Introduction

The Human Rights Committee considered the reports submitted by the Kingdom of the Netherlands on 14 and 15 July 2009 (adopted on 28 July 2009). In paragraph 29 of its concluding observations the Committee asked the Kingdom of the Netherlands to provide information on the current situation and on the implementation of the Committees recommendations as set out in paragraphs 7, 9 and 23.

The Kingdom of the Netherlands is pleased to provide the requested information:

Paragraph 7

The Committee has urged the Netherlands to provide for 'prior judicial review' before a physician terminates life on request in order to 'guarantee that this decision was not the subject of undue influence or misapprehension'.

The Netherlands shares the view of the Committee that it is essential for any request for euthanasia or assisted suicide to be voluntary and well-considered. This view also informs Dutch legislation and practice. In response to the Committee's recommendation, the Netherlands explains, below, how the concept of a 'voluntary' and 'well-considered' request is fleshed out in the Termination of Life on Request and Assisted Suicide (Review Procedures) Act. The Act's functioning is also discussed, based in part on an evaluation of the Act.

The importance of the criterion that a request for euthanasia must be voluntary and well-considered is illustrated by the first due care criterion in section 2 of the Act: the physician in question must be convinced that the patient's request is voluntary and well-considered.

The extent to which the request is voluntary and well-considered is assessed over the course of several conversations by the attending physician, who has a long-standing doctor-patient relationship with the individual concerned. If the physician is convinced that all the due care criteria laid down in the Act have been met – which includes the voluntary and well-considered nature of the request, as well as, for instance, the patient's unbearable suffering, with no prospect of improvement – he or she is required by law to arrange for an independent physician to assess these criteria again. The independent physician is required to speak to the patient personally and if at all possible in private. Both physicians then produce detailed reports of their findings with respect to the due care criteria.

The due care criteria, such as that the request must be voluntary and well-considered, also apply to the post-mortem procedure which, to avoid any misunderstanding, is described below.

Once the physician has carried out the request for euthanasia, he or she reports the death to the municipal pathologist. The pathologist then examines the body, checks and collates the relevant documentation and, if all is in order, requests permission from the public prosecutor to release the body for burial or cremation.

The pathologist then sends the relevant documents – a registration form, a detailed and reasoned report by the physician who treated the patient (explaining why he or she is convinced that the statutory due care criteria have been met), and the written report by the independent physician – to the regional euthanasia review committee. Each committee comprises three members: a lawyer, who is also the chair, a physician and an ethicist. It reassesses whether all due care criteria have been met. If any of the reports require further explanation the physician concerned may be invited to appear in person.

Should the review committee reach the conclusion that the due care criteria were not met, the case is reported to the Public Prosecution Service and the Healthcare Inspectorate. Each body then conducts its own investigation.

To safeguard the quality of the consultative procedure, the Royal Dutch Medical Association (KNMG) trains both GPs and specialists in how to conduct independent consultations in cases where euthanasia has been requested. In this connection, the SCEN (Euthanasia in the Netherlands Support and Assessment) programme provides peer supervision and ongoing training. SCEN is nationwide in scope, which means that any physician based in the Netherlands can consult a SCEN physician.

SCEN was recently evaluated as part of ongoing efforts to safeguard and optimise the programme's quality.

The Termination of Life on Request and Assisted Suicide (Review Procedures) Act was evaluated in 2007 (Onwuteaka-Philipsen et al., 2007[1]). The evaluation looked closely at developments in medical decision-making at the end of life, and the effectiveness and repercussions of the Act. It concluded that there was little reason to make substantial amendments to the Act or prevailing policy, or to the due care criteria. Finally, the results of the evaluation give no grounds for considering the introduction of prior judicial review.

