil Code.

The patient is the one that decides on his or her treatment, article 7:450 par. 1 Dutch Civil Code. This directive enables the patient, even though the patient is not capable of expressing his or her will any longer in person, to express his or her will through this directive. The medical professional has to respect the wishes of the patient.

## 5. Case law

Not many cases have made it to court, for many reasons. Since the law is relatively new, not many invoked the law. The public prosecutor is hesitant to bring cases before the court as it can be frightening for the professional to performing euthanasia, when too many professional are charged with a criminal offense. Many professional are choosing not to euthanise patients as they are afraid of the consequences it

---

<sup>5</sup> Book 7 Dutch Civil Code, section 7.7.5 <http://www.dutchcivillaw.com/civilcodebook077.htm>.



can bring for them. If the professional does not follow all the requirements, he cannot appeal for the special ground of exclusion from criminal charges, meaning he could risk imprisonment in doing so.

Although not many cases have been before court, since the introduction of the law, only one case has been registered in The Netherlands and one in Belgium, they are good examples. The law on euthanasia is, according to some, not entirely clear and needs some explaining from the court on how to apply the specific rules codified in the law. Two cases will be explained further in detail and will be used to illustrate the rules and their application better.

### 5.1 Case: 74 year old demented woman

Important is to note that the accused was cleared of punishment before the start of the process. The public prosecutor used this case to clarify some aspects of the law that were not entirely clear. For this reason, this case attracted a lot of attention in public.

The case concerned an elderly woman suffering from dementia. Before she had gotten into a state where she was not capable of expressing her own will and deciding on her own, she signed an euthanasia declaration enclosed with a declaration that she was suffering from dementia. In the declaration she expressed that she does not want to be in a nursery home and that she wants to say goodbye to her close circle when she still can recognise them. From the moment she is not capable anymore to live on her own in her own house, she does not want to live at all. She signed this declaration for an indefinite time.

In 2016 she ends up in a nursery house, where she is examined and observed by different professionals. They declare the woman is no longer aware of her surroundings and does not understand where she is. Nevertheless, the euthanasia was performed. The public prosecutor charged the performing professional with the claim that she failed to verify the request for euthanasia, all the other requirements of article 2 where met.

When the patient is not capable of understanding the situation, the professional has

to trust his own verdict in agreeing to the euthanasia. The request put forward by the patient must be consulted with the professional, so a judgment can be made if the request is a voluntary and well-considered choice. The wish to live has to be verified as long as it is possible for the patient to express it, even if the patient is incapacitated.

The public prosecutor argued the death wish of the patient as not existing at the time of her death. The professional has failed to verify the death wish of the patient, therefore she could not have made the conclusion that the wish was voluntary and well-considered at the time of death. The court, however, ruled the patient not in a state where she could express her wish, therefore the professional was not obliged to inquire after the current wish to live of the patient.

A report, dating 2013, from the municipal commission dealt with the question, how the declaration as signed by the patient in this case, can be explained. A written declaration can replace an oral request, based on article 2 par 2 of the Euthanasia law. This provides that in the event that a patient is no longer able to express his will, but prior to becoming in that state was deemed capable of a reasonable appreciation of his interests in this regard, and a written declaration was made including a request for termination of life, the professional can respect the request. With patients that are suffering from dementia this kind of declaration is therefore essential.

The written declaration can be seen as the current will and request of the patient at the moment of death even though she cannot express it any longer. Even if the behaviour of the patient at the moment is contrary to what was stated in the declaration, the declaration is seen as the true wish of the patient. The professional can therefore continue with the wish in the declaration and perform the euthanasia, unless the professional finds legitimate reasons not to comply with the wish of the patient. The willingness to die has to be confirmed by the patient, if possible.

The suffering of the patient is difficult to measure when the patient has dementia, the professional has to rely on his own experience to

determine this. In the case of the demented woman, the professional reached the conclusion that the suffering of the patient was unbearable and hopeless.

The court gave a broader explanation of the law in this case. They showed that it is possible to perform euthanasia on an individual not capable of expressing their own will at the moment of death. The declaration signed before the moment of losing capacity to do so can be seen as the will of the individual in question at a later moment. Moreover, it is not necessary for the professional to do an extensive research into the wishes of the patient at the moment of death.

