Euthanasia in the Netherlands

Historically, the Netherlands was the first European country to decriminalize euthanasia and assisted suicide by a law passed in 2001. The number of individuals who have been euthanized has grown steadily every year, constituting a worrisome cultural shift, which is especially troubling for the most vulnerable in society.

This report provides an in-depth review of the current situation, including statistical data, existing laws, and laws currently being debated to broaden its scope. This report examines the main ethical infringements observed, demonstrating an increasingly loose interpretation by the supervisory bodies, to the point that even the United Nations is concerned.

I - SUMMARY

Euthanasia has been legal in the Netherlands for over 15 years, since the April 12, 2001 law was passed, and came into vigor on April 1, 2002. Historically, the Netherlands was the first European country to authorize euthanasia. Since legalization, euthanasia has more than tripled. The figures presented each year by the regional euthanasia review committees also show an increasing number of infringements, and a looser and looser interpretation of the stipulations of the 2001 law.

Even though the precise conditions established by law have not changed "*stricto-sensu*", their very extensive interpretation has created increasingly disputable situations. For example euthanasia on people with psychiatric disorders, dementia, those who are very old, or those suffering from several pathologies, has nothing to do with the initially established legal requirements. Other opinions are being voiced, notably by some doctors who deplore that euthanasia has been trivialized.

While some denounce the infringements of the law, others wish to broaden the conditions of access to euthanasia and the practices. Parliament is being pressured to allow assisted suicide for people over age 70 requesting it, with no other motive but their age and "being tired

of life". Thus, the association "By Free Will" (*Uit vrije will*) organized a citizen's initiative petition early in 2010, in order to force a Parliamentary debate. A draft bill tabled by the government in October 2016 is currently being studied.

II - STATISTICAL DATA

The data presented below are taken from the annual report of the Regional Review Committees for examining euthanasia *(Regionale Toetsingcommissies Euthanasie, RTE*). These figures do not include the cases of clandestine euthanasia and palliative sedation which are in fact euthanasias. [1].

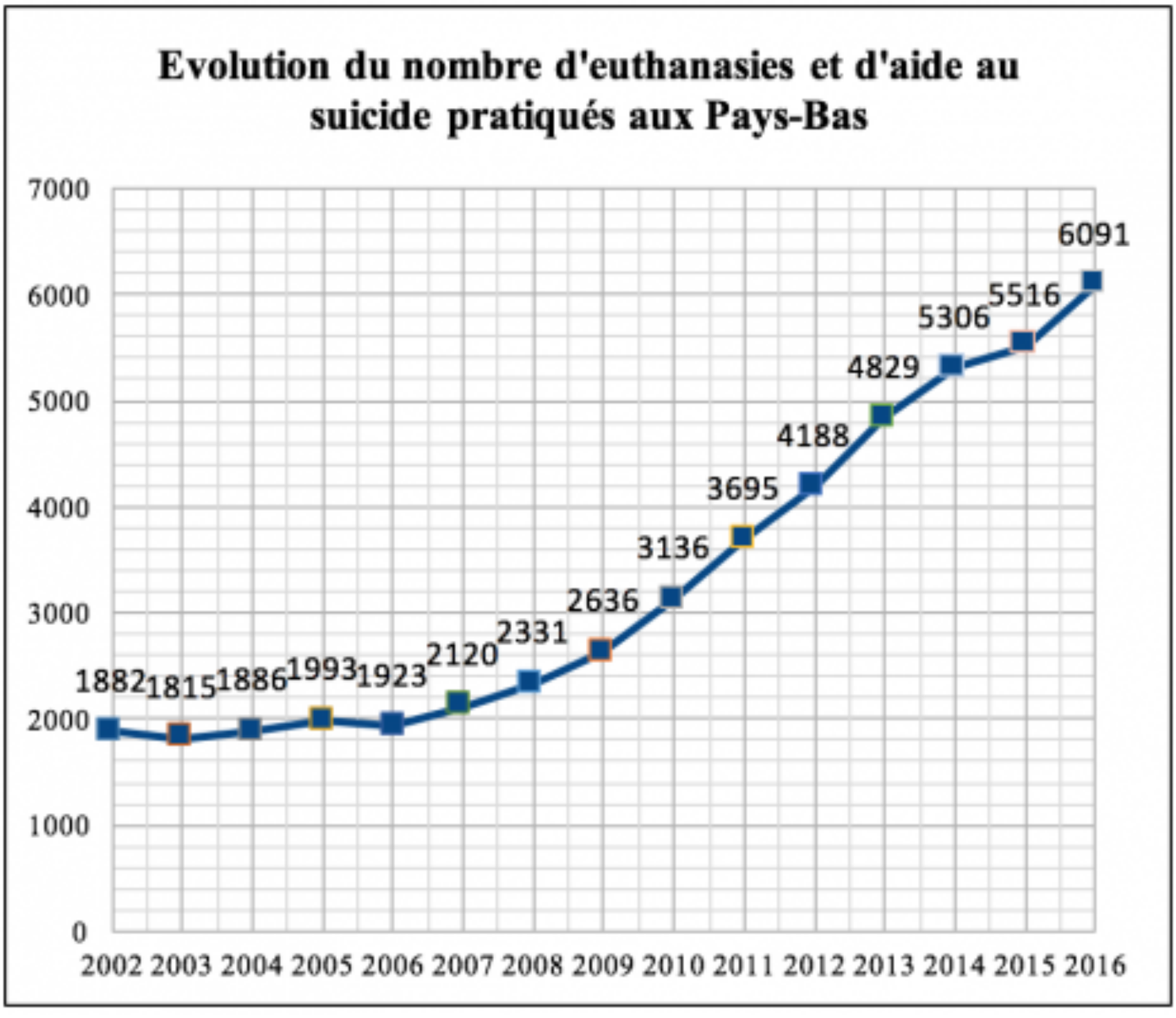
In 2002, the first year the law was enforced, there were 1,882 reported cases of euthanasia. By 2012, this number had risen to 4,188; and in 2016 it reached 6,091 cases. In 10 years time, the number of euthanasia cases had doubled, and in 15 years it had tripled. By comparison, the population in the Netherlands only grew by 4% between 2002 and 2016.

