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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family 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, the Fundamental Rights Agency of the European Union, the Organization for Security and Co-operation in Europe, and the Organization of American States.
2. This report focuses on Belgium’s failure to adequately protect the right to life of its citizens, as enshrined in Article 6 of the International Covenant on Civil and Political Rights and Article 6 of the Convention on the Rights of the Child, as well as Article 3 of the Universal Declaration of Human Rights. In particular, the report focuses on Belgium’s euthanasia law, and the recent decision to extend this law to children.

(a) The Law on Euthanasia

3. Belgium’s Law on Euthanasia of 28 May 2002 defines euthanasia as “intentionally terminating life by someone other than the person concerned, at the latter’s request”.¹ 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.”

“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.”²

4. The law contains a large list of things the physician must do before carrying out the act, including explaining to the patient his or her medical condition and life expectancy, and discussing options other than euthanasia, such as palliative care, consulting another doctor not connected to the patient or the attending physician, and discussing the request with relatives chosen by the patient and any nursing team that has regular contact with the patient. The physician must also be certain of the patient’s physical or mental suffering and of the durable nature of the request for euthanasia, and be certain that the patient has had the opportunity to discuss his or her request with any person he or she chooses.
5. As detailed below, such safeguards are wholly inadequate, given Belgium’s obligation to uphold the right to life under international law.

¹ Belgique, Parlement Fédéral, Loi relative à l’euthanasie F. 2002-2141 [C 2002/09590] (28 May 2002), s. 2.

² Unofficial 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.

Lack of procedural safeguards

6. Despite open and notorious breaches of the law, particularly under the reporting criteria³, no case has ever been successfully brought by Belgian prosecutors before a Belgian Court. Physicians who perform unregulated assisted suicide and euthanasia do so with impunity. As widely publicized by Belgian media, doctors acting as experts before the Belgian Senate hearings on expanding assisted suicide to include children were shockingly candid about ignoring the procedures and safeguards when ending the lives of their patients. Despite testifying publically and on the record, no criminal case was brought against the doctors who literally confessed to their own guilt under the Belgian Act on Euthanasia.
7. Furthermore, those physicians who do complete the procedural requirements of the law by submitting the required form to the Federal Control and Evaluation Commission – *after* the patient has been euthanized – have unfettered discretion in shaping the facts, diagnosis and outcome of how the assisted suicide was undertaken including fabricating the entire form by falsifying facts. This leaves vulnerable patients at the mercy of overzealous physicians.
8. As policing of the Euthanasia Act requires action by the Public Prosecutor to bring a criminal complaint before a competent court, those family members directly affected by the loss of a loved one through unregulated assisted suicide, cannot themselves bring a criminal action no matter how egregious the victimization involved is. Instead, family members can simply make a complaint to the Public Prosecutor, who may or may not choose to take the matter further.
9. Given the social and political climate in Belgium, the prospects of success of such an action are very low indeed.
10. Therefore a two-step filter exists whereby the Public Prosecutor has discretion whether to bring the case before a court and then in turn the court also has discretion whether to accept the case or not. It is clear that no effectiveness exists in either protecting potential victims and their family members from abuse of the law or punishing doctors who break the law by performing unlawful assisted suicides.

Lack of judicial review or oversight

11. The Constitutional Court of Belgium has been afforded three opportunities to examine the provisions of the law of 28 May 2002 concerning euthanasia and rejected each case. Indeed, only on one occasion did the Court provide any substantive analysis.

³ “So what happened after the publication of the article? A leading public figure confessed to a crime – possibly many crimes – before witnesses who included the ‘judge’ in charge of administering the law for this particular crime. Surely there must have been outrage at the arrogance of a doctor who regards himself as above the law. Surely the head of the commission must have initiated an investigation. But nothing happened. Nothing at all” – See, M. Cook, “Belgium and the majesty of the law”, *Mercatornet*, 5 January 2014, online <<http://www.mercatornet.com/careful/view/13344>>.

