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Professor Erny Gillen teaches Moral Theology and Bioethics at Luxembourg Seminary. He is Episcopal Vicar for Social Affairs and President of Caritas in Luxembourg. He is also President of Caritas Europa and Vice President of Caritas Internationalis in Rome. During August he visited Wellington where I was able to interview him for this issue of The Nathaniel Report.

Michael: Thank you for the opportunity to meet with you during your short stay in New Zealand. Specifically in this conversation we are going to talk about the recent legalisation of euthanasia in Luxembourg following the other Benelux countries Belgium and prior to that The Netherlands. What is the nature of the legislation passed this year?

Erny: We have passed two different Bills in Luxembourg – one Bill about palliative care and one Bill about euthanasia and assisted suicide. They were passed in Parliament on the same day but in two different votes so there are two different laws. The law on euthanasia and assisted suicide introduces the right for the medical doctor to perform euthanasia or assisted suicide if there is a demand from the patient and if that patient has fulfilled different conditions. The conditions you have to fulfil:

- You have to be a full aged person who is free, who knows what he or she is asking for.
- You should be in a situation where a positive outcome is not possible.
- You should suffer in a very severe way.

If those conditions are fulfilled then you can apply for euthanasia or assisted suicide. If you do apply then a medical doctor has to verify whether those conditions are fulfilled and he has to inform you about the possible relief given by palliative care. If then you are going to persist in your idea to ask for euthanasia there will be a second medical doctor who should enter into the process and verify whether the patient finds himself indeed in an incurable, heavy and continuous situation of an illness. If this is the case then you have to write a demand for euthanasia and assisted suicide and only then can euthanasia or assisted suicide be performed on you. Once that is done the medical doctor has to fill out a form and that form will have two different parts – an anonymous form and a personal data form which will only be opened if there is a suspicion voiced within the National Control Commission. The anonymous and technical form will go to the National Commission who will verify whether the conditions were fulfilled and if the National Commission had any doubts they can ask for the personal data and they can ask all the people involved in the process to see whether it was legally done or not.

Michael: So this National Commission is post-factum?

Erny: Yes.

Michael: So the legislation is very similar to The Netherlands then but with some variations. Would you like to comment on those?

Erny: There are no big differences between the actual law in Luxembourg and the law in The Netherlands. There is one difference. For example, you must be an adult 18 years old to apply. You cannot apply if you are younger than 18 and you cannot apply if you are not in control of your own faculties. So handicapped people, for example, who are protected by the law, cannot simply apply for euthanasia. Whether psychologically ill people can apply or not is at the moment an open question. We will see over time how that will evolve.

Michael: Does it differ in any way from Belgium's legislation?

Erny: For Belgium there are no real differences from an ethical point of view.

Michael: Could we talk about the Constitutional issues that were raised by the passing of this law in Luxembourg? The Grand Duke Henri refused to sign the legislation and by doing so forced the Chamber of Deputies to change the Constitution. He appealed to his conscience as the reason he would not endorse the legislation.

Erny: Yes. It was a very dramatic situation. There were more attempts to have legislation on euthanasia and it failed several times. What happened this time was that there was an unfortunate binding between the law on palliative care and euthanasia.

The Government was proposing a law on palliative care and two Parliamentarians were proposing a law on euthanasia. I think the political calculation was if we bind both laws (then) the euthanasia law will fail because the other law is proposed by the Government. And it was indeed a very narrow vote. The palliative care vote was 100% – all of the 60 Parliamentarians were in favour of the palliative care and only half plus one (31) were in favour of the euthanasia law. But all the Parliamentarians were told you have to vote from your own conscience so it was not the Socialists voting against or in favour but each Parliamentarian had to make his own personal vote.

Michael: So it was not what we would call in New Zealand a party vote but rather a conscience vote?