In 2016, there were 16 cases of euthanasia per day in this country, for a population of 16.8 million; thus accounting for 4% of all deaths annually.

The majority of these euthanasia cases (83%) were performed on patients suffering from incurable diseases, another 10% for multiple pathologies, 4% for disabilities related to old age, 2% for psychiatric disorders and 1% for dementia.

An abstract of the 2016 report was made and published in French, with the Dutch euthanasia statistics, including tables and the main data used in the analysis. Thus, 80% of the time, euthanasia occurred in the patient's home and in 85% of cases it was performed by the family physician.

The following chart demonstrates the rise in the number of euthanasia and assisted suicide cases since 2002.



III – THE LEGISLATION

A) The 2001 Law: Legalization of Euthanasia and Assisted Suicide

Euthanasia became legal in the Netherlands with the April 12th 2001 law, entitled the *"Law for the Termination of Life on Request and Assisted Suicide"*, which became effective on April 1st 2002. It is the result of a long process of debates which began in the 70s-80s, with a more "understanding" vision for doctors, formed by case law, and based on several legislative proposals. (Refer to the annex for the dates in chronological order).

Without decriminalizing euthanasia itself, the current Dutch legislation allows it for some specific cases. Indeed, euthanasia, suggesting or inciting suicide and assisted suicide are still legally considered as criminal offenses. However, the law contains a release from liability

clause for doctors who respect five “criteria of due care”:

1) The patient's request for euthanasia must be voluntary and well-considered. The consent of the patient who is no longer able to express himself may be taken into account if he has previously made a written declaration to that effect, and is at least 16 years old.

2) The patient’s sufferings must be considered unbearable without a prospect of improvement.

3) The patient must be fully informed and aware of his condition, prospects and options.

4) Both the doctor and the patient have reached the conclusion that there is no other reasonable alternative.

5) There must be consultation with at least one other independent doctor who needs to provide written confirmation of the above-mentioned conditions. If the request for euthanasia is made by a mentally ill patient, two independent physicians must have been consulted, including at least one psychiatrist.

The law also applies to minors: it provides that a doctor may accept a minor’s request, if his parents participate in the decision-making (when the minor is between 16 and 18) or give parental consent (when he is between 12 and 15 years old). In addition, since 2005, a protocol known as the "Groningen Protocol" lists the necessary conditions and steps to be followed in the context of end-of-life decisions for young children, especially newborns.