With regard to the voluntary and well-considered nature of the request, a closer look at the evaluation is merited. The evaluation also considers the situation in which a physician refuses a patient's request for euthanasia. It was found that in over two-thirds of cases, the patient's request for euthanasia was not granted. There are many reasons for refusing such requests: the patient

[1] 'Evaluatie Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding', Onwuteaka-Philipsen et al (red), 2007. (English summary available at http://www.zonmw.nl/fileadmin/cm/vraagsturing/documenten/Evaluatie_regelgeving/evaluatie_euthanasiewet_webversie.pdf, pages 13-23).

might have died before the request could be granted, for example, or the physician may not be convinced that the patient's suffering is unbearable, with no prospect of improvement. Six per cent of requests were refused because the physician was not convinced that the request was entirely voluntary. The reason is less likely to be pressure applied by third parties than a desire on the part of the patient not to be a burden on loved ones any longer. The Netherlands would emphasise that a feeling of not wishing to be a burden on others is not a legitimate reason for requesting euthanasia. Physicians – and SCEN physicians in particular – therefore pay careful attention to the context of the request. They make certain that the request is entirely voluntary – i.e. is the sincere wish of the patient him or herself – and is well-considered.

Granting a request to terminate life or for assisted suicide places a heavy burden on a physician, in both a legal and an emotional sense. Physicians do not treat such requests lightly. They will not proceed unless convinced that the request is voluntary and well-considered. It is important to keep in mind that patients have no right to have their lives terminated by a physician, nor is it the physician's duty to grant any such request.

In response to the Committee's concluding observation, the Netherlands emphasises that due care is exercised in dealing with requests to terminate life or for assisted suicide. The statutory due care criterion that the attending physician must be convinced that the patient's request is voluntary and well-considered is firmly anchored in the Act and in the way physicians deal with requests for euthanasia. The expert evaluation of the Act in 2007 (Onwuteaka-Philipsen et al., 2007) raised no doubts concerning the level of care exercised in establishing that requests are voluntary and well-considered. Both the law itself and the professional standards observed by the patient's physician and the independent physician provide sufficient guarantees that the request for euthanasia is voluntary and well-considered. For these reasons the Netherlands considers that there is no need to amend the Act to require prior judicial review of requests for euthanasia.

Paragraph 9

The Netherlands endorses the Committee's recommendation that the asylum procedure should enable a thorough assessment that allows sufficient time for the presentation of information and evidence.

Naturally, the existing Dutch fast procedure fully respects the international obligations to which the Netherlands is bound, including the principle of non-refoulement. Under both the former system and the improved system, which was introduced on 1 July 2010, requests for asylum will only be dealt with via the fast procedure if it is possible to exercise sufficient care in doing so. If an application warrants further investigation which cannot be concluded within the time limit for the fast procedure, the case will be assigned to the extended procedure.

The improved asylum procedure is intended to help the authorities reach decisions on asylum applications with both greater speed and greater care, working on the principle that every asylum seeker benefits from having certainty about his or her future prospects at the earliest opportunity, provided that greater speed does not come at the expense of exercising due care. A number of measures have therefore been proposed, which should directly enhance the quality of decision-making on asylum applications. The main new elements are as follows:

- Period of rest and preparation (*rust- en voorbereidingstermijn*; RVT)
  Under the new 'period of rest and preparation', the asylum seeker will be given the chance first to rest and then to prepare thoroughly before starting the asylum procedure. It should be noted in this connection that the asylum seeker will be briefed by the Dutch Refugee Council and offered legal assistance when preparing for the asylum procedure. In principle the asylum seeker will be able to prepare at the offices of the lawyer concerned, which will help build trust and ensure greater continuity in the provision of legal representation. Investigation of the asylum seeker's identity also starts at the beginning of the RVT. This

helps expedite the return process should the asylum request be rejected, but it also makes it easier to establish which EU member state is responsible for handling the asylum application. The asylum seeker's reasons for seeking asylum will not be examined during the RVT.

- Health check
  A health check will also take place during the RVT. Asylum seekers will first be seen on a voluntary basis by a community health nurse. If physical or psychological problems are identified or suspected, the asylum seeker will be referred to a community health doctor for further examination. This doctor is responsible for the medical report that is issued (even if it is drawn up by the nurse in those cases where no health problems are identified). The aim of the health assessment is to establish whether the asylum seeker is in a fit state to be interviewed. It will focus on the extent to which the person can be considered capable of making coherent and consistent statements. Recommendations concerning the type of conditions under which the person in question can be interviewed may also be made.

- Improvements to asylum procedure
  In contrast with the 48-hour procedure followed in application centres until 1 July 2010, the new 'general' asylum procedure will take eight days. Alternate days will be set aside for the activities of the Immigration and Naturalisation Service (IND) and for the asylum seeker to consult with his or her legal adviser. In principle, every step of the process, up to and including the submission of corrections and additions to the second interview will be covered as part of this eight-day procedure. This will save a significant amount of time if an extended asylum procedure follows.