12. In 2003, the Court was asked to suspend the implementation of the law, with the applicants arguing that the right to life is fundamental and without which the rights and freedoms in the European Convention on Human Rights would be illusory. However, the Court dismissed the application, holding that the suspension of a law can only be permitted if immediate implementation threatens to cause serious injury that is difficult to repair.⁴
13. In 2004, a second case came before the Constitutional Court, relying in part on Article 2 of the European Convention on Human Rights. The Court dismissed the application, ruling that "...the applicants do not derive from Article 2 [ECHR] arguments leading to a different assessment."⁵ Moreover, while the country does have a positive obligation to safeguard the right to life, this has to be weighed against other rights.
14. A third case was brought in 2014, challenging significant amendments to the 2002 law that introduced child euthanasia. However, the Constitutional Court dismissed the case as manifestly inadmissible because it was deemed to be challenging provisions of the 2002 law, which should have been submitted within six months of publication of the impugned provision in the *Moniteur Belge*⁶ - meaning that the extension of the euthanasia law to minors could not be reviewed by the Belgian courts.

Case of Godelieva De Troyer

15. In April 2012, Godelieva De Troyer was killed by lethal injection by leading euthanasia proponent, Dr. Wim Distelmans, because she was suffering with "untreatable depression." The tragic case reveals the complete lack of safeguards within the Belgian system, and the inherent danger of legalizing assisted suicide and euthanasia. Similar cases of similar malpractice are becoming increasingly commonplace.⁷
16. In 2011 the physically healthy Ms. De Troyer dispensed with the services of her treating physician of more than twenty years, who had said that she didn't satisfy the requirements of the Belgian euthanasia law. She visited four new doctors over the course of a seven-month period, looking for a doctor who would approve her request for lethal injection. Two of the four psychiatrists did not regard her as incurable and believed that she could be helped. A third psychiatrist stated that the euthanasia request was not mature.
17. During the period Ms. De Troyer was also receiving two separate medications, *Paroxetine* and *Cymbalta*, both of which have been linked to a heightened risk of suicide.

⁴ Decision No. 43/2003 of 9 April 2003.

⁵ Decision No. 4/2004 of 14 January 2004 at B.3.4.

⁶ Decision No. 131/2014 of 19 September 2014.

⁷ See, for example, http://archives.lesoir.be/-ma-mere-ne-repondait-pas-aux-criteres-pour-etre-euthan_t-20110115-01783D.html; <http://www.bbc.com/news/magazine-25651758>.

18. Dr. Distelmans was ultimately selected as the doctor to perform the euthanasia. He is an oncology care specialist and certainly not a specialist in mental health. Revealing a clear conflict of interest, he sits on the government body responsible for checking the requirements of the euthanasia law have been met in each case. He also leads the association, *LEIF*, which received a payment of €2,500 from Mrs. De Troyer just before her death, marked for the attention of Dr. Distelmans as president of the association.
19. Ms. De Troyer's son, Tom Mortier, only found out about his mother's death the following day when the hospital rang, asking him to retrieve her body from the morgue. He is now bringing a case before the European Court of Human Rights.⁸

Widespread abuse

20. The inadequacy of the 'protections' offered by the domestic law are further amplified by the rising number of euthanasia 'deaths' and concomitant abuse of the system. In *Haas v. Switzerland*,⁹ the European Court stated that "when a country adopts a liberal approach, appropriate measure to implement such liberal legislation and measures to prevent abuse are required"¹⁰, going on to say that "the risk of abuse inherent in a system which facilitates assisted suicide cannot be underestimated."¹¹
21. Indeed, a number of studies support the premise that such unregulated euthanasia is prevalent in Belgium.¹² Against a backdrop of a year-on-year increase in the number of people being euthanized,¹³ a study conducted even before the recent further liberalization of euthanasia in Belgium to include minors concluded that in one region of Belgium, 66 out of 208 euthanasia 'deaths' occurred in the absence of an explicit request or consent.¹⁴
22. The reasons for the lack of consent included the fact that the patient was unconscious or had dementia, the physician felt that euthanasia was "in the patient's best interest" or discussing it with the patient would have been harmful.¹⁵ A separate study demonstrated the reporting rate in Flanders to be just 52.8% with euthanasia accounting for 1.9% of all deaths in Flanders.¹⁶

⁸ See <<http://adfinternational.org/2014/02/18/mortier-v-belgium/>>.

