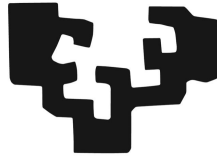


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Facultad de Derecho

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TRABAJO FIN DE GRADO/ FINAL DEGREE PROJECT  
GRADO EN DERECHO/ LAW DEGREE

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COMPARATIVE LAW:  
**EUTHANASIA**  
2022/2023

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## INDEX

<b>1. Introduction</b>	
1.1 Origin and history of the concept “Euthanasia” .....	4
1.2 Variety of the concept.....	6
1.4 Types of Euthanasia.....	7
1.5 Difference between euthanasia and assisted suicide.....	7
<b>2. Euthanasia and Human Rights.....</b>	<b>8</b>
<b>3. Euthanasia in the EU frame</b>	
3.1 Acceptability among European citizens and the influence of religion on the issue .....	12
<b>4. Comparison between legislations</b>	
4.1 The netherlands .....	16
4.2 Belgium .....	24
4.2.1 ECHR.....	27
5.3 Spain .....	32
5.4 France .....	36
<b>5. Conclusion .....</b>	<b>39</b>

## Introduction

As societies have been developing, every event related to the death of a human being has been acquiring huge importance. Nowadays, there is a need to keep the process under medical and legislative control as the law will have its eyes on it.

This importance has been given as there has been huge progress and development of medicine and science surrounding this issue. Thanks to this, life can now be prolonged, and vital functions of the human body can artificially be maintained to unimaginable limits compared to previous decades.

Moreover, life expectancy has increased exponentially as a result of the development of this science, causing the numbers of population to go up and also, a creation of a register of illnesses as to know what causes more death among humans.

Due to all these mentioned above; law, as well as society in general has seen the need of creating some sort of control, guarantees and requirements among the process of death to assure people can die with dignity.

This project has been organised with the aim of comparing different legislation on the topic “euthanasia” in Europe.

Firstly, a general view on the topic will be given with the objective of understanding what euthanasia is and where it comes from. Secondly, a relationship between human rights and the practice will be established.

As a continuation of my work, I will be making an analysis on a study about the acceptability of euthanasia among the European population.

To finish a comparison between different legislations will be made, concretely between: The Netherlands, Belgium, Spain and France.

### 1.1 Origin and history of the concept:

According to the school of medicine of Missouri's university: *“The word “euthanasia” itself comes from the Greek words “eu” (good) and “thanatos” (death). The idea is that instead of condemning someone to a slow, painful, or undignified death, euthanasia would allow the patient to experience a relatively “good death.”*<sup>1</sup>

To understand the concept and go through its history I will base this part in the research made by Bont, Maribel , Dorta, Katherine, Ceballos, Julio , Randazzo, Anna , & Urdaneta-Carruyo, Eliexer (2007) called: *“Eutanasia: una visión histórico - hermenéutica”*.

As it is stated, this practice has existed for many decades, it is not a new concept in modern societies. It is thought by studies in History that the Greeks were possibly the first to consent suicide under certain conditions, since, the texts that collect the thoughts of Socrates and Plato point out that: *“a painful illness was a good reason to stop living”*. Moreover, in *The Republic*, Plato (427-337 B.C.) condemns the doctor Heroditus for encouraging diseases and inventing ways to prolong death. The best indication that suicide was committed in Greece, as a form of Euthanasia, lies in the fact that other groups represented by the Pythagoreans, Aristotelians and Epicureans condemned this practice.<sup>2</sup>

Cicero (106 - 43 B.C.) in his letter to Atticus, uses the word Euthanasia as a synonym of dignified, honest and glorious death. Seneca expressed: It is preferable to take one's own life, rather than a life without meaning and suffering. And Epictetus (50 - 130 A.D.) preached death as an affirmation of free will.<sup>2</sup>

A bit further up in history, during Christianity, the Roman Catholic Church completely modified the legislation on suicide: anyone who attempted against his or her own life would not receive a Christian burial. Saint Augustine affirmed that suicide was

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<sup>1</sup> *Euthanasia - MU School of Medicine.* (n.d.). University of Missouri School of Medicine. Retrieved February 27, 2023, from <https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/euthanasia>

