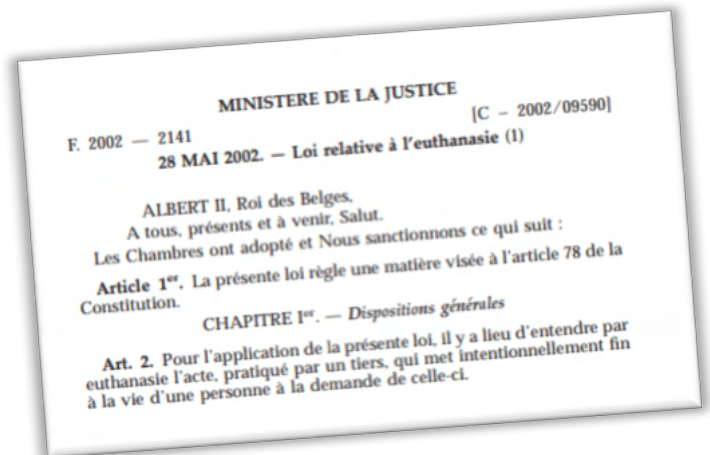


Euthanasia, 20 years later:

For a veritable evaluation of the Belgian law

On 28 May 2002⁽¹⁾, Belgium became the second country to **decriminalise euthanasia**, i.e. the act of "intentionally ending a person's life at the latter's request" because of his state of health.

After twenty years⁽²⁾ of applying the Belgian law on euthanasia, and given the current critical debates on the subject, it is essential to take **stock** of the practice of euthanasia in Belgium and draw some **perspectives** on its recent and future developments.



I. HISTORICAL

In 2002, the Belgian Parliament decriminalised euthanasia for adults by introducing an **exception to the criminal prohibition on intentionally ending the lives of others**.

According to the authors of the law, **the objective** of this decriminalisation of euthanasia was twofold:

- to offer an **exceptional solution** to patients with a "serious and incurable" disease causing them "constant, unameliorateable and unbearable suffering",
- putting an end to the **covert euthanasia** then practised

The **means** to achieve these objectives are also of two kinds:

- exceptionally allow a doctor to end a patient's life on his request, albeit under **strict conditions**, both from the point of view of the patient's condition and the procedure to be followed
- ensure compliance with this legal framework through **systematic and rigorous monitoring** by the Federal Commission for the Control and Evaluation of Euthanasia (hereafter briefly: "**the Control Commission**").

Since its adoption in 2002, Belgian law has allowed euthanasia on the grounds of **psychological suffering**, whether or not associated with physical suffering.

In 2014, the law was extended to **minors**, without age limit but "endowed with the capacity for discernment".⁽³⁾