⁹ *Haas v. Switzerland*, (2011) 53 E.H.R.R. 33.

¹⁰ *Ibid.* at § 57.

¹¹ *Ibid.* at § 58.

¹² J. Pereira, "Legalizing Euthanasia or Assisted Suicide: The Illusion of Safeguards and Controls" (2011) 18:2 *Current Oncology* e38.

¹³ Tinne Smets et al, "Legal Euthanasia in Belgium: Characteristics of All Reported Euthanasia Cases" (2010) 48:2 *Medical care* 187 at 1.

¹⁴ Kenneth Chambaere et al, "Physician-Assisted Deaths under the Euthanasia Law in Belgium: A Population-Based Survey" (2010) 182:9 *CMAJ* 895 at 896.

¹⁵ *Ibid.*

¹⁶ Tinne Smets et al, "Reporting of Euthanasia in Medical Practice in Flanders, Belgium: Cross Sectional Analysis of Reported and Unreported Cases" (2010) 341 *BMJ* at 7, online <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2950259/>>.

23. Moreover, the pattern of year-on-year increases in the number of people being euthanized has continued – with Belgium recording 1,432 cases of euthanasia in 2012, a 25% increase from 2011.¹⁷

(b) Child Euthanasia

24. On 13 February 2014 the Belgian Parliament passed a bill allowing euthanasia for terminally ill children without any age limit. No such law exists anywhere else in the world.
25. Before the parliament's vote, 160 Belgian paediatricians signed an open letter against the law, arguing that modern medicine is capable of alleviating pain.¹⁸ Moreover, 58 members of the Parliamentary Assembly of the Council of Europe signed a declaration stating that the law:
- betrays some of the most vulnerable children in Belgium by accepting that their lives may no longer have any inherent value or worth and that they should die;
 - mistakenly assumes that children are able to give appropriate informed consent to euthanasia and that they can understand the grave meaning and complex consequences associated with such a decision;
 - promotes the unacceptable belief that a life can be unworthy of life which challenges the very basis of civilised society.¹⁹
26. Despite Belgium's obligation to protect the right to life under article 6 of the International Covenant on Civil and Political Rights and article 6 of the Convention on the Rights of the Child, and its obligation to uphold the rights of children with disabilities, particularly under article 7 of the Convention on the Rights of Persons with Disabilities, the Constitutional Court refused to review the child euthanasia amendments to the Law on Euthanasia,²⁰ thus concluding that its enactment was fully in line with international law.
27. It is evident, both from practical reason and international law itself, that minors do not have the capacity to make an end of life decision and can be unduly influenced by parents, caretakers or a supervising physician. The legalization of euthanasia for minors cannot be considered compatible with the right to life or the "best interests of the child" standard under international law.

(c) Recommendation

28. Given the grave concerns regarding Belgium's Law on Euthanasia detailed above, and its even more troubling amendment to include child euthanasia, ADF International recommends that Belgium repeal the Law on Euthanasia of 28 May 2002, in line with its commitments to uphold the right to life under international law.

¹⁷ See <<http://www.bbc.com/news/world-europe-25364745>>.

¹⁸ See <<http://www.bbc.co.uk/news/world-europe-26181615>>.

¹⁹ "Legalisation of euthanasia for children in Belgium", Written declaration No. 567, Doc. 13414, 30 January 2014.

²⁰ Decision No. 131/2014 of 19 September 2014, cited above.