

Dutch GP found guilty of murder faces no penalty

Tony Sheldon *Utrecht*

A Dutch GP, found guilty of murdering a dying 84 year old patient, has not been penalised for his action. The Amsterdam court that tried him said that Dr Wilfred van Oijen had made an "error of judgment" but had acted "honourably and according to his conscience," showing compassion, in what he considered the interests of his patient.

Van Oijen, who featured in the 1994 euthanasia television documentary, *Death on Request* (*BMJ* 1994;309:1107), argued that he chose "to let his patient die in the most ethical manner."

The Royal Dutch Medical Association (KNMG) has defended his action as having "complete integrity," claiming a "huge emotional gulf" between it and the offence of murder.

The case turned on whether the injection of 50 mg of the anaesthetic drug alloverine into

the patient, soon after which she died, could be considered part of palliative treatment. Expert witnesses said that it could not. Observers suggest that had the GP chosen a different drug this could have been considered normal medical practice.

The condition of Van Oijen's patient, for whom he had been a GP for 17 years, was described in court as "wretched." She was in "the very last stage of dying." She lay in a coma in a bed soaked in urine, her room stinking from bed ulcers and necrosis in her heel.

Both her daughters had urged Van Oijen to end their mother's suffering. She had had heart problems and osteoporosis for a long time, and during the last year was increasingly bedridden. Van Oijen had encouraged her to try to remain mobile while he relieved her pain with increasing doses of morphine.

The court accepted there were "special circumstances," describing the treatment as "death shortening" but that the "criteria of care" required to avoid prosecution in euthanasia cases had not been followed. She had made no request for euthanasia and had said that she



Dr Wilfred van Oijen (left) talks to his patient in the 1994 television documentary *Death on Request*

did not want to die.

Moreover, there had been no second medical opinion. Van Oijen also incorrectly reported that her death was from natural causes, for which he was also found guilty and given a suspended fine of 5000 guilders (£1430; \$2140). The public prosecution service had called for Van Oijen to be given a nine month suspended prison sentence.

Johan Legemaate, professor of health law at Rotterdam's

Erasmus University, commenting on the case, said that the court recognised that the doctor had crossed a border between what is an entirely acceptable medical practice of relieving pain and what is legally defined as murder.

"It wrestled with that and finally decided that from a legal point of view this is murder, although entirely different from the normal criminal intention to kill." □

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Highlights:

How The Courts Allowed Euthanasia

Euthanasia Dossier

by Arjan Schippers, 23 July 2001

In this story:

Euthanasia has been openly practiced in the Netherlands, as courts have always been very sensitive to the general mood in society and therefore very hesitant to send doctors to jail for granting patients' wishes to die. Case law on the due care requirements gradually evolved through a series of landmark rulings.



The Courts

It all started in 1973 when the Leeuwarden criminal court sentenced a doctor to only a one week suspended sentence, for administering a lethal dose of morphine to her terminally ill mother. She had repeatedly asked her daughter to put an end to her life. It was the first court case where a number of requirements were summed up: the patient had to be terminally ill, suffer unbearably and request to die.

Force Majeure

The next landmark ruling came in 1983, when the Dutch Supreme Court overturned a conviction. The doctor had terminated the life of a 95-year-old woman who had been unable to eat or drink and had requested euthanasia. A lower court had convicted him because the woman suffered from a chronic, and not a terminal, illness. But the Supreme Court agreed that the doctor faced a conflict between his duty to preserve life and his duty to alleviate suffering. It allowed him to invoke *force majeure*.

Psychological

In 1991 the famous Chabot case implicitly included psychological suffering as a valid ground for euthanasia. The psychiatrist Chabot had assisted a 50-year-old woman in committing suicide. The woman suffered from severe depression, and after the death of her two sons and the break-up of her marriage she did not want to live any longer. Dr. Chabot invoked *force majeure*. This was not granted, because none of the colleagues that Dr. Chabot had consulted had actually examined the woman. But the Court also held that invoking *force majeure* could be allowed in cases where the suffering is purely psychological.

In 1995 a nurse was handed a suspended prison sentence of two months for terminating the life of a friend who suffered from aids. She had consulted a doctor who had supplied her with the means. The court ruled that only doctors could perform euthanasia.

The Rights of the Terminally Ill Act

Strictly speaking the Netherlands is not the first state where euthanasia has been formally allowed. In 1996 the Australian Northern Territory legalised euthanasia. The Rights of the Terminally Ill Act was later affirmed by a Supreme Court ruling. The requirements for a euthanasia request to be granted under that act were not very different from those in Dutch law. However, in 1997 the Australian Senate repealed the euthanasia act by 38 votes to 34. In the short period that the law was in force, the life of one man suffering from prostate cancer was legally terminated.

Babies

In that same year the Amsterdam Court ruled in a case concerning a patient who was not able to express a wish to die. The Court acquitted a gynaecologist who had administered a lethal injection to a three-day old baby suffering from spina bifida and hydrocephalus. The baby was in extreme pain and was expected to live no longer than six months. The parents had requested euthanasia. The gynaecologist successfully invoked *force majeure*.

In 2000 a doctor was acquitted after he had assisted an 86-year old man in committing suicide. The patient, former senator Edward Brongersma, was simply tired of life. In the Ministry of Justice's appeal against the acquittal the court of justice ruled this was stretching the rules too far and convicted the doctor, but did not pass sentence because he had acted out of compassion.

Links

- Dutch Voluntary Euthanasia Society
- International Task Force on Euthanasia and Assisted Suicide
- Scottish Euthanasia Society self-acclaimed largest resource for euthanasia information on the Web
- Euthanasia Research & Guidance Organization (American)
- World Federation of Right-to-Die Societies
- Euthanasia information from American prolife organisation

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