Erny: It was a conscience vote in the Parliament. Some people were surprised because they thought it wouldn't pass. Then our system foresees a second vote unless the Council of State – it's like a Second

want to go to the whole way of palliative care, including palliative person so you have a right to access palliative care but then if you sedation is mentioned but then you need informed consent of the

Erny: That is a very big issue. In the law of palliative care terminal

Michael: Terminal sedation is a very big issue.

space for euthanasia. As part of the palliative care proposal there would be no longer any Some people are thinking if we would impose palliative means should be used – so in this regard there is a link between those laws. means of palliative care are mentioned and you could say that they of euthanasia it is written that people should be informed about the palliative care. Nevertheless there is a link in both laws: and in the law

not mix up the situations of euthanasia with the situations of palliative care. Having two laws makes it very clear that you should doctors and nurses don't know enough about the possibilities of palliative care because sometimes even in our country medical nurses and medical doctors so that they are knowledgeable about the topic of that law and there should be organised training for generalised access. Everybody has access to palliative care – that we have two different laws and so the access to palliative care is now

Erny: I think that what is good about the laws in Luxembourg is that even though Hospice is currently very strong in New Zealand, it possible to subvert ethical palliative care in the Hospice movement that she now links palliative care with assisted suicide which makes Parliament to legalise euthanasia in New Zealand. What is notable is has been working towards introducing a Private Members Bill to it was a much publicised case in New Zealand. In recent years she murderer of her terminally ill mother, Joy, whom she was nursing.

psychology. She was also convicted in March 2004 for the attempted carer and euthanasia. She is a trained intensive nurse, now studying calling her hospice a "Haven" that would practice both palliative

world. Lesley Martin one of the main advocates for this speaks of legalised euthanasia so clearly this is an international and an internet proponents of euthanasia are planning to link palliative care with with palliative care? The reason I ask that is because in New Zealand Michael: Would you like to comment about the link in the legislation in the minority situation...

Church in a minority situation as well as the Christian Party was put was also such a big issue – now the euthanasia issue has put the

the second time in history of Luxembourg – the abortion law in 1978 Church is interfering in the world of politics; But the Catholic Church says, we are in favour of the arguments put forward by the One saying, others saying, it's not possible that the Catholic Church was quoted by all the different parliamentarians taking the floor. Bishop was during the last vote in the Parliament, for example, the Bishop

Erny: Indeed. The Catholic Church issued several statements. Our law being passed. Would you like to talk about that?

Michael: The Church's role in influencing the debate? Clearly it was a strong counter cultural voice but that was not enough to stop this

vote. But the Council of State did not give a dispensation so there

Chamber (Upper House) will give a dispensation from the second

was a need for a second vote in the Parliament. Grand Duke Henri

was in November 2008. The actual law was passed on 18 December

2008 and it was signed by the Grand Duke under a new reworded

constitution in March 2009. It has been in force since....

Duke would approve and promulgate the law.

In order to avoid a constitutional crisis all parties found, under the

leadership of the Prime Minister, a way out within only days after the

announcement of the Grand Duke that he wouldn't sign the law if it

so legally speaking he was, after the 28 March, no longer in the

necessity of having to approve the laws. Of course that's semantics.

Duke in the future, would only promulgate the laws without the

small change added. That change would be to say, that the Grand

and he accepted, that in the Constitution there would be a very

To avoid the constitutional crisis it was proposed to the Grand Duke,

situation to approve, but only to promulgate – so it was clear that he

was promulgating a law which he personally would not and did not

approve.

So legally speaking he was, after the 28 March, no longer in the

necessity of having to approve the laws. Of course that's semantics.

Michael: That showed enormous courage and leadership and I

would think he would be rather unique in Europe thus far for the

countries that have legalised euthanasia?

Erny: Yes! I think there was strong opposition in Luxembourg

against that law – coming from the Catholic Church, and coming

from a lot of people who are not necessarily linked to the Catholic

Church, but who are people who think life should be protected in all

circumstances. On the other hand it was a very ideological discussion

and at the very end people thought that the personal freedom, the

personal autonomy, should be ranked higher than the dignity of

For Catholic people or people who argue from a natural law

perspective that's a complete contradiction.

Michael: Tell me about the other Catholic politicians then –

how did they address this vote of conscience?

Obviously this was not a constitutional crisis per se for them – but

23 voted against and one person voted to the Christian Party

Erny: Of the 24 parliamentarians who belong to the Christian Party

the other hand if you accept that the conscience is the last word a

person if that person applied the rule and voted according to her

allowed to vote according to your conscience, and then exclude a

debate whether that person should be excluded from the Christian

Party or not. And because it was a conscience vote the party leaders

decided that it would be unfair to tell the people that you are

nevertheless not the line of the Christian Party but on

conscience. Even so that's not the rule and voted according to her

person if you accept that the Christian Party but on

conscience. So that's not the rule and voted according to her

person if you accept that the Christian Party but on

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