Q&A ABORTION IN THE NETHERLANDS (August 2011)

This document answers questions that foreign readers may have about Dutch abortion laws and policy.

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Q&A ABORTION IN THE NETHERLANDS 2011

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Q.1. What are the laws on abortion in the Netherlands?

In the Netherlands women may terminate an unwanted pregnancy by means of an induced abortion. In the legislation this is referred to as the termination of pregnancy, but the common lay term is abortion. Under the Criminal Code, abortion is not an offence if it is carried out by a physician in a hospital or clinic which is authorised to provide such treatment under the Termination of Pregnancy Act. Abortion is not seen as a routine medical procedure but as a procedure to which a woman is entitled if her circumstances leave her no other alternative.

According to Article 296 of the Criminal Code: ‘Any person who provides treatment which he knows or could reasonably suspect might terminate a pregnancy is liable to a term of imprisonment not exceeding four years and six months or a fourth category fine (not exceeding €11,345) […] The act referred to in paragraph 1 is not an offence if the treatment is given by a medical practitioner in a hospital or clinic which is authorised to provide such treatment under the Termination of Pregnancy Act.’ The Criminal Code also provides that a pregnancy may only be terminated until such time as the foetus ‘might reasonably be presumed capable of surviving independently of the mother’. Expert opinion currently considers a foetus to be viable at 24 weeks, but most doctors will perform the procedure no later than 22 weeks into the pregnancy, because of the margin of error of ultrasound scans and to be sure they remain within the statutory time limit. In cases in which the woman is seeking an abortion for medical reasons, the pregnancy may be terminated in the 24th week at the latest, although there are a very small number of specifically described medical situations in which more advanced pregnancies may also be terminated. Under the Termination of Pregnancy Act, a pregnancy may only be terminated in a hospital or clinic which is licensed for this purpose.

The Termination of Pregnancy Act entered into force in November 1984. The Healthcare Inspectorate has been reporting on recorded data since 1985. The aim of the Act is to balance two potentially conflicting interests: on the one hand it seeks to protect the life of the unborn child, and on the other to help women who are in a difficult position as a result of an unwanted pregnancy. The purpose of the Act is to ensure that any decision to terminate a pregnancy is given careful consideration, and that a termination is performed only if the woman’s circumstances leave her no alternative.

The Act does not set out any reasons or criteria for terminating a pregnancy. Instead, it sets standards in the form of a set of requirements designed to guarantee that the decision to
terminate is taken with all due care. This approach was adopted because the decision to terminate a pregnancy must be taken with due regard for the individual circumstances of each case.

Q. 2. How did the Termination of Pregnancy Act come about?

Abortion became the subject of public debate in the second half of the 1960s in the context of several far wider issues. The availability of oral contraceptives and sterilisation had paved the way for family planning, people’s attitudes to sex were changing, the influence of the church had declined and abortion had been legalised in Great Britain. At the same time, economic growth in the Netherlands had raised the standard of living, and the population as a whole was more highly educated. All of these factors contributed to the legalisation of abortion in 1984. For the record, it should be noted that abortion was not and is not intended as a method of family planning.

From 1971, women could go to an abortion clinic run by the Stimezo Foundation for a safe, but illegal, abortion. The Stimezo Foundation was established in 1970 for the express purpose of improving access to safe, reliable abortions. The number of illegal abortion clinics increased rapidly. They were founded because hospital doctors were reluctant to perform abortions, and did so rarely, if at all. Abortion became a subject of debate in the medical community as well. A new, improved technique was developed, that of suction curettage, which could be provided as an outpatient service.