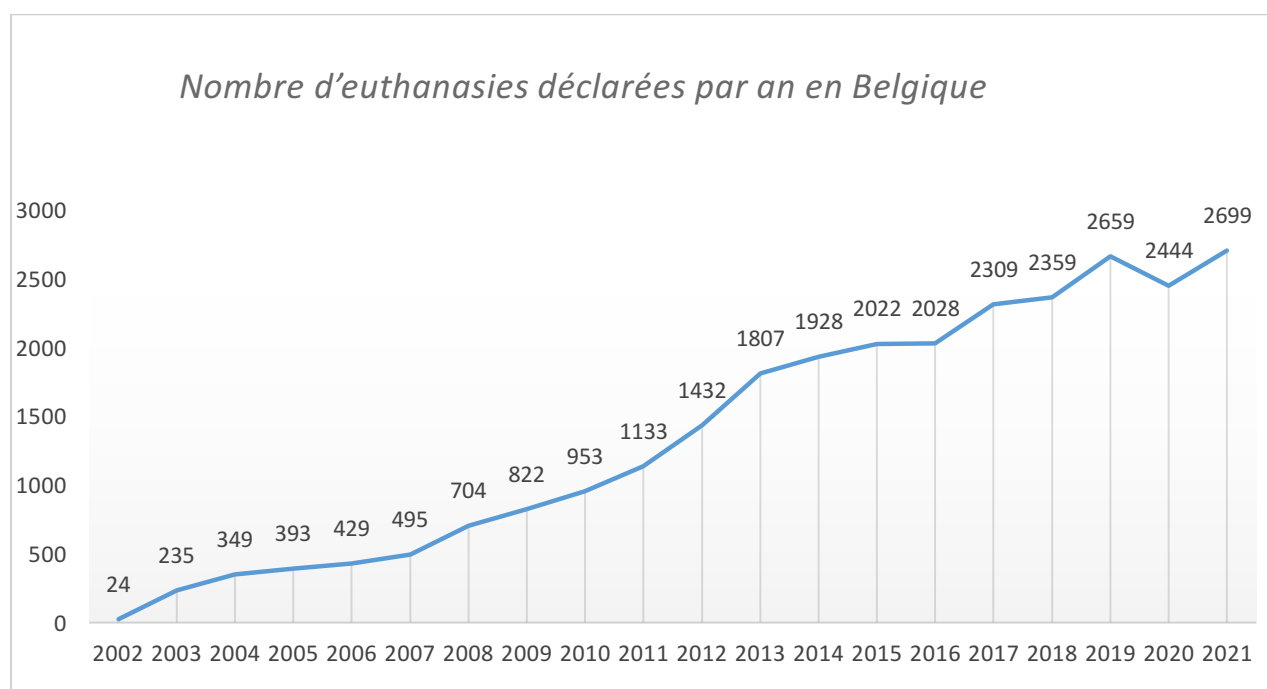
II. THE LAW IN PRACTICE

Two decades of legal practice of euthanasia in Belgium allow us to **compare the arguments put forward by the authors of the law** on euthanasia in 2002 with the **fundamental trends observed** since then, particularly concerning the profile of patients who have died by euthanasia.

The **raw annual figures** and the **Control Commission's biennial reports** will serve as our guidelines in this confrontation.

1. *"Euthanasia is an exceptional solution..."*

In **fifteen years**, from 2003 (the first year of complete application of the law) to 2018, the number of euthanasia cases reported to the Commission has **increased tenfold**.



In 2021, **2699 people** died by euthanasia or **one in forty deaths in Belgium**.⁽⁴⁾ Besides the decrease recorded in 2020 due to the COVID-19 health crisis, Belgium records yearly a **constant increase** in reported euthanasia.

There is a significant but narrowing gap between the number of euthanasia involving **Dutch-speaking** and **French-speaking** patients. In 2021, 74% of declarations were written in Dutch against 26% in French.

In addition, the proportion of euthanasia performed at the patient's **home** (54% in 2021) tends to grow compared to euthanasia performed in hospitals or retirement homes.

Finally, the proportion of euthanasia carried out on **unconscious** people, based on an advance declaration, remains **extremely minority** (less than one per cent in 2021).

2. "... to relieve severe suffering"

▪ Being at the end of life is not a condition for access to euthanasia

16% of patients euthanized in 2021 **didn't expect to die shortly**. However, the proportion of euthanasia performed on **people who weren't at the end of life** has grown significantly over the years; statistically, its number doubled in the last ten years.

Similarly, a **significant proportion of relatively young people died by euthanasia** in 2021. A third of officially euthanised people were **under 60**.

▪ Suffering is considered in an essentially subjective way

From its first report, the Control Commission believes that the "**unbearable nature of suffering is largely subjective and depends on the patient's personality, his ideas and his values**".⁽⁵⁾

In the Commission's view, patients have the right to refuse treatment of their pain (including palliative) and concomitantly to request euthanasia because of the unappeasable nature of their suffering.⁽⁶⁾

▪ Euthanasia for "polypathologies": a recurring and troubling category

After cancer, **polypathologies** represent the **second type of disease** mentioned in the Commission reports, with nearly one-fifth of deaths by euthanasia in 2021.

Polypathologies refer to "**a combination of suffering caused by several chronic affections that progress to a final stage**".⁽⁷⁾ Among these, the Control Commission mentions:



- decrease in eyesight
- hearing impairment
- **gait and mobility** disorders
- incontinence** related to renal failure

Suffering leading to a loss of autonomy or even **social exclusion** is considered unameliorateable. The **Control Commission** states, however, **it is not in a position to verify** the reality of the pathologies mentioned in the doctor's statements.⁽⁸⁾

▪ Euthanasia for psychiatric illness: what about the incurable nature?

In Belgium, several dozen cases of reported euthanasia yearly concern patients suffering from psychiatric conditions such as **depression** or **autism**⁽⁹⁾.