B) Pressures to extend criteria for euthanasia or assisted suicide

On a regular basis, a number of organizations campaign for a broader interpretation of the 2001 law. For example, in 2011 the Royal Dutch Medical Association (hereafter KNMG, the acronym for the association in Dutch :*Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst*) proposed new guidelines to clarify what is allowed or not, within the legal framework, considering that the suffering in non-terminal phases of a disease could be a motivation for requesting euthanasia [1].

However in public debates or legislative proposals, the strongest pressure is targeted at extending legal possibilities for new situations,

which were not originally imagined.

1 People who are "tired of living"

In October 2016, the Dutch government tabled a draft bill intended to allow for new legal guidelines for the assisted suicide of the elderly [2], even if they are not suffering, pleading that they have "fulfilled or completed their life" *voltooid leven)*. The guiding principle would not be to relieve suffering, but to respect the individual's autonomy. According to the government, these individuals "*no longer see any possible way to give value and meaning to their lives, have difficulty bearing their loss of independence, and feel lonely*".

However, in February 2016, a commission mainly composed of doctors, philosophers and lawyers, concluded that the notion of "accomplished life" could not be recognized. These experts consider that the 2002 law is already wide enough, and foremost it could pave the way to euthanasia under the influence of some families wishing to "finish off" elderly and vulnerable relatives. Some political parties agree that this is worrisome, believing that such a text would only put "*pressure on other elderly people and make them feel burdensome to the community*". A medical ethics professor considers the government's initiative as "proof of our failure to truly offer the elderly a place in society." [3] In a statement on March 2017, the KNMG also confirmed: "*Such a radical proposal is undesirable for both practical and principled reasons*" [4].

Both the Minister of Health and the Minister of Justice decided to ignore this important opinion and are pushing for the bill to be passed. Further clarification is needed, especially regarding the age at which euthanasia would be possible: the ages 70 or 75 are often mentioned. Instead of a doctor, these requests would then be handled by a social worker specially trained in assisted death, and by an independent expert.

2 Euthanasia for minors under 12

The current Dutch law allows euthanasia of children from the age of 12. During the period between 2002 and 2015, 7 cases were declared. The 2005 *Groningen Protocol* regulates euthanasia for newborns who are severely ill and whose "quality of life" is deemed unsatisfactory [5].

As of 2014, the Ethics and Law Commission, of the NVK *(Nederlandse Vereniging voor Kindergeneeskunde* - Dutch Pediatric Association), suggested having discussions on allowing euthanasia for children under 12 years of age (the decision would be made by both parents and the doctor, without necessarily having the child's agreement) [6]. As early as 2015, the NVK declared it was in favor of euthanasia of children between the ages of 1 and 12, based on an analysis of the ability to discern [7]. In cases where the children cannot understand nor speak for themselves, the doctor, with both parents' consent, could choose euthanasia, as it is already the case for newborns.

In May 2016, the Minister of Health declared that passing a new law was unnecessary for extending these practices: "*It is a mistake to believe that the current legal guidelines do not allow death for seriously ill children. Indeed, a doctor in case of "absolute necessity" can always invoke the condition of necessity.* "

3 The development of organ donation after euthanasia

In 2012, after the first organ removal, the practice is being developed to help overcome the shortage of available organs. In March 2016, an emblematic case was highly publicized with the euthanasia case of a man "who saved five lives".

In early 2017, guidelines for organ donation following euthanasia (*Richtijn orgaandonatie na euthanasia) were written, at the request of the Minister of Health, health professionals, patient associations, ethicists and patients' relatives*. This multidisciplinary and practical guide *(Richtijn orgaandonatie na euthanasie)* was made to provide detailed information on the medical procedure combining euthanasia and organ donation. These directives, applicable to all doctors and hospitals, specifically insist that euthanasia must be performed in a hospital and not in the patient's home by the attending physician as is usual in most cases. This allows organ removal at the hospital in the minutes following expiration, with an appointed professional team waiting in the operating room.

