

# Euthanasia of detainee: granting a prisoner's request

**Auke Willems argues that the lack of psychiatric treatment adds a penal dimension to Belgium's euthanasia system**

*In September 2014, a Belgian national, Frank van den Bleeken, was granted euthanasia while detained on psychiatric grounds. This was the first time a detainee has been granted the right to die and therefore this case has caused much public debate. Van den Bleeken was never convicted of murder and rape; instead the court found he was insane and hence could not be held accountable for the crimes he committed.*

The Belgian court ordered his detention on psychiatric grounds and required him to undergo treatment for an undetermined period. But because such specialised treatment was not available for him in Belgium he was eventually placed in a 'normal' prison without any form of treatment. He has been in prison for 30 years and claimed to 'suffer unbearably' from his psychiatric condition. This case has raised questions about Belgium's euthanasia laws, but more importantly about its penal system and failure to provide for psychiatric treatment ordered by courts. This article aims to explore both these issues.

## **Request for euthanasia**

Van den Bleeken is aware of his mental illness and regards himself as a danger to society. He has clearly stated he does not want to leave prison because he does not want to risk causing any further harm. Several times in the past he was granted probation and every time it went terribly wrong. After these failed probations it was clear he

would never be released.

He therefore only saw two viable options; either to be transferred to a specialised facility in the Netherlands, or if denied, to be allowed euthanasia. It is important to stress that his euthanasia request was only secondary to his wish to be transferred to an appropriate facility. After authorities denied his request for a transfer, he filed a first request for euthanasia in 2011, but until now the Belgian justice department had not given permission for such a request. In September 2014 however, an appeals court in Brussels accepted the euthanasia. Granting euthanasia to a detainee or convict is a new intervention, but it has been reported that another 15 detainees are considering filing requests for euthanasia (*De Standaard*, 2014), raising concerns that this case will lead to an increase in such requests. However, the euthanasia has since been called off; medical confidentiality prevented doctors from disclosing why, but the ruling does not mean that prisoners can no longer request euthanasia in the future.

## **Euthanasia in Belgium**

Euthanasia has been legal in Belgium since 2002, and is allowed in cases where patients' physical or psychological suffering is unbearable and there is no prospect of curing them (European Institute of Bioethics, 2013). The legal procedure prescribes that next to the patient's doctor another independent medical practitioner has to approve the request. In cases where the patient is not in the final stages of an illness, a

second independent practitioner has to be consulted. Euthanasia is widely accepted in Belgium in cases of terminal illness, and in 2012 about 1,400 people requested euthanasia (this number has risen to 1,800 in 2013).

## **Avoiding punishment by euthanasia**

The case has led to renewed discussion surrounding euthanasia, and has brought elements of Belgium's penal system into debate. Victims and their relatives were shocked by the decision to allow for euthanasia. Two sisters of one of van den Bleeken's victims responded by saying that they were never shown the attention that van den Bleeken has received from doctors and other experts (Voermans, 2014). However understandable such reactions are, in this particular case the person was not convicted as such and was detained on psychiatric grounds. Moreover, regardless of the seriousness of the crimes committed by a person, he or she has the right to request euthanasia. Cases in which convicted criminals request euthanasia solely on grounds of the detention are unlikely to succeed because of the strict requirements of the euthanasia law.

The real issue here is therefore not the avoidance of punishment, as the euthanasia procedure should be able to filter such cases out, but rather the failure of Belgian authorities to provide for psychiatric treatment. In other words, is this grant for euthanasia acknowledgment of Belgium's failing system of psychiatric care?

## **Death penalty in disguise?**

Belgium does not have the death penalty, but according to Carine Brochier of the European Institute of Bioethics the death penalty has been reinstalled 'through the backdoor' (*The Guardian*, 2014). The argument goes along these lines; the Court ordered van den Bleeken's detention in combination with psychiatric treatment, but because such treatment was not available, and after having spent 30 years in prison, euthanasia ultimately became his wish. However, a number of psychiatrists who have followed him for years

have concluded that his mental condition is incurable. Following this conclusion, the contention that the euthanasia resembles a death penalty seems

incorrect; in other words, his urge for euthanasia would still have surfaced sooner or later.

Nevertheless, another specialist, Professor

Distelmans, is

not sure whether van den Bleeken suffers from his condition or from the conditions under which he is detained (Voermans, 2014). A decision for euthanasia on mental health grounds is subject to the interpretation of experts and this is where the problems surrounding psychiatric care align with the euthanasia decision itself; when someone is suffering from a psychiatric disorder rather than from a physical illness, it is much harder to prove that their condition is incurable.

### **Lack of psychiatric treatment violates human rights**

The failure to provide psychiatric treatment has been widely criticised (*Liga voor Mensenrechten*, 2011) and various courts have ruled that the lack of psychiatric care amounts to a violation of fundamental human rights. The European Court of Human Rights (ECtHR) ruled in 2013 that the lack of adequate care for a mentally-ill sexual offender amounted to inhuman or degrading treatment (*Claes v Belgium*). In 2014 the same court found the lack of psychiatric treatment of eight detainees to be a violation of their right to liberty and security (*Lankester v Belgium*). A further string of cases (Gryson, 2014) signals how serious and widespread the failure is. The continued detention of people who have been found insane, and were not held accountable for their actions for significant periods of time without any real prospect of change in their situation, goes beyond the suffering that is inevitably associated with detention (see ECtHR in *Claes*). It follows that the state falls short in these cases with regard to its obligations to those in an inferior and

powerless position. This inadequate or total lack of treatment is structural and widespread. Ordinary prisons are not equipped to deal with complex

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mental disorders, and transfers to specialised facilities outside prison are either not possible because of a shortage of places, or because the relevant legal framework does not allow for transfer to external facilities.

### **Response by the Belgian government**

Following the various convictions, the Belgian government has taken a number of steps in an attempt to address the problem. In 2007, a new law was adopted that aims to improve the situation for those detained for psychiatric reasons. However, the new law has not yet entered into force. In addition two new facilities with a total capacity of 450 are currently being built; though it remains unclear when these will be operational.

The pace of the response shows that the urgency with which action is required has not been fully acknowledged. Interim measures that could have offered temporary relief, while in the meantime more structural improvements are prepared, were not taken (for example transferring patients to external facilities, possibly in other countries). This signals the low political priority for this issue and demonstrates that the rights of sexual offenders might not be on top of all political agendas.

### **Recognition of a failing penal system?**

The serious shortcomings in the mental-care system predate this particular case and have been known for some time. Nevertheless, this case is merely another example and once more confirms the systemic failure to provide psychiatric treatment. The key characteristic is that this case has drawn Belgium's euthanasia system into the discussion.

Whether this particular euthanasia

is the result of detention without psychiatric treatment is ultimately a medical question. The legal framework surrounding euthanasia provides for safeguards that only those who suffer from unbearable and incurable illnesses are eligible, and therefore fears that large numbers of inmates serving long sentences will be allowed euthanasia are not realistic. The euthanasia law does not prevent, however, the contribution to psychiatric conditions by the state, which then lead to euthanasia requests. It is unclear whether the growing group of detainees who are reportedly considering euthanasia are doing so because of a lack of psychiatric care. One therefore has to be careful to speak of a trend, as the link between the failing psychiatric care and euthanasia cannot yet be clearly established. What can be established though, is that as a result of the government's slow response, Belgium's well-functioning and widely accepted euthanasia system has come under scrutiny. The threat that the effects of the failing psychiatric care will start to spread to other ostensibly unrelated areas might influence the Belgian government's approach to a problem that has been lingering for too long. ■

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