Many **psychiatrists question** the **definitively incurable** nature (a legal condition for euthanasia practice) of certain psychiatric diseases such as depression.⁽¹⁰⁾

3. "The practice of euthanasia in Belgium is subject to stringent control"

▪ The conditions of the law are partially inoperative

Many doctors **interpret** the coexistence of suffering and severe and incurable illnesses **subjectively** and expansively (see: the previous point).

The opinion sought from a **second (or third) doctor** is also **non-binding**.

▪ The Commission's control of the law is largely ineffective

The **Control Commission's mission** is to verify compliance with the conditions of the law for each reported euthanasia and to evaluate the practice thoroughly.

This **control** is nevertheless mainly rendered **ineffective** by various elements:

- The Commission accepts that it monitors compliance with the law **solely based on the doctors' declarations**, without being able to verify the information transmitted to it;
- Doctors who are members of the Commission and who practice euthanasia face **severe conflicts of interest** when they have to **assess** the conformity of the **euthanasia they've performed**;
- The Commission admits that it does not have the means to **control non-reported** (and, therefore, illegal) **euthanasia**;
- More broadly, the Commission accepts that the financial and human resources available to it (involving examining of more than 200 files in a meeting of two to three hours) **prevent it from carrying out a detailed analysis**⁽¹¹⁾.

We also note that the **Commission's control** takes place **a posteriori**, once the patient has died. In that role it is in the position of the first judge because it is supposed to carry out the initial verification and subsequently to transmit the file to the judicial authorities in case of doubt about the legality of an euthanasia.⁽¹²⁾ The fact is that, until today, the Commission referred **only one case to the Public Prosecutor's Office**.



▪ The number of non-reported euthanasia has not decreased since decriminalisation

Several studies show a significant discrepancy between the proportion of **reported** and **de facto euthanasia**, as well as between **consensual** and **non-consensual euthanasia**:

- **26%** of the euthanasias carried out in **2013 in Flanders** were **not consensual** (Chambaere et al., 2015)⁽¹³⁾
- **and in 35.5% of cases** that year the **Control Commission** was not informed (Dierickx et al., 2018)⁽¹⁴⁾

4. "Euthanasia is a right; the doctor must respect the patient's autonomy"

- a right to euthanasia is inexistent

Recall that the Belgian law of 2002 *decriminalises* euthanasia as an **exception to the prohibition of killing**.

Therefore, if the patient *can ask* a doctor to end his or her life by euthanasia, he has **no subjective right to obtain** euthanasia.

- euthanasia and the paradox of autonomy

The **autonomy of the individual** widely justifies the legitimacy of access to euthanasia. However, this practice does not concern the patient alone but, on the contrary, necessarily requires **the involvement of third parties**. These include, in particular, the doctor ending the patient's life and the other caregivers who participate in the euthanasia.

Euthanasia cannot, therefore, be considered solely through the register of the patient's autonomy but must also be evaluated in the light of its **impact** on the people called upon to participate in it (in particular psychologically)⁽¹⁵⁾ and, more broadly, on **society**.

- Respect for the freedom of conscience of caregivers remains fundamental



Because of the **non-medical nature** of euthanasia and its **incompatibility** with medical ethics and the **Hippocratic Oath**, Belgian law recognizes the **freedom of conscience** of the doctor and any person who does not wish to participate in euthanasia.⁽¹⁶⁾

The latest amendment to the Belgian law voted in March 2020⁽¹⁷⁾ nevertheless **infringes** on this freedom of conscience, **by forcing health institutions** to accept the practice of euthanasia within them.⁽¹⁸⁾

By denying any collective dimension to freedom of conscience, Belgian law now makes it **impossible** for any caregiver working in Belgium who chooses not to end artificially human life to **practice his profession** in a hospital or a retirement home."

5. *Euthanasia makes it possible to die with dignity"*

Considering euthanasia as the **only way**, in some cases, to **guarantee a dignified death** refers to a **false alternative** between the choice of euthanasia and that of the patient's suffering.

This conception completely ignores the solutions offered today by **palliative care**, which allow **effective and comprehensive management** of the patient's pain and suffering through a constant and multidisciplinary accompaniment (medical, social, psychological, existential, even spiritual) until death. Palliative care involves a joint **refusal of therapeutic relentlessness** and of **euthanasia**⁽¹⁹⁾.

Dignity is intrinsic to every human being, regardless of his vulnerability. It is thus a misconception to make the degree of dignity of the person dependent on his state of health or his degree of independence, or even on the choice to die by euthanasia.