- Reception facilities during review proceedings following general asylum procedure

  A further change to the former situation is that an asylum seeker will now have four weeks to depart if his asylum application has been rejected and he has lodged an application for review with the district court. Throughout this period the asylum seeker may make arrangements for his return with the assistance of the Repatriation and Departure Service. In most cases the court will give a judgment on the application for review within this four-week period.

- A shorter extended asylum procedure

  If further investigation is needed before a considered decision can be taken on an asylum application, the application can be assigned to the extended asylum procedure. Since every stage up to and including the submission of corrections and additions will now be covered in the general asylum procedure, the extended procedure will be eight weeks shorter on average than the current follow-up procedure. Nevertheless, a further interview may be held as part of the extended procedure, during which the asylum seeker can submit further corrections and additions to the report of the second interview.

- Parallel medical assessment

  Should there be any indication that admission to the Netherlands is justified on medical grounds (e.g. on the basis of the health check), it is possible to initiate a ‘parallel’ procedure, in which the applicant’s state of health (and its consequences under aliens law) is assessed at the same time as the asylum application itself. In this situation, reception facilities are provided for the asylum seeker until this procedure has also been completed. This measure prevents too many repeat applications being submitted after the standard asylum procedure has been exhausted.

- Expansion of the ex nunc review

  Under the new system the courts will in principle be able to take account of new facts and circumstances submitted by asylum seekers after a decision has been given but before the time limit for applying for review expires. This is intended to prevent new applications being submitted later for this purpose.

Paragraph 23

The Committee expressed concern at reports that prison conditions in Bon Futuro Prison and Bonaire Remand Prison remain extremely harsh and urges the Netherlands Antilles to ensure as a matter of urgency that conditions in places of detention are improved to meet the standard set out in article 10, paragraph 1.

To improve the situation in Bon Futuro Prison the following steps have been taken:

Security

The prison management's first priority is entry controls and safeguarding the security of staff and inmates alike. Bon Futuro prison staff underwent training in 2010 which included topics such as their approach to prisoners and the use of pepper spray. A total of 161 staff took the training course. In addition, an internal support team (*Intern Bijstandsteam*; IBT) has been set up to replace the existing Riot Team. This new internal support team is part of the Bon Futuro Security Strategy.

Dutch experts have assisted with the recruitment of the IBT staff. A total of 28 persons have completed the necessary training and can be deployed immediately if needed. Furthermore, the team is fully equipped to carry out their duties in a responsible way.

In 2010 a public tender was launched for the construction of the prison's inmate-reception building, facilities for inspecting and storing goods, a

building for personal security checks and new workshops. As part of the *Plan Veiligheid* (Security Plan), all the projects are coordinated, with various architectural firms providing building supervision. By the end of 2011 the construction of the inmate-reception building will be finalised and the premises will be in use.

In order to further enhance security in the detention complex, a new internal camera surveillance and observation system came into operation in October 2009. In January 2010 a new fire detection system and fire extinguishers were installed throughout the complex in order to observe general regulations relating to fire safety. By May 2010 the Bon Futuro prison was in full compliance with fire safety regulations.

Detention conditions

With respect to the improvement of the detention conditions of the inmates, a sub-plan entitled 'Opknappen Cellen' (refurbishment of cells) was implemented, with the aim of improving the detention complex's overall basic facilities. In order to enhance the inmates' sense of security, work began in January 2010 on the installation of the call-button system for all cell blocks. The call-button system makes it possible for inmates to call prison staff members should there be an emergency. The system will be operational by September 2011.

There is also a sufficient supply of mattresses in each cell block to ensure that every inmate has a clean mattress to sleep on. A company has been hired to screen off the toilets from the showers for more privacy. The same company has also installed squat toilets. Furthermore, the entire plumbing system, as well as other sanitary facilities at the Bon Futuro prison, is to be overhauled.