## 5.2 Case Heringa

An elderly woman's request for euthanasia was denied so she decided to end her life on her own, assisted in this process by her stepson, Ms Heringa. They thoroughly planned the whole process. All the necessary information was collected, with help from a specially established clinic for this purpose. Later all the medicines were collected and a precise plan was made as to how much of each medicine would need to be taken to be a lethal dosage. The process was carried out on a day previously agreed upon. The death was fast and pain free.

The son was later charged with the killing of his stepmom under article 293 Dutch Criminal Code. He appealed for the exclusion ground of compulsion of an irresistible force in the sense of emergency, which makes an illegal action legal, article 40 Dutch criminal Code.<sup>6</sup> This rule is not explicitly regulated by law, it results in article 40. In this exclusion ground there is a conflict of duties, on one hand there is the duty to follow the law but on the other there is the duty to assist an individual in need of help even if this means breaking the law. The duties need to be balanced

against each other, always with the test of proportionality and subsidiarity.

In this case Heringa decided the help his stepmom needed was of such nature, there was no other choice for him other than to assist her in the process of ending her own life.

The court, however, concluded that the requirements in article 2 of the Law Review of Life Termination and Life Termination strictly applies to professionals and are not applicable to common individuals. They can, however, be included in the light of the assessment of article 40 Dutch criminal code.

## 6. Public debate

Although the law entered into force in 2002 and before some forms of euthanasia were allowed, it is still a debate in the Dutch society and politics. The opinions are divided on the current legislation while some think there is too much freedom others think there is still too little on deciding on how to end our own lives.

The debate in the parliament has been put on hold for the last 2 years and they are not keen on opening a new debate. Some of the parties in the parliament are very sensitive on this matter. Others want more clarity on the law as it is, which led to the prosecution of the professional that performed euthanasia on an elderly woman that was suffering from dementia, which was discussed in paragraph 5.1.

Euthanasia is one of the subjects where the public debate revolves around but other ideas and developments on life ending also require some attention, as they are part of the debate, they will be discussed further in the coming paragraphs.

### 6.1 Complete life

Currently, in the Netherlands a new topic of discussion concerning the notion of a complete life, came to be. One of the political parties is a strong advocate for the notion. They are trying to pass a new legislation through the parliament to implement this notion in the existing legislation. The parliament is hesitant to start a new debate about euthanasia and the new idea of a complete life, since it is a very

<sup>6</sup> Dutch Criminal Code, pag. 40  
[https://www.legislationline.org/download/id/6415/file/Netherlands\\_CC\\_am2012\\_en.pdf](https://www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf).

sensitive topic with many dividing views. After accepting the euthanasia law it became quiet around this topic. For this purpose the parliament assigned a commission, established in 2014, to investigate how this new idea will be received by the Dutch community.

This commission produced a report, which was published in 2016. The report explained more into depth what the notion of complete life exactly covers. Complete life is a very broad definition that can be used in many different situations. This definition is depending on each individual and is a personal one but is mostly used for older people that do not have a positive life prospect any longer. Euthanasia falls under the definition of a complete life and is already accepted by law. However, other forms of life ending also fall under this definition which are not legally accepted and often do not have a medical ground for the suffering of the patient.

Under the European legal point of view, states are not obliged to facilitate the citizens with a choice of their own life ending. Art 2 of the European convention on Human Rights<sup>7</sup> states the right to life but does not imply the right to death. The states have their own margin of appreciation on the rights and duties derived from the article.

The commission is of the opinion that it is not desirable to extend the current law on the topic of the end of life decisions. The people are not in favour of legalizing the complete life notion. The legislation as it is now offers some room for assisted suicide, an accumulation of age related complaints can be a medical ground for euthanasia. The parliament has commissioned an investigation into the size and circumstances of the group of individuals from whom current legislation does not seem to offer room for help with an end of life chosen by themselves. This investigation was concluded in January 2020, the

parliament has yet to react to the result coming from this investigation.

The investigation was aimed at providing reliable knowledge about:

- The number of people, from fifty-five years old and above, who no longer experience a life perspective and as a result have a continuous, active or inactive death wish, which falls outside the euthanasia law, because their suffering has no or insufficient medical basis.
- The existential, social and medical factors and circumstances that play a role.
- Similarities and differences between people who do and who do not have a death wish.

The main conclusion is that an estimated 0.18% of all people over fifty-five have a desire to end their life, without being seriously ill. That amounts to just over 10,000 people overall. More than a third of this group would like to receive assisted suicide. Two thirds prefer to end life their life on their own.

