



ADF INTERNATIONAL

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**BELGIUM**

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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, and the Organization of American States. ADF International is also a participant in the FRA Fundamental Rights Platform.
2. This report details the incompatibility of Belgium’s Euthanasia Law with its human rights obligations, particularly under the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of Persons with Disabilities (CRPD).

### (a) Right to Life

3. The Belgian Law on Euthanasia of 28 May 2002 allows doctors to ‘intentionally end the life of a person at his or her [informed] request.’<sup>1</sup> The physician who euthanizes a patient commits no criminal offence when he ensures that: ‘The patient has attained the age of majority and is legally competent and conscious at the moment of making the request;’ ‘The request is voluntary, well-considered, and repeated, and is not the result of any external pressure;’ and ‘The patient is in a medically futile condition of constant and unbearable physical or mental suffering that cannot be alleviated, resulting from a serious and incurable disorder caused by illness or accident.’<sup>2</sup>
4. Belgium set up a Federal Commission for Control and Evaluation of Euthanasia (hereinafter, the ‘Commission’) to assure compliance of the relevant procedures with the legislation; however, the commission performs the review after the euthanasia has been carried out.<sup>3</sup> To date, the Commission has reviewed over 12,000 cases and only referred one for investigation.
5. In February 2014, Belgium expanded its Euthanasia Law to enable doctors to end the lives of children of any age, upon their request. The child needs to ‘be in a “medically futile condition of constant and unbearable physical suffering that cannot be alleviated and that will result in death in the short term” and the child must ‘understand the consequences of [his or her] decision as verified and certified by a child psychiatrist or psychologist.’<sup>4</sup> The child needs to have the ‘capacity of discernment’ and this decision must be supported by a parent or guardian.<sup>5</sup> Belgium

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<sup>1</sup> Belgique, Parlement Fédéral, Loi relative à l’euthanasie F. 2002-2141 [C 2002/09590] (28 May 2002).

<sup>2</sup> Unofficial (unamended) translation available at: “The Belgian Act on Euthanasia of May, 28th 2002” 9:2–3 Ethical

Perspectives 182; See also: Guenter Lewy, *Assisted Death in Europe and America: Four Regimes and Their Lessons* (Oxford University Press, 2010) at 74–75.

<sup>3</sup> ‘Belgium passes law extending euthanasia to children of all ages,’ (The Guardian, 13 February 2014) <<https://www.theguardian.com/world/2014/feb/13/belgium-law-extends-euthanasia-children-all-ages>> accessed 12 October 2020.

<sup>4</sup> Jo Samanta ‘Children and euthanasia: Belgium’s controversial new law’ (Diversity & Equality in Health and Care, 2015) <<http://diversityhealthcare.imedpub.com/children-and-euthanasia-belgiums-controversial-new-law.php?aid=3729>> accessed 12 October 2020.

<sup>5</sup> Ibid.

has euthanized three minors, ages 17, 11, and 9.<sup>6</sup>

6. Since 2002, the Commission has broadly interpreted what qualifies as ‘constant [and] unbearable’ suffering.<sup>7</sup> As a result, euthanasia deaths in Belgium have more than doubled in eight years: from 953 in 2010 to 2,655 in 2019.<sup>8</sup> Among these, 510 persons were euthanized due to poor mental health.<sup>9</sup>
7. The Commission also confirmed the existence of clandestine practices. For example, doctors have rendered opinions by telephone without examining the patient. Surplus euthanasia products are sometimes given to the family and there is no control of returned surplus products.<sup>10</sup>
8. Parliament members have submitted more than 20 bills to extend the Euthanasia Law. The most recent was adopted on 5 March 2020 by the Belgian Federal Parliament voted in order to, inter alia, severely curtail conscientious objection for healthcare professionals.
9. Worryingly, euthanasia has been offered as a solution to people struggling with disabilities, mental illness or social challenges. Johnny Vaes, 59-year-old man with terminal pancreatic cancer, scheduled his euthanasia procedure for Friday May 13, 2016, after a final farewell to his loved ones. He had announced his upcoming euthanasia procedure on Facebook and invited his loved ones to the hospital for a last get-together, declaring: “For lunch I’ve asked for French fries with mayonnaise and ketchup. Afterwards, I’ll have my shot, and I’ll leave.”
10. Belgian doctors have repeatedly expressed concerns over the further liberalization of the country’s euthanasia law, warning that “budgetary problems in healthcare for the elderly, may lead to debating euthanasia policies based on socio-economic reasons.”<sup>11</sup> In the meantime, euthanasia advocates argue that treatment of incurable diseases, such as Alzheimer’s, should be interrupted so that money can be invested for ‘patients with treatable conditions.’<sup>12</sup> This inevitable slippery slope would allow certain people to become the final arbiter over whose lives and health are worth treating.

### *The Right to Life in International Law*

11. Article 6 of the ICCPR, which Belgium ratified in 1983, recognizes that every person has the right to life. Article 10 of the CRPD, to which Belgium became a State Party in 2009, safeguards persons against discrimination on the basis of disability by stating, “States Parties reaffirm that every human being has the

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<sup>6</sup> Charles Lane ‘Children are being euthanized in Belgium’ (The Washington Post, 6 August 2018) <[https://www.washingtonpost.com/opinions/children-are-being-euthanized-in-belgium/2018/08/06/9473bac2-9988-11e8-b60b-1c897f17e185\\_story.html](https://www.washingtonpost.com/opinions/children-are-being-euthanized-in-belgium/2018/08/06/9473bac2-9988-11e8-b60b-1c897f17e185_story.html)> accessed 12 October 2020.