Beyond medical technological issues, are many genuine ethical questions still to be addressed. The clearly stated objective is that thanks to these new guidelines, organ removal from persons who have died of euthanasia is facilitated and the number of post-mortem organs

available in the Netherlands should be doubled. Nevertheless it is worrisome that medical or societal pressure to obtain organs might incite individuals to "sacrifice themselves" by a misconceived idea of charity between sick and healthy people.

4 The suicide pill

In September 2017, the association "*De Laatste Will*" (The Last Will) announced it would provide a product to provoke death within an hour without a doctor's supervision. With 3,500 members and an average age of 70 years old, this association advocates "the right to die with dignity" when the person has made his decision, and not necessarily in cases of unbearable suffering.

IV – A LARGE NUMBER OF INFRINGEMENTS RECORDED

Although the law has not formally been changed since 2001, its' interpretation has become increasingly permissive. Even if the law provides for relatively strict conditions, in practice the interpretation has been extended, thus making euthanasia more accessible.

A) Euthanasia, instead of palliative care

1 The law on euthanasia was passed "far too soon"

In December 2009, Mrs. Els Borst, the Dutch Health Minister in 2001, responsible for legalizing euthanasia, confessed to Anne-MeiThe, anthropologist and jurist, in a book of interviews that: in her opinion, euthanasia was legalized "far too soon". She believes that public authorities did not focus the necessary attention on palliative care and accompanying the dying. "*In the Netherlands, we first listened to the political and public requests for euthanasia. Obviously, this was not done in the correct order*. In particular, she questions the "public pressure" from doctors seeking to relieve their patients' suffering without having to carry out extraneous illegal "tinkering".

2 Inappropriate sedation and disguised euthanasia

In 2013, the Dutch Cancer Center (NKNL) denounced disguised euthanasia and inappropriate patient care. Every year, 1700 cases of

end-of-life sedation could be the result of concealed euthanasia practices.

Published in July 2017, the 3rd Five-Year Evaluation Report (2012-2016) of the Dutch Law, studying death certificates demonstrated that deaths by "deep and continuous sedation until death" had risen by 8.2% in 2005 to 18% in 2015. This sharp rise highlights the need to better understand whether this technique is palliative care or practice of euthanasia.

Moreover, published on August 26th, 2016 a study carried out by "SCEN" doctors (*Steun in Consultancy bij Euthanasia in Nederland*), maintains that many cases are practiced because the individual requesting euthanasia did not receive adequate care.

B) People with psychiatric disorders

The law explicitly states that the patient's request must be voluntary and well-considered. Therefore it is problematic to grant euthanasia to patients with psychiatric disorders or dementia. For such an irreversible decision as euthanasia, the question that free choice raises is applicable until the last moment. For patients with mental health problems, expressing free will is even more difficult to establish. Yet euthanasia in these situations is not uncommon. Referring to an advance directive (a written document requesting euthanasia in cases where the person can no longer give informed consent) is commonplace for justifying euthanasia in cases of dementia.

In 2009, the Regional Review Committee reported 12 cases of euthanasia for neurological diseases, including people at the early stages of Alzheimer's disease. In 2016, according to the data, 201 euthanasia cases were reported for psychiatric illnesses (60 cases) and dementia (141 cases). The ability of a psychologically impaired person to consent is difficult to establish, and thus many doctors refuse euthanasia for these patients. The question of "suffering without any prospect of improvement" could also be evoked in some psychiatric cases.

On February 16, 2017, a petition signed by 350 doctors denounced euthanasia of individuals with dementia, and the increase in "borderline cases". "*How can one give a lethal injection to a patient with advanced dementia, simply on the basis of an advance directive? How can one*

give a lethal injection to someone who is not able to confirm that he wants to die? We refuse to do it. Our moral reluctance to end a helpless human being is too great. "

C) The End-of-Life Clinic: a means to circumvent doctors' refusals

Although the law explicitly stipulates that the doctor and the patient must both concur that no other solution is available; some associations consider that the patient's wishes should always prevail, and that a doctor's refusal should not prevent euthanasia from occurring.

In 2012, the association *"NVVE"* (association for the voluntary end-of-life) has set up "travelling teams" to cater to people whose family practitioners' refuse euthanasia. Composed of a doctor and a nurse, there are 30 travelling teams. The association intends to perform 1000 euthanasia per year, and has also opened a "death clinic" in The Hague, specializing in euthanasia.