<sup>2</sup> Traducción propia: Bont, Maribel , Dorta, Katherine, Ceballos, Julio , Randazzo, Anna , & Urdaneta-Carruyo, Eliexer . (2007). *Eutanasia: una visión histórico - hermenéutica. Comunidad y Salud*, 5(2), 36-45. Recuperado en 27 de febrero de 2023, de [http://ve.scielo.org/scielo.php?script=sci\\_arttext&pid=S1690-32932007000200005&lng=es&tlng=es](http://ve.scielo.org/scielo.php?script=sci_arttext&pid=S1690-32932007000200005&lng=es&tlng=es).

something detestable and abominable, God gave life and the sufferings, therefore, had to be endured. In 693 it was announced that anyone who attempted suicide would automatically be excommunicated. In short, for twelve centuries suicide had become the mortal sin for excellence among Christians.<sup>3</sup>

In the Renaissance, the concept of Euthanasia acquires its real meaning and it is considered as the good death, being death the last act of life; so it was necessary to help the dying with all available resources to achieve a dignified death without suffering.<sup>3</sup>

At the time of the Nazi dictatorship, more than two hundred thousand incapacitated persons (physically or mentally) were killed in what the totalitarian and extremist government commanded by Adolf Hitler called the Euthanasia Program. In Nazi usage, euthanasia referred to the systematic killing of those whose lives were unworthy of living. The code name for this secret operation was T4 (Aktion T4). The program was initially concentrated on newborns and very young children. Doctors and midwives were obliged to register children up to the age of three who showed symptoms of mental retardation, physical deformities or other symptoms included in an Empire Ministry of Health questionnaire. The program quickly expanded to include older handicapped children and adults.<sup>3</sup>

At the end of the Second World War, humanity was faced with the need for a supra-state body to protect individuals, since war should not be a legitimate means of resolving problems between states. The atrocities committed by the Nazi doctors judged by the Nuremberg Tribunal, particularly in the field of human experimentation, and the dropping of the atomic bomb on Japan, stated a question around scientific neutrality.<sup>3</sup>

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<sup>3</sup> Traducción propia: Bont, Maribel , Dorta, Katherine, Ceballos, Julio , Randazzo, Anna , & Urdaneta-Carruyo, Eliexer . (2007). Eutanasia: una visión histórico - hermenéutica. *Comunidad y Salud*, 5(2), 36-45. Recuperado en 27 de febrero de 2023, de [http://ve.scielo.org/scielo.php?script=sci\\_arttext&pid=S1690-32932007000200005&lng=es&tlng=es](http://ve.scielo.org/scielo.php?script=sci_arttext&pid=S1690-32932007000200005&lng=es&tlng=es).

## 1.2 Variety of the concept.

As we have appreciated along history, the concept of euthanasia has had a huge number of approaches. Looking at the timeline of history, depending on the moment we place ourselves, this practice has been considered from an honest way to die to the biggest sin a person could make.

Thus, we need to find a common concept and definition for euthanasia. Depending of the author one concept or another is given more importance based on different legal foundations.

According to: “*Martin M, 2021, La eutanasia, problemas actuales, Universidad de valladolid pág.24*”, we can defer 3 kinds of definitions depending on the legal concept we are most giving importance to :

1. Definition based on the right to die as for example, José Luis Díez Ripollés that considers euthanasia as: *“aquel comportamiento que de acuerdo con la voluntad o interés de otra persona que padece una lesión o enfermedad incurable, generalmente mortal, que le causa graves padecimientos y/o le afecta considerablemente a su calidad de vida, da lugar a la producción, anticipación, o no aplazamiento de la muerte del afectado”*<sup>4</sup>
2. We could also consider as the fundament for the definition the right to dignity as Antonio Quintano Ripollés that defined euthanasia as: *“la acción de acortar la vida de quien, sufriendo una enfermedad incurable, la reclama seria e insistentemente para hacer cesar sus insoportables dolores”*.<sup>4</sup>
3. As last calcification we have the definition based on a dignified dead as Miguel Ángel Núñez de Paz does. He defines euthanasia as: *“aquellos comportamientos que suponen la privación de la vida de una persona o la anticipación y no aplazamiento de su muerte, por motivos humanitarios y a petición o requerimiento de aquella que sufre una enfermedad terminal incurable, lesión o invalidez irreversible que le ocasiona graves e insoportables sufrimientos que afectan a su calidad de vida”*.<sup>4</sup>