<sup>7</sup> ‘Belgium: 15 years After Legalizing Euthanasia’ (Alliance Vita, 7 June 2017) <<https://www.alliancevita.org/en/2017/06/belgium-15-years-after-legalizing-euthanasia/>> accessed 12 October 2020.

<sup>8</sup> Oscar Schneider, ‘Over 2600 people died by euthanasia in 2019’ (The Brussels Times, 3 March 2020) <<https://www.brusselstimes.com/news/belgium-all-news/98253/over-2600-people-died-by-euthanasia-in-2019/>> accessed 12 October 2020.

<sup>9</sup> ‘23-year-old Belgian woman to be killed by euthanasia for ‘poor mental health’’ (Lifesite News, 17 October 2019) <<https://www.lifesitenews.com/news/23-year-old-belgian-woman-to-be-killed-by-euthanasia-for-poor-mental-health>> accessed 12 October 2020.

<sup>10</sup> Ibid.

<sup>11</sup> Alliance Vita, *ibid.*

<sup>12</sup> Ibid.

inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”

12. The legalization of practices such as euthanasia is an egregious violation of the right to life. This right is to be protected by law, and nowhere is it indicated that the duty of the State to protect human life is abrogated if the person aiming to violate it is the rights-holder himself. As affirmed inter alia by the European Court of Human Rights in *Pretty v United Kingdom* and *Haas v Switzerland*, the right to life does not include a diametrically opposite right to die.<sup>13</sup>
13. These cases affirm that the right to privacy under Article 8 of the European Convention on Human Rights (ECHR) and the prohibition of torture, inhuman or degrading treatment or punishment under Article 3, must be understood in conjunction with Article 2, which not only prohibits the State from intentionally taking life, but also obliges it to take appropriate steps to safeguard the lives of those within its jurisdiction.
14. Article 25 of the CRPD specifies that ‘persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.’ Article 17 provides the right to respect for physical and mental integrity. Article 26 requires that those with disabilities be provided ‘comprehensive habilitation and rehabilitation services and programmes, particularly in the [area] of health....’ They are to be afforded ‘full inclusion and participation in all aspects of life.’<sup>14</sup> The number of people reportedly euthanized due to their health conditions shows the discriminatory nature of Belgium’s Euthanasia Law.
15. In addition, not only is there an absence of any references to euthanasia in any international human rights treaty, but treaty monitoring bodies have questioned the practice in the small minority of countries which have legalized the practice. In September 2014, the UN Committee on the Rights of Persons with Disabilities expressed concern that Belgium’s Euthanasia Law could be ‘misused to kill off persons with intellectual disabilities.’<sup>15</sup>
16. In the context of the Council of Europe, while the European Court of Human Rights has explained that there is no ‘right’ to assisted suicide under the Convention, the Parliamentary Assembly of the Council of Europe has stated in Recommendation 1418 (1999) that:

‘The Committee of Ministers [should] encourage the member states of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects ... by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while (i) recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with Article 2 of the [ECHR] which states that ‘no one shall be deprived of his life intentionally’; (ii) recognising that a terminally ill or dying person’s wish to die never constitutes any legal claim to die at the hand of another person; [and] (iii) recognising that a terminally ill or dying person’s wish to

<sup>13</sup> *Pretty v United Kingdom* (2002) 35 EHRR 1; *Haas v Switzerland* (2011) 53 EHRR 33.

<sup>14</sup> Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, entered into force 3 May 2008) A/RES/61/106 (CRPD).

<sup>15</sup> UN Human Rights Office of the High Commissioner, “Committee on the Rights of Persons with Disabilities considers the initial report of Belgium,” 19<sup>th</sup> September 2014, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15073>.

die cannot of itself constitute a legal justification to set out actions intended to bring about death.<sup>16</sup>

17. In Resolution 1859 (2012), the Assembly went even further by stating that 'euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited.'<sup>17</sup>
18. As evidence by the case of Tom Mortier, whose mother was euthanised in 2012 for depression without its knowledge, despite being physically healthy and not meeting the requirements of the law according to her treating psychiatrist of more than 20 years, euthanasia laws lend themselves to manipulation and abuse.<sup>18</sup> A ban on this practice, and not its regulation, is the only guarantee of compliance with Belgium's international legal obligations to protect all human life.
19. Instead of supporting euthanasia, the Belgian government must focus its attention on scaling up the provision of palliative care (a process spurred on by the necessity of alleviating suffering during end-of-life care where euthanasia is not a legal option), rather than construing the active ending of life as a personal right – one which is not contemplated and cannot be justified under international human rights law. Rather than making it easier for them to die, Belgium should effectively safeguard the human dignity and rights of the sick and the vulnerable by providing all the necessary material, psychological, social and spiritual assistance.

#### **(b) Recommendations**

20. In light of the aforementioned, ADF International suggests the following recommendations be made to Belgium:
  - a. Repeal the Euthanasia Law, acknowledging that there is no right to death under international law and that the practice of euthanasia violates the right to life;
  - b. Prohibit euthanasia and assisted suicide to protect the human rights to life, health and non-discrimination of the elderly, sick, disabled and other vulnerable members of society;
  - c. Ensure that no person is forced to participate, either directly or indirectly, in euthanasia or assisted suicide in violation of their human right to freedom of conscience;
  - d. Ensure that patients are provided with high-quality palliative care;

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<sup>16</sup> Recommendation 1418 (1999) Art 9.

<sup>17</sup> Resolution 1859 (2012) Art 5.

<sup>18</sup> ADF International, Mortier v. Belgium, <<https://adfinternational.org/legal/mortier-v-belgium>> accessed 12 October 2020.



**VIENNA**

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