According to the official report from the Regional Review Committees for euthanasia in 2016, doctors at the End-Of-Life clinic performed approximately 400 cases of euthanasia, compared with 107 in 2013. They willingly accept the most borderline and "complicated" cases which other doctors do not necessarily believe to be justifiable, and yet this clinic appears oblivious of being reprehended by the oversight review committee or by the justice (see below).

The KNMG association comprising 53,000 doctors denounces these "travelling teams" who don't know the patients well enough to be able to judge their condition: *"We are not against euthanasia if there is no other alternative. But euthanasia is a complex process, following long-term treatment and based on a relationship of trust with the patient. We must have a holistic approach to the patient's treatment especially to evaluate if there is an alternative to euthanasia: we seriously doubt that this can be done by a doctor whose only objective is to perform euthanasia. "*

V - LAXISM OF OVERSIGHT BODIES

Although the law has not formally been modified since 2001, its interpretation has given way to various practices.

A) The Regional Review Committees have a broad interpretation of the law

Five Regional Review Committees were established in 2002 to evaluate the euthanasia cases and verify that physicians act in accordance with criteria of due care. They report annually on euthanasia in their respective provinces.

As early as 2008, an official report in French cited the annually increasing rates of euthanasia. Nevertheless, the percentage of clandestine euthanasia was still estimated at 20% in 2005, which raises the question of full legal disclosure. The report also stated that "*no criminal proceedings were brought against a doctor on the basis of articles 293 (euthanasia) and 294 (assisted suicide assistance) of the penal code. In 6 years time, a total of 24 contentious cases were reported by the Regional Review Committees to the College of Public Prosecutors. In most cases, the doctors in question were invited to speak with the Queen's Procurator for a simple call to order, since apparently the prosecution had not received two legal violations by the same doctor* ".

In 2016, these Review Committees only requested additional information for 77 out of 6 091 cases, or 1.3% of the total number. Of these 77 cases, euthanasia was carried out in 10 cases, even though the doctors did not meet the required conditions.

In July 2017, the following overall statistics were published for the Dutch Law in the Third 5-Year Evaluation Report (2012-2016):

- Only 0.2% of the cases reported to the Review Committee board were found to be non-compliant with the criteria of due care defined in the law (76 cases out of the 43,171 cases reported between 2002 and 2015).
- The Review Committee only requested clarification from the doctor in 4% of the reported cases.
- In 1% of the declared cases, doctors were summoned to a committee meeting to clarify the case.

This report concludes: "When the doctor acts in a way that does not comply with the criteria of due care, but apparently acts in good conscience, the committee prefers an informational discourse towards him rather than prosecution."

B) According to the Law, no abuses have occurred since 2001

There have been particularly wide-ranging judicial decisions. For example in the case of Albert Heringa, there was acquittal after appeal, even though he assisted his mother to commit suicide under illegal conditions. This controversial decision was rendered *"on the grounds that he acted in an "emergency situation", having to choose between respecting the law or an "unwritten moral obligation" to procure lethal products for his mother's suicide."*

On three occasions in 2014, the End-Of-Life clinic was accused by the Regional Review Committees for irregularities in their requests files. Nevertheless this clinic continued unabashedly to develop its activity. In 2015, two cases of euthanasia were deemed non-compliant with the legal requirements. In spite of this, the End-Of-Life clinic, responsible for the procedures, did not face any criminal charges.

Several other controversial cases have been highly publicized. For example, in 2016, a 41-year-old alcoholic was euthanized at his request. A 20-year-old woman, sexually abused several times during childhood, and suffering from psychological sequelae, was also euthanized. Her doctors concluded that her physical and mental suffering had become unbearable. In February 2017, a woman suffering from Alzheimer's disease was euthanized against her will in a health care facility. Subsequently the control committee referred the case to the court for violation of the law by a doctor (for the first time in 16 years), but without filing for homicide.

VI - UNEASINESS FROM MEDICAL STAFF

A) Lack of an objection of conscience clause for doctors

In the Netherlands, there is no formal objection of conscience clause for physicians, thus they cannot refuse euthanasia on personal, moral or ethical grounds. In 2011, the KNGM (Royal Dutch Medical Association) instituted guidelines, to specify the conditions for

practicing euthanasia, and included the physician in the decision-making process for some operations.