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<sup>4</sup> Mateo Martin, 2021, La eutanasia, problemas actuales, Universidad de valladolid, pag. 24 [https://uvadoc.uva.es/bitstream/handle/10324/48027/TFG-D\\_01219.pdf?sequence=1](https://uvadoc.uva.es/bitstream/handle/10324/48027/TFG-D_01219.pdf?sequence=1)

### 1.3 Types of euthanasia

The classification on kinds of euthanasia is quite extensive. Depending on the legislation of each country one practice of another will be legal or illegal, so, not in every part of the world the same kind of euthanasia is permitted.

According to the classification done by the University of Missouri School of Medicine on euthanasia we have this classification: <sup>5</sup>

1. Active euthanasia: active means for killing a person are used. For example when a lethal dose of a drug is injected in the patient. <sup>5</sup>
2. Passive euthanasia: differing from the previous one is using passive means for killing a person which could be better said as: *“intentionally letting a patient die by withholding artificial life support”*. In this case the patient would be kept alive until its removal is decided <sup>5</sup>. Moreover, it could also be the case in which a patient refuses to have any kind of treatment
3. Voluntary euthanasia: the patient decides and consents the end of his/her life. <sup>5</sup>
4. Involuntary euthanasia: there is no consent of the patient due to a situation of unconsciousness, vegetative state, or lack of capacity to give its permission. <sup>5</sup>
5. Self-administered euthanasia/other-administered euthanasia: it is the euthanasia administered by the proper patient or by a 3rd person. <sup>5</sup>
6. Assisted euthanasia: in this case: *“the patient administers the means of death but with the assistance of another person, such as a physician”*. <sup>5</sup>

### Difference between euthanasia and assisted suicide

This terminology can sometimes get confusing as when it is used, terminology gets messed up. At first, is important to know that assisted dying can be executed as: euthanasia or assisted suicide. <sup>6</sup>

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<sup>5</sup> *Euthanasia - MU School of Medicine*. (n.d.). University of Missouri School of Medicine. Retrieved February 27, 2023, from <https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/euthanasia>

<sup>6</sup> Maxim Institute. (2021, 1 noviembre). *What is the difference between euthanasia and assisted suicide?* <https://www.maxim.org.nz/article/faq1-euthanasia-and-assisted-suicide/>

In the main, euthanasia refers to the situation in which a patient asks for help in the process of ending his/her life and he/she has another person who takes the action which leads to their unnatural death. On the contrary, assisted suicide happens when the person who wants to end his or her life gets the assistance of a 3 person to, for example, get prescribed a drug to die and in this case it is the patient who brings forward the action. Summing up, the main difference is in who takes the action to lead to that unnatural death.

More technically;

- *“Euthanasia is when the attending medical or nurse practitioner takes an action with the singular intention of causing a patient’s death. Generally, this is in the form of a lethal injection”*. (Maxim Institute, 2021)
- *“Assisted suicide is when a suicide is intentionally aided by the attending medical or nurse practitioner and the person self-administers the medication. That is, the medical practitioner will prescribe a lethal drug which the patient will usually take orally”*. (Maxim Institute, 2021)

## 2. Euthanasia and human rights

*“Euthanasia is one of the most complex issues facing human rights, especially given its ethical, legal, medical and religious dimensions”*. (Shala, I., & Gusha, K. 2016)(5). It has always been a very controversial issue as it could attempt against a number of human rights. This practice is done with the aim of ending someone's life so we could come to the conclusion that it could go against the right to live, the right to moral and fiscal integrity, human dignity and the right to the free development of personality...

All these rights mentioned above are recognized in numerous international conventions such as: Universal Declaration of Human Rights, the European Convention of Human rights, the International Covenant on Civil and Political Rights...