Based on a structural plan entitled 'Schoonmaken Terreinen' (cleaning up the grounds), work began on cleaning up the grounds outside the prison walls, starting in February 2010. By February 2011, the project was almost

complete. The work remaining to be done, namely the placement of louvre windows and grids, as well as maintenance of the work done in 2010, will be the focal points of the follow-up project started in February 2011.

There is also a maintenance schedule which includes periodic spraying for vermin (once every two to three months) by a professional company. Eventually, management of pest control will be conducted by the prison itself.

The leaking roof in the isolation and observation cells has been repaired with concrete and a company has also been selected to provide meals for the inmates according to their dietary needs.

Activities

The inmates are offered a daily programme of activities. The programme is available to inmates in all cell blocks and will be rolled out gradually. At present, inmates can be put to work on the premises inside the prison walls. Furthermore, all cell blocks have an opportunity to engage in sports activities twice a week and visit the library on the prison premises once a week.

Furthermore, taking into account ILO Recommendation 136 concerning special youth employment and training schemes for development purposes[2], the Government of the Netherlands Antilles ratified a law in 2006 which primarily addresses the right of children and young adults to develop their potential and support themselves. Through this National Ordinance on Compulsory Youth Training[3] juveniles and young adults between the ages of 16 and 24 years are obligated to participate in a social and educational programme if they have no educational qualifications. With the constitutional changes in the Kingdom of the Netherlands which came into force on 10 October 2010, the Netherlands Antilles ceased to exist and Curaçao became a separate country within the Kingdom of the Netherlands. All treaties which

[2] Dutch Treaty Series, 1971, 117

[3] Official Bulletin 2005, no. 72

were in force for the Netherlands Antilles were automatically transferred to, and are in force for, Curaçao. The national legislation incorporating these international obligations was also transferred from the Netherlands Antilles to Curaçao.

Implementation of the National Ordinance started in 2008 for the juvenile inmates. The main purpose of this programme is to equip them with personal and occupational skills and training in order to enhance their chances later on the labour market. This is done gradually through a learning and work programmes from Monday to Friday. Besides a basic day programme for all cell blocks, special modules have been developed in order to cater to the specific needs of each cell block.

In 2010, the day programme, which entails language training in both English and Papiamentu, computer skills training, sewing lessons and literacy training – as well as music lessons – was attended by four groups of 26 inmates. Before starting the day programme, a preliminary phase must be completed. A group of 18 juvenile inmates as well as a group of 18 young adult inmates were enrolled in this preparatory programme. Upon completion they will continue with the day programme.

Courses to develop computer skills were attended by four groups of 15 inmates. 20 inmates received music lessons while two groups of 15 inmates followed English language training and three groups of 10, 11 and 14 inmates respectively, received literacy training and Papiamentu language training. There was also a group of 10 inmates who received sewing lessons.

On 10 October 2010 the Netherlands assumed responsibility for central government judicial tasks on Bonaire, St Eustatius and Saba (the ‘BES islands’), including the judicial and custodial facilities on the islands. Both leading up to that date as well as since then measures were and still are being

phased in to improve the system in order to meet international standards. The Government would refer in particular to the following measures.

In 2008, with the assistance of the Custodial Institutions Agency (DJI) in the Netherlands, the renovation of the existing prison on Bonaire commenced. Since 2010 this institution has been under the authority of the Chief Director of DJI and capacity has been expanded to 76 places. There are now a maximum of two offenders per cell and the institution is clean and safe for staff and offenders. The staff is at full strength and in the near future, middle managers from the Netherlands will be replaced by locally employed staff. All local staff (approximately 70 FTE) have received basic professional training for work in custodial institutions.

There is separate accommodation for adult and juvenile offenders and a separate care unit for offenders who cannot function well in the regular unit. Offenders in the care unit receive extra guidance and are seen by a psychiatrist and psychologist.

Each unit has a schedule which provides for daily activities such as fresh air, sport, recreation and small-scale work projects. The first steps have been taken towards providing education for adults and young offenders through a literacy course. A medical service has been set up and is operational. Through their unit supervisor, offenders may request a visit with the medical service. In the very near future, two local nurses will receive special on-the-job training.

The institution’s director and middle management have now developed a number of working protocols, such as a new visiting procedure. There are regular consultations between the director and inmate representatives: the detainees’ committee. Close contacts are maintained with the DJI in the Netherlands in order to keep up-to-date on policy developments.