## 6.2 Pill of Drion

This pill is a mean of ending your own life when you have decided that your life has been long enough and you would like to end it in a painless way. This pill is forbidden at the moment but research has been made as to the opinion of the people, if this kind of pill would be desirable. 6 out of 10 people participating in the research said it would be desirable. Questions are raised if this is compatible with article 2 of the European Convention on Human Rights. Others question if the government is not violating article 3 of the convention by forcing people to end their lives in a more painful way by not providing the Pill. The European Court of Human Rights made it clear that the right to life in article 2 does not imply the right to death and article 3 does not give the state the obligation to provide the people with a painless way to end their lives.

<sup>7</sup> EU Convention on Human Rights, article 2 [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

Now that the debate is continuing about the extension of the euthanasia law, the idea of accepting a pill like this seems to be more and more possible. The latest poll taken under the parties in the government shows that 64%<sup>8</sup> of all the parties is willing to accept the pill to make the end of life decisions easier.

## 7. Conclusion

Euthanasia and assisted suicide has been an important topic ever since it was legalized. At the moment it is difficult to say in which direction the debate will go, concerning the current legislation. The people and the parties are still very divided. The law is very strict but it does leave some room for expansion. The court has shown this room to be there, as seen in the two cases discussed. The question is now if the people will accept an even bigger freedom in the choice of their life ending.

## Bibliography

1. Explanatory memorandum on the Law Review of Life Termination and Life Termination, 26691 nr. 3, 1999. *Available at* <https://zoek.officielebekendmakingen.nl/kst-26691-3.html>.
2. Coalition agreement 1998, letter from the formator, 26024 nr. 10, 1998. *Available at* <https://zoek.officielebekendmakingen.nl/kst-26024-10.html>.
3. Looking for standards for doctors' actions when asked for help with termination of life while suffering. *Available at* [file:///C:/Users/Gosia%20Wistuba/Downloads/Commissie\\_Dijkhuis.pdf](file:///C:/Users/Gosia%20Wistuba/Downloads/Commissie_Dijkhuis.pdf).
4. Law Review of Life Termination and Life Termination. *Available at* <https://wetten.overheid.nl/BWBR0012410/2014-02-15>.
5. Regional Euthanasia Review Committees Regulation. *Available at* <https://zoek.officielebekendmakingen.nl/stcrt-1998-101-p10-SC14079.html>.
6. Dutch Civil Code, Book 7, Section 7.7.5. *Available at* <http://www.dutchcivillaw.com/civilcodebook077.htm>.
7. Dutch Criminal Code. *Available at* [https://www.legislationline.org/download/id/6415/file/Netherlands\\_CC\\_am2012\\_en.pdf](https://www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf).
8. Burial and Cremation law. *Available at* <https://wetten.overheid.nl/BWBR0005009/2018-08-01>.
9. Court decision: HR 21 April 2020, 19/04910 (Written declaration patient with dementia). *Available at* <https://www.legalintelligence.com/document/s/34026776?srcfrm=basic+search&docindex=1&stext=euthanasie&rid=844546e7-8c1b-4296-8d1f-0080d3473509>.
10. Court decision: HR 16 April 2019, JIN 2019/74 (Case Heringa). *Available at* <https://www.legalintelligence.com/document/s/32024346?srcfrm=basic+search&docindex=3&stext=euthanasie%20heringa&rid=4d0564ee-e5e4-47e7-8ebf-93ab1db5cc2a>.
11. The Perspectief research: Perspectives on the death wish of elderly people who are not seriously ill: the people and the numbers. *Available at* [https://www.zonmw.nl/fileadmin/zonmw/documenten/Ouderen/Voltooid\\_Leven/ZonMw\\_A4\\_HPO\\_def-online-3\\_spread.pdf](https://www.zonmw.nl/fileadmin/zonmw/documenten/Ouderen/Voltooid_Leven/ZonMw_A4_HPO_def-online-3_spread.pdf).
12. The Convention for the Protection of Human Rights and Fundamental Freedoms. *Available at* [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).
13. Anniversary research by Maurice de Hond, Pill of Drion. *Available at* <https://home.noties.nl/peil/40jaar/G1.pdf>.

<sup>8</sup> Anniversary research by Maurice de Hond, Pill of Drion. *Available at* <https://home.noties.nl/peil/40jaar/G1.pdf>.