In its concluding recommendations, the 3rd Five-Year Evaluation Report (2012-2016) of the Dutch law nevertheless emphasizes that "*the government should reaffirm the fact that doctors are not required to grant requests for euthanasia. The report also gave the following suggestion: "Abandon the legal stipulation of requiring referral to a colleague for cases where doctors refuse a request for euthanasia or assisted suicide (Conscience Clause).*"

For palliative sedation, it is normally the doctor who makes the decision, with the patient's agreement. However, in March 2017, a Dutch doctor, specialized in geriatrics, was sentenced by the Health Disciplinary Board of The Hague. He had refused to sedate his patient, considering that she was calm, slept well, and reacted well to doses of morphine, without having any refractory adverse effects. The Council judged that the doctor should have taken into account the psychic suffering of still being alive, and that the mere fact of wanting to die could be qualified as a refractory adverse effect.

B) Strong psychological pressure on doctors

Prominent figures such as Professor Theo Boer have denounced the slippery slope towards trivialization and a loss of control for euthanasia, which is tending to become the standard way of dying for cancer patients.

In 2015, the KNMG carried out a survey to poll 500 doctors on their opinions on euthanasia. The doctors denounced that the act was being trivialized, and lamented that increasing numbers of patients wished to resort to euthanasia instead of a natural death. The survey showed that 60% felt "*pressured into euthanasia by their patients or by the family*" and 90% felt that the burden put on doctors to perform euthanasia is underestimated.

The doctors' petition regarding individuals with dementia also underlines that euthanasia is a complicated issue for doctors (see § IV-B).

VII - CRITICISMS FROM OUTSIDE THE NETHERLANDS

A) A vague law for French parliamentarians

French parliamentarians studied the Dutch law in 2008, during an in-depth study tour. In their analysis they reported that the law's application has several questionable characteristics: *"the criteria to assess the degree of a patient's suffering are unclear; the very existence of a posteriori verification based more on respecting the procedure than for medical reasons; the doctor's assessment is subjective and the lack of knowledge of the law is not sanctioned. It is paradoxical to insistently voice a person's right to autonomy, and yet confide the decision to the doctor, thereby de facto submitting this legislation to medical authority.*

B) Apprehension from the UN Human Rights Committee

In July 2009, the UN Human Rights Committee expressed apprehension about the high number of cases of euthanasia and assisted suicide. The Netherlands were "*strongly urged*" to revise the law in order to comply with the provisions in the 1966 International Covenant on Civil and Political Rights.

- Despite these criticisms, the legislation in the Netherlands has not been modified. The number of euthanasia cases continues to grow every year, with an increasingly extensive interpretation of the law and growing pressure from some to expand its scope even further.

In particular two topics were mentioned:

- The significant number of cases euthanasia and assisted suicide, and their annual progression.
- Some modalities raised questions: allowing a doctor to terminate a patient's life without seeking a judge's opinion, and the fact that the second medical opinion required by law is obtainable via an emergency phone line.

ANNEX

Changes in the legal framework before the 2001 law

1973: In the first judicial decision where the law was transgressed, the doctor was only sentenced with a symbolic penalty for practicing euthanasia on his mother. Other similar judgments followed.

November 27, 1984: The Dutch Supreme Court introduced the aspect of "force majeure" into case law, which a doctor may invoke when he has resorted to euthanasia, but has acted conscientiously and with due respect of medical ethics.

1988: Bill to amend the Penal Code to decriminalize euthanasia and assisted suicide, resulting in 1989 with an agreement that a national inquiry commission be created.

November 1, 1990: A procedure is established to regulate doctors' reports of euthanasia.

November 8, 1991: the government proposed that the Dutch Parliament decriminalize euthanasia "*de facto*" (and not "by law"). Thus, it was not an issue of legalizing euthanasia, but one of legalizing the possibility to declare death by euthanasia. Implicitly, the bill recognized euthanasia as a legitimate medical procedure in some situations.

February 9, 1993: Parliament accepted the bill and it came into force.

Late 90s: Parliamentary debates were held to "legally" decriminalize euthanasia and assisted suicide, culminating in the law of April 12, 2001.