In the Universal Declaration of Human Rights we have:

- Article 3: *“Everyone has the right to life, liberty and the security of a person”*.<sup>7</sup>

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<sup>7</sup> United Nations General Assembly. The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948.



- Article 5: “No one shall be subjected... inhuman or degrading treatment”<sup>7</sup>

In the European Convention of Human rights:

- Article 2.1: “Everyone’s right to life shall be protected by law”.<sup>8</sup>

Moreover, in the International Covenant on Civil and Political Rights

- Article 6.1: “Every human being has the inherent right to life. This right shall be protected by law”<sup>9</sup>

This is why it creates such a big debate.

In Australia there have been numerous legislative attempts to try to legalise euthanasia but until now there is no law supporting it. The Australian human rights commission brought forward an act where the relationship between euthanasia and human rights law was discussed after trying to legalise by “*Rights of the Terminally Ill Act 1995 (NT)*” or also called *ROTTIA*, medical assisted and voluntary euthanasia in the case of a terminally ill person. However, shortly after being published it was made inoperative by the federal Parliament.

The debate was based around all the ethical, moral, philosophical, religious and even legal and constitutional issues that legalising such laws imply. The “slippery slope” argument was recurrent with means that: “*introduction of one form of euthanasia (regarded as “acceptable” because of the requirement of consent and the specification of detailed safeguards) will invariably lead, in practical terms, to less acceptable forms (e.g. voluntary euthanasia without proper safeguards, or even non-voluntary or involuntary euthanasia)*”.<sup>10</sup>

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<sup>8</sup> Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe Treaty Series 005, Council of Europe, 1950.

<sup>9</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966

<sup>10</sup> Zdenkowski, G. (s/f). *Human rights and euthanasia*. Gov.au.  
[https://humanrights.gov.au/sites/default/files/content/pdf/human\\_rights/euthanasia.pdf](https://humanrights.gov.au/sites/default/files/content/pdf/human_rights/euthanasia.pdf)

Moving onto the conclusions of the act, the commission concluded with the following ideas <sup>11</sup>:

1. *“The right to life under international law is widely regarded as a fundamental right...”*
2. *“The right to life is not, however, absolute”.*
3. *“In carefully circumscribed circumstances, there would not appear to be a violation of the right to life provided that:*
  - (i) the law seeking to diminish the effect of the right does not involve an arbitrary deprivation of life;*
  - (ii) legal protection is afforded in such a manner as to delimit such authorisation to the non- arbitrary sphere”*
4. *“There are conflicting views as to whether the right to life (whether absolute or qualified) is an inalienable right. It would seem that an effective legal waiver can operate in restricted circumstances if it is authentic, reliable and subject to appropriate safeguards. A waiver will arguably not be effective in all circumstances. It is submitted that the likelihood of a legally effective waiver diminishes as the potential erosion to the right to life increases”*

In March 2023, “*Le monde*”, a French newspaper published a debate between André Comte-Sponville, a recognised french philosopher and Michèle Lévy-Soussan, a french doctor, where they discussed about ethical issues surrounding euthanasia and assisted suicide. Both considered that: *“A democratic state must give us the means to develop palliative care and practise active help in dying”*. <sup>12</sup>

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<sup>11</sup> Zdenkowski, G. (s/f). *Human rights and euthanasia*. Gov.au. [https://humanrights.gov.au/sites/default/files/content/pdf/human\\_rights/euthanasia.pdf](https://humanrights.gov.au/sites/default/files/content/pdf/human_rights/euthanasia.pdf)

<sup>12</sup> Traducción propia: Virginie Larousse (10th March 2023, 8:00 am). André Comte-Sponville et Michèle Lévy-Soussan : “Un Etat démocratique doit nous donner les moyens de développer les soins palliatifs et de pratiquer l’aide active à mourir”. *Le monde*. <https://www.lemonde.fr/idees/article/2023/03/10/andre-comte-sponville-et-michele-levy>

While the debate was going on, André Comte-Sponville was asked what his answer was for those who opposed the "right to die" to the "duty to live". His answer was very clear: *"...life is not a duty but a right! And let us remember from the outset that the right to live is more important than the right to die. It goes without saying that the urgency is to help those who wish to live, who are the vast majority, and not to help the few who can no longer stand existence to die. However, these two rights are not mutually exclusive. We have the right to end our lives... suicide is part of human rights. Of course, it's life that's worth it. But since death is part of life, we have no choice but to die or not... I do not see why we should be deprived of this right."*<sup>12</sup>

