Palliative Medicine 2003; **17:** 111–112

From Belgium

Mr Tony Van Parys Federal Parliament's House of Representatives, Belgium

Mr Van Parys is a lawyer and has been a member of the Belgian Federal Parliament's House of Representatives since 1981. He was Minister for Justice from 1998 to 1999.

On May 16, 2002, the House of Representatives voted for the legalization of euthanasia.

Like the EAPC, CD&V emphasizes the importance of care for patients whose life expectancy is limited because of illness. Palliative care as an overall approach aiming at maintaining quality of life for both patients and their families is CD&V's preference, rather than euthanasia without a palliative care 'filter'.

The new WHO definition of palliative care emphasizes the importance of quality of life, and states that prevention and relief from suffering by means of early identification and relief of pain is achievable. Physical, psychological, social, and spiritual problems are not disregarded. Such a definition fits with our philosophy of human solidarity and individualized care.

The importance of and the necessity to provide a legal framework for medical decisions relating to the end of life has not been (and was never) questioned, but in our opinion, the bill legalizing euthanasia in certain circumstances goes too far.

Our reservations relate to five particular issues:

1) *Euthanasia during the non-terminal stage of an illness* CD&V strongly opposes the extension of legalization to individuals who are not imminently dying. In contrast to palliative care, which should be available to all and not limited to life's end, euthanasia is only relevant at a terminal stage. Otherwise, we cross the boundaries of medical urgency and accept that everybody has the right to request termination of life as soon as their situation becomes 'hopeless'.
2) *Euthanasia for psychological suffering* The law stipulates that psychological suffering is sufficient as a basic condition that could justify euthanasia. We can not agree. The subjective dimension of psychological suffering is too vast, and this opens the door for abuse. It is virtually impossible for a physician to estimate the burden of psychological suffering. In addition, it is often not clear what patients with psychological problems want and this may change according to short-lived circumstances. In such cases there is no medical justification for euthanasia. In our opinion, depressed or demented patients cannot be considered as candidates for euthanasia.
3) *Euthanasia in cases of incompetent patients* The law disregards the most essential condition for euthanasia: the free will of the person involved. According to the draft bill, individuals who are not able to ask for euthanasia, may be subject to euthanasia. The fact that they have made such a request in a previous declaration ('advance directive') is sufficient.We have a positive attitude as far as the potential of a previous declaration is concerned, but, in our opinion, a request for active termination of life does not belong to it. Such a request assumes free will at the time it is granted, and not only at the time that it was expressed!
4) *Insufficient control systems* We agree with the State Council, in its statement that a euthanasia law is compatible with article 2 of the European Human Rights Legislation about the rights to life, only if the law incorporates sufficient guarantees and an efficient monitoring system. The Council has not confirmed that such guarantees are included in the draft bill.
   In our opinion, the control systems in the law are insufficient. Both the prescribed procedure before the act of euthanasia and control after the event are not enough to ensure efficient protection of the right to life.
5) *Euthanasia: no longer a crime?* Post hoc investigation is virtually impossible, since it has not been decided what the penalties will be in case of non-compliance with both procedure and material terms of the law. Hence, it is unclear whether a physician who administers euthanasia whilst respecting all the rules, commits a crime – and what kind of crime? – if he does not make a declaration of his intervention (as required in article 5).Any legal regulation stands or falls on the extent of compliance that can be verified; the details of that verification mode are missing in the draft bill.

The draft bill disregards the Penal Code, and states in the separate part relating to the euthanasia act that a physician 'does not commit a crime if he executes euthanasia' (providing that he complies with the basic conditions). The physician need only comply with a number of conditions, and then his euthanasia act is permitted. Hence, euthanasia becomes a mere procedural and administrative event, in which the physician simply executes a request. That approach turns euthanasia into an ordinary medical intervention.

10.1191/0269216303pm763op

No longer considering euthanasia as a crime cannot be justified or accepted. The policy of the CD&V is that euthanasia must be taken into the Penal Code; its execution by a physician, in accordance with the conditions required, can only be justified by invoking an emergency.

In addition to these issues, we must explicitly emphasize that no absolute right to euthanasia can be created from the law. The fact that all legal conditions are complied with cannot result in a *right* to euthanasia. The spirit of the law cannot and must not grant such a right, but it should protect the physician who is faced with a medical emergency.

For that reason, the euthanasia process must involve advice from a palliative care expert, and the euthanasia regulations should explicitly acknowledge the necessity to consult a palliative care specialist.

What is specifically missing in the procedure which must be followed prior to euthanasia is a clear 'palliative care filter'. The law makes palliative care subordinate to euthanasia, instead of proposing palliative care as a potential alternative and as a solution before considering euthanasia. Palliative care is not considered as a real alternative approach, according to the draft bill. A brief reference to it in the margin and as a part of information the patient is entitled to is sufficient. In our opinion, that constitutes a denial of the current potential and contribution of palliative care and of the efforts by so many palliative care professionals and volunteers. That is why, apart from consulting another physician and the nursing team, advice from a palliative care expert must be obtained. Advice by a second physician, so far limited to confirming the continuous, unbearable, and incurable nature of the pain or the suffering, must be given more importance, and, as stipulated in Dutch Law, should include a review of the overall management. The second physician must also decide on the seriousness of the medical case, its desperate nature, and what potential there is for palliative care.

In summary, we should like to see the palliative care culture develop further and integrate better. The current legislation presents palliative care only as an alternative, whereas in our opinion, palliative care should be considered as a basic right prior to any request for euthanasia.

The law extends so far that a need of adjustment, correction, and modification will arise inevitably and in the short term. Application of the law in the field will generate serious problems, not least because physicians are put in a position of huge legal uncertainty. That means an amendment to the law will be necessary soon.

One must continue to think about and discuss fundamental ethical issues and values. One will never reach the stage of 'All has been said, the issue no longer exists'. That is why CD&V will continue to emphasize the importance of palliative care and try, with that in mind, to pursue amendments to the law.