6. *"Euthanasia is a freedom, a choice; no one can be forced to euthanasia"*

The will of an individual to end his life is an aspect of freedom, in the usual (and not legal) sense of the term.



■ How can we assess the voluntary nature of the request for euthanasia?

The assessment of the "**voluntary, thoughtful and repeated**" nature of the request for euthanasia, as provided for in Belgian law, may prove **difficult** in practice, particularly regarding the **absence of "external pressure"**.⁽²⁰⁾

A significant risk exists that the request for euthanasia originates from a **loss of self-esteem** or even from an **existential loss** of the sick person facing his life's end.

Faced with these feelings which **associate euthanasia with the preservation of the dignity of the person**, it is necessary to ensure that they do not arise from the pressure – explicit or implicit – placed by the family, relatives, the medical profession or the press (through media coverage of particular cases). The patient may grow to believe that **staying alive** and dying in a natural way would be an **undignified, even selfish choice**. He may well as the feeling of being a **"burden"** to his loved ones.

■ Euthanasia for mental disorders and the coherence with suicide prevention

The legal practice of euthanasia on people with psychiatric conditions such as depression (see the *Tine Nys case*)⁽²¹⁾ **raises the question** of its **compatibility** with the public policies for **suicide prevention** put in place by the authorities:

How can we design a **coherent and effective policy** to help and support people with **suicidal ideation** when we present euthanasia as an **ultimate "therapeutic"** option ?

CONCLUSION – An evaluation of the Belgian law on euthanasia is urgent

Twenty years after its adoption, the outcomes of the Belgian law on euthanasia lead to a **double conclusion of failure**:

- the Commission's monitoring of compliance with legal requirements is **deficient**
- the **number of non-reported euthanasia** cases has not decreased and remains a real concern

Therefore, the arguments provided in 2002 to justify the decriminalization of euthanasia are now **obsolete**.

More broadly, the Control Commission's reports show a trend of **double normalization of death by euthanasia** in Belgium:

- year on year, the **total number of euthanasia cases** continues to **increase**
- the **conditions for access** to euthanasia (in particular regarding the patient's state of health) **are constantly being extended**, both from the point of view of their application by doctors and their control by the Control Commission.

This normalisation of euthanasia in Belgium also echoes the trends observed **abroad**, where euthanasia is decriminalised, such as in the *Netherlands*⁽²²⁾ and *Canada*⁽²³⁾.

Based solely on the idea of the individual's autonomy, euthanasia may have a **damaging impact** on the relatives confronted with it, on the caregivers called to participate in it, and on those who are also terminally ill but do not want to end their lives.

Perspectives and proposals

Various political actors demand **further expansions of the law** on euthanasia, such as:

- euthanasia of **people with dementia**, based on an earlier declaration⁽²⁴⁾
- euthanasia no longer related to the state of health but to the "**fatigue of living**" of the person⁽²⁵⁾

These proposals would lead to a decriminalisation of euthanasia in Belgium, initially linked to criteria of health status, towards the recognition of a "**right to commit suicide**" by the hand of others.

The **extensive practice of euthanasia** in Belgium has made it **impossible** to implement a **fair policy of support for patients** at the end of life through **palliative care**, especially when the availability of this care remains constrained by the budget⁽²⁶⁾.

After twenty years of legal practice of euthanasia in Belgium, it seems **urgent** to carry out a **genuine and complete evaluation** of the 2002 law, so that decision-makers can take into account that **strict control** of euthanasia as **an exceptional solution** is **hardly possible**.