*It's not a question of dignity. The Association for the Right to Die with Dignity is fighting a fair fight but is mistaken in the vocabulary. Since all human beings are equal in rights and dignity, the dying person of course has the same dignity as you and I who are, for the moment, in good health. It is not a question of dignity but of freedom..."*<sup>12</sup>

A strong argument in support of euthanasia is that a decision to end life is fundamental to human dignity, personal autonomy and safety, concepts that are protected by various international instruments of human rights. Although the right to liberty and security of a person is given a limited interpretation and has so far been limited to freedom from arbitrary detention, the notions of personal autonomy may affect the future development of human jurisprudence.<sup>12</sup>

This way we could ask ourselves, could there be a legal right to die?

One of the most crucial choices one may make is whether to continue living in circumstances where there is suffering, loss of independence, a threat to one's dignity... People appreciate having control over a variety of life decisions, including where they live, what they do for a living, who they marry, and whether or not to have children. Another of one's decisions must be whether to stay alive or not when their quality of life declines. As a result, it can be said that the right to life and the right to death are not two separate rights but rather two definitions or aspects of the same right. The right to life includes the freedom to choose whether or not to live. The right to choose whether or not to end one's life (while one could still live) is known as the right to die. It would be

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[-soussan-un-etat-democratique-doit-nous-donner-les-moyens-de-developper-les-soins-palliatifs-et-de-pratiquer-l-aide-active-a-mourir\\_6164904\\_3232.html](http://www.soussan-un-etat-democratique-doit-nous-donner-les-moyens-de-developper-les-soins-palliatifs-et-de-pratiquer-l-aide-active-a-mourir_6164904_3232.html)

an obligation to live rather than a right to life if the right to life solely applied to the decision to continue living and did not also apply to the decision to stop living. It is highly improbable that there is a duty to live one's life notwithstanding how miserable it has become.<sup>13</sup>

However, this does not mean that there needs to be the right to get assistance to end one's life but, not to prevent that person from having the option to get help in dying if it is wished. This distinction is important because if that first right mentioned (the right to get assistance to die) would exist, it would be an obligation for doctors, including the ones with moral reservations about assisted suicide or euthanasia, to bring this practice forward. This would include a sanction or a punishment if they failed to do so as we would be talking about an actual right.<sup>13</sup>

### 3. Euthanasia in the EU frame

What range of acceptability does euthanasia have among the European population?

In 2013 the International journal of public health, published a study where the public acceptance of euthanasia was studied around Europe.

At that time, the debate about euthanasia had become very widespread and several countries had legalised it: Luxembourg, Netherlands and Belgium. The goal of this research was to know what level of public acceptance there was about the topic and explain the reason for differences.

*“The objective of the present study is to replicate the 1999 study, using data from the most recent wave of the EVS, conducted in 2008. These data give opportunity to compare, for the first time, the views of the general public in countries with and without a legal framework for performing euthanasia. Data were derived from the 2008 wave of*

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<sup>13</sup> Benatar, D. (2010). Should There Be a Legal Right to Die? *Current Oncology*, 17(5), 2-3. <https://doi.org/10.3747/co.v17i5.671>

*the European Values Survey (EVS), conducted in 47 European countries (N = 67,786, response rate = 69 %).*<sup>14</sup>

If we have a look at the results there was a huge division of opinions between Eastern Europe and Western Europe. Eastern European countries were far from accepting euthanasia whereas in western European countries there was a relatively high acceptance especially in a group of countries; the three we have mentioned above in which euthanasia had already been legalised and in Spain, Sweden, Denmark and France.

The study took into account different variables which made them understand the reason for the different results in every country. Some of them were the age, the education, gender, the level of income... and the most interesting one, which I considered, was the degree of religiousness in the country.