These developments and increased public support for abortion demanded new legislation on abortion. However, liberalising the abortion laws was a difficult process. In 1970, the Labour Party (PvdA) introduced a bill to remove abortion from the Criminal Code. In 1975, the Christian Democratic Alliance (CDA) proposed that abortion remain a criminal offence unless ‘continuation of the pregnancy carried a grave risk of physical or mental harm to the woman, which could only be averted by terminating the pregnancy’. In 1976, the right-leaning liberal party (VVD) submitted a motion of its own, and later, one together with the Labour Party. The problem was that, though the bill was supported by a majority in parliament, neither the PvdA nor the VVD formed part of the governing coalition. In December 1980, after a change of government, parliament passed a bill introduced by the VVD and the CDA. In November 1984, the Termination of Pregnancy Act entered into force together with a decree implementing the Act. In the intervening years, abortion clinics continued their work without legal action being taken against them.
Q. 3. What procedure must be followed before an abortion can be performed?

A.3. If a woman wants to terminate her pregnancy, her first step will usually be to consult her general practitioner, who will refer her to a doctor at a clinic or hospital which is licensed to terminate pregnancies under the Termination of Pregnancies Act. A woman can also go to an abortion clinic without a GP referral. At the clinic or hospital, the woman must be given information about possible alternative solutions in her situation. The doctor there may only perform the abortion procedure after establishing that the woman has reached her decision after careful consideration and of her own free will.

To give the woman time to think things over, the Act prescribes that there must be a lapse of five days between her first talk with the doctor (who may be the general practitioner she initially went to for referral) and the actual termination. Both the woman and the doctor are responsible for the process of reaching a decision, although the decision as such is ultimately made by the woman. A woman is not legally required to reach agreement with her partner or parents; the decision is hers alone.

Induced abortion is only permitted as long as the foetus is not viable outside the mother’s body. Expert medical opinion recently confirmed that a foetus is viable from 24 weeks. Most abortion clinics however maintain a limit of 22 weeks and a few days (see Q.1). The duration of pregnancy can be accurately determined with an ultrasound scan. Induced abortion carried out when menstruation is no more than 16 days overdue is referred to as menstrual regulation. Like induced abortion at a later stage, this procedure may only be performed in a clinic or hospital that is licensed under the Termination of Pregnancy Act. Menstrual regulation may be performed without the lapse of five days.

Q.4. Where and how are abortions carried out?

This depends on the duration of the pregnancy. When menstruation is between 12 and 16 days overdue, the pregnancy may be terminated without the lapse of five days between the woman’s first talk with the doctor and the treatment. The doctor will first conduct an examination (ultrasound scan) and discuss the woman’s decision with her.
A pregnancy in its first trimester can be terminated by suction curettage, for which a local or light general anaesthetic is administered. In 2000, an abortion pill (mifepristone) was registered in the Netherlands under the brand name Mifegyne. This pill may be administered to terminate pregnancy up to 7 weeks after the first day of the woman’s last menstruation (i.e. she is no more than 7 weeks pregnant). If the pill is administered after the woman is 16 days overdue, the Termination of Pregnancy Act applies in its entirety. The abortion pill may be prescribed by a GP, provided the practice is registered and fulfils the requirement of the Termination of Pregnancy Act.

There are a number of licensed abortion clinics where a pregnancy can be terminated in its second term. One of various procedures can be performed, for which a woman is administered local or general anaesthetic.

In 2011, 92 hospitals and 15 clinics were licensed to perform abortions. Such licences are granted by the Minister of Health, Welfare and Sport to establishments that satisfy statutory requirements relating to the quality of treatment in terms of medical competence and facilities as well as psychological care.

The directors of these establishments must submit quarterly reports to the Healthcare Inspectorate, including information about the number of patients they have treated. The figures are published in the Healthcare Inspectorate’s annual report.

For women who are resident in the Netherlands, the costs of a termination performed by a licensed clinic are covered by the Exceptional Medical Expenses Act. Treatment in a hospital is covered by the health insurer. Women who are resident abroad and who have a pregnancy terminated in the Netherlands have to pay the costs themselves. Special rules apply to women who are illegally resident in the Netherlands.

Q.5 How come the Netherlands has such a low abortion rate?

Not all countries officially record the number of abortions carried out and some have a high illegal abortion rate. Nevertheless, compared to other countries, the Netherlands has an extremely low abortion rate.