Footnotes

- ¹ [Law of 28 May 2002 on euthanasia](#), (French version), *Belgian Official Gazette*, 22 June 2002.
- ² See also (FR) "[Euthanasia: 10 years of decriminalization in Belgium](#)", *European Institute of Bioethics*, 2012.
- ³ [Law of 28 February 2014 amending the Law of 28 May 2002 on euthanasia, with a view to extending euthanasia to minors](#), (FR), *Belgian Official Gazette*, 12 March 2014.
- ⁴ (FR) FEDERAL COMMISSION FOR THE CONTROL AND EVALUATION OF EUTHANASIA (hereafter: the "Control Commission"), [Press release – Euthanasia – Figures for the year 2021](#), 31 March 2022.
- ⁵ (FR) The CONTROL COMMISSION, "[First report to the legislative chambers](#)" (22 September 2002-31 December 2003), 2004, p. 18 (emphasis added).
- ⁶ *Ibid.*
- ⁷ (FR) The CONTROL COMMISSION, [Ninth report to the legislative chambers](#) (years 2016-2017), 2020, p. 37.
- ⁸ (FR) The CONTROL COMMISSION, [Eighth Report to the Legislative Chambers](#) (years 2016-2017), 2018, p. 39.
- ⁹ (FR) The Control Commission for the Control and Evaluation of Euthanasia, [Ninth Report to the Legislative Chambers](#) (years 2016-2017), 2020, p. 40.
- ¹⁰ Has. BAZAN e.a., (NL) "[Schrap euthanasie op basis van louter psychisch lijden uit de wet](#)" article in the Flemish daily *De Morgen* of 8 December 2015. Translation: "Remove euthanasia based on purely psychological suffering from the law".
- ¹¹ See (NL) video "[Analysis: De geheimen van de euthanasiecommissie](#)", Flemish news agency VRT Nieuws, 30 September 2020.
- ¹² in 2017, one of the members of the Control Commission resigned for this reason: see (NL) article "[Euthanasiecommissie speelt zelf voor rechter](#)" in the Flemish daily *De Standaard* titled on 26 December 2017.
- ¹³ K. CHAMBAERE et al., "[Recent Trends in Euthanasia and Other End-of-Life Practices in Belgium](#)", *The New England Journal of Medicine*, 2015, vol. 372, p. 1180
- ¹⁴ S. DIERICKX et al., « [Drugs Used for Euthanasia: A Repeated Population-Based Mortality Follow-Back Study in Flanders, Belgium, 1998-2013](#) », *Journal of Pain and Symptom Management*, 2018, 56No 4pp. 551-559.
- ¹⁵ See. on this point T. DEVOS ed., [Euthanasia: Searching for the Full Story. Experiences and Insights of Belgian Doctors and Nurses](#), Springer, Open Access, 2021
- ¹⁶ (NL) [Law of 28 May 2002 on euthanasia](#), *Belgian Official Gazette*, 22 June 2002, art. 14: «No written or unwritten clause can prevent a doctor from performing euthanasia under the legal conditions».
- ¹⁷ Art. 3 of the [Law of 15 March 2020 to amend the legislation on euthanasia](#), *Belgian Official Gazette*, 23 March 2020
- ¹⁸ See, in this regard, the resolution N° 1763 (2010) of the Parliamentary Assembly of the Council of Europe, "[The right to conscientious objection in the context of legal medical care](#)", especially n° 1: "No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an [...] euthanasia, for any reason"
- ¹⁹ Cfr. the definition of the World Health Organization "[Palliative care affirms life and regards dying as a normal process and intends neither to hasten nor to prolong death](#)", p. 79
- ²⁰ K. Raus, B. VANDERHAEGEN and S. STERCKX, "[Euthanasia in Belgium: Shortcomings of the Law and Its Application and of the Monitoring of Practice](#)", *The Journal of Medicine and Philosophy*, 2021, vol. 46, No. 1, pp. 80-107
- ²¹ See. the case *Tine Nys* case: a young woman suffering from depression who died at age 38 by euthanasia: L. VANBELLINGEN, (FR) "[The Tine Nys trial, a trial about euthanasia for psychological suffering](#)", *European Institute of Bioethics*, 22 January 2020.
- ²² See in particular: L. VANBELLINGEN, (FR) "[Euthanasia and dementia: the Netherlands allows forced sedation to avoid patient resistance](#)", *European Institute of Bioethics*, 25 November 2020; (FR) "[Towards euthanasia of young children without their consent in the Netherlands](#)", *European Institute of Bioethics*, 28 October 2020.
- ²³ C. DU BUS (FR) "[In Canada, euthanasia is increasingly accepted as an "end-of-life option"](#)", *European Institute of Bioethics*, *European Institute of Bioethics*, 14 July 2021.
- ²⁴ See. Various (FR) Proposals N° [749](#) and n° [632](#) filed in this sense during the current legislature (2019-2024) in the Belgian House of Representatives.
- ²⁵ OPEN VLD, [Tijd voor een debat over het voltooid leven](#), 29 October 2019.

²⁶ « [A study on the extension of access to the "palliative package" beyond three months in Belgium](#) », European Institute of Bioethics, 21 April 2022.

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