The Netherlands has always had a relatively low abortion rate (number of abortions compared to number of live births), and in this respect little has changed since abortion
became legal. The reason is closely related to the widespread use of contraceptives in this country.

Family planning was taboo in Dutch society up to the 1960s and the Netherlands had one of the highest birth rates in Europe right up to 1965. This situation changed dramatically in the decade that followed, reflecting a fundamental shift in the social, cultural and political climate (see Q.2.). With the availability of new forms of contraception, sexual and moral values changed and family planning gained increasing acceptance.

The question is, why did family planning become so popular in the Netherlands and why was there hardly any increase in the abortion rate? Four factors played a role.

1. In the Netherlands, the social and political debate on family planning was prompted by concerns about the prospect of overpopulation. The Netherlands was the most densely populated country in the world in the 1960s, and the future prognoses were alarming. This factor as a consideration in family planning was unique to the Netherlands.

2. At the same time, the influential Dutch Society for Sexual Reform (NVSH) launched a campaign for new family planning legislation. By the mid-1960s the NVSH had over 200,000 members and a staff of 100 at its headquarters in The Hague. The women's movement, too, conducted a major family planning campaign. These two movements propelled the social debate on family planning forward.

3. Towards the end of the 1960s, the Dutch College of General Medical Practitioners (NHG) recognised family planning as an important aspect of general practice and almost all general practitioners began to offer their patients this service. This step had far-reaching implications. It meant that people could discuss birth control in confidence and in a relatively familiar context, whereas in most countries counselling services were provided by gynaecologists or special clinics. Within a short space of time, birth control had become an integral part of health care.

4. The government lifted the ban on contraceptives in 1969 and in 1971 made them available under the national health insurance scheme. Two years later, sterilisation was also covered by national health insurance. In addition, small family planning clinics run by the Rutger Foundation became eligible for government grants. Not only did these measures constitute an incentive to practise birth control, they were also a factor in making contraception morally acceptable. Family planning became a public issue as well as an individual matter.
Hence, the use of contraceptives had gained widespread acceptance in the Netherlands not only by the time abortion was legalised, but even before it became a political issue. Thanks to demographic, social, psychological and financial factors, nearly all obstacles to birth control had been removed. This is one of the main reasons for the low abortion rate. In a short space of time, the Netherlands was transformed from a country with a high birth rate by European standards into one in which birth control was common practice.

Q.6. How does Dutch policy on abortion compare with that of other European countries?

Up to the mid-twentieth century, abortion was illegal all over the world. It was not until the 1960s that it gradually became legalised. By 1986, most European countries had introduced laws allowing for abortion. But policy on abortion still varies from country to country,

Abortion is still illegal in Ireland and Portugal. In Ireland, abortion is only permitted if the mother's life is at risk. However, Irish women may have abortions in Great Britain. In Portugal, abortion is only permitted if the mother has been raped or her life is at risk, or if the foetus is impaired.

In the majority of countries (including Belgium and Germany), abortion is permitted up to 12 weeks. In Sweden, the limit is 18 weeks. In Great Britain (but not Northern Ireland), it is 24 weeks. The statutory time limit in the Netherlands is also 24 weeks. In the majority of countries, there is no time limit if the mother's life is at risk or if the foetus is impaired. Thus, while a woman's right to self-determination plays a key role in Dutch policy, it is not unique in this regard.
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Bibliography and other sources of information

STATISTICS
United Nations, legislation on abortion, by country (dated)


LEGAL
European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

ORGANISATIONS
Dutch Healthcare Inspectorate (Inspectie voor de Gezondheidszorg, IGZ)
www.igz.nl

Abortion clinics
www.ngva.net/clinics

Dutch College of General Practitioners (NHG)
http://nhg.artsennet.nl/English.htm

StiSAN abortion clinics (Dutch only)
www.stisan.nl

GENERAL INFORMATION
Coalition agreement
http://www.government.nl/Government/Coalition_agreement

Dutch Society for Sexual Reform (NVSH)
http://www.nvsh.nl/

Rutgers WPF
http://www.rng.nl/english