Leaving this study on a side for a moment we might ask ourselves why religion has to do with the acceptance or not of euthanasia. I'll now do a brief summary of the opinion on euthanasia for different religions and why it is considered a sin for many of them:

- For buddhism, it is said by Damien Keown, emeritus professor of Buddhist ethics at Goldsmiths College in London that: *“Buddhism teaches that it is morally wrong to destroy human life, including one’s own, he says, even if the intention is to end suffering. Buddhists are taught to have a great respect for life, Keown says, even if that life is not being lived in optimal physical and mental health”.*<sup>15</sup>

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<sup>14</sup> Cohen, J., Van Landeghem, P., Carpentier, N. *et al.* Public acceptance of euthanasia in Europe: a survey study in 47 countries. *Int J Public Health* 59, 143–156 (2014).

<https://link.springer.com/article/10.1007/s00038-013-0461-6>

<sup>15</sup> “Pew Research Center, November 2013, “religious Groups” Views on ENd-of-life Issues”

<https://www.pewresearch.org/religion/2013/11/21/religious-groups-views-on-end-of-life-issues/>

- For islam, says David Stephen Powers, a professor of Near Eastern studies at Cornell University in Ithaca, N.Y. that: *“Muslims believe that life is sacred and comes from God; therefore it is a sin to take life”*.<sup>13</sup>
- In Judaism, Jewish law generally places more weight on protecting human life than it does on other factors, such as the desire to lessen suffering and pain. *“According to Rabbi Leonard A. Sharzer, associate director for bioethics at the Louis Finkelstein Institute for Religious and Social Studies at The Jewish Theological Seminary in New York City, Judaism teaches that life is a precious gift from God. A person’s life belongs to God, he says, and therefore deciding when it ends should be left to God”* <sup>13</sup>
- Finally, Christians, in general terms, are also against this practice as they consider that life is God's gift and that we should respect birth and death because they are natural life processes that God created. Therefore, even if someone wants to die, no human has the right to take their life.<sup>16</sup>

Furthermore, there is an official document called the *“Declaration on Euthanasia”* done on the 5th of may of 1980 by the Congregation for the Doctrine of the Faith. This congregation was created in 1542 and its aim according to the secretariat of state, III congregations, Congregation for the Doctrine of the Faith, art 48: *“The proper duty of the Congregation for the Doctrine of the Faith is to promote and safeguard the doctrine on faith and morals in the whole Catholic world; so it has competence in things that touch this matter in any way”*.<sup>17</sup>

On the above mentioned document about euthanasia, taking into consideration the value of human life for christians: *“Human life is the basis of all goods, and is the necessary source and condition of every human activity and of all society... a gift of God's love, which they are called upon to preserve and make*

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<sup>16</sup> BBC - religions - Christianity: Euthanasia. (s/f). BBC. Recuperado el 6 de abril de 2023, de [https://www.bbc.co.uk/religion/religions/christianity/christianethics/euthanasia\\_1.shtml](https://www.bbc.co.uk/religion/religions/christianity/christianethics/euthanasia_1.shtml)

<sup>17</sup> *Pastor Bonus*, - John Paul II - Apostolic Constitution (June 28, 1988). (1988, junio 28).

Vatican.va.

[https://www.vatican.va/content/john-paul-ii/en/apost\\_constitutions/documents/hf\\_jp-ii\\_apc\\_19880628\\_pastor-bonus-roman-curia.html](https://www.vatican.va/content/john-paul-ii/en/apost_constitutions/documents/hf_jp-ii_apc_19880628_pastor-bonus-roman-curia.html)

*fruitful”<sup>18</sup>. A consequence of going against it: “Intentionally causing one's own death, or suicide, is therefore equally as wrong as murder; such an action on the part of a person is to be considered as a rejection of God's sovereignty and loving plan... necessary to state firmly once more that nothing and no one can in any way permit the killing of an innocent human being, whether a fetus or an embryo, an infant or an adult, an old person, or one suffering from an incurable disease, or a person who is dying. Furthermore, no one is permitted to ask for this act of killing, either for himself or herself or for another person entrusted to his or her care, nor can he or she consent to it, either explicitly or implicitly. nor can any authority legitimately recommend or permit such an action.”<sup>19</sup>*

Coming back to the study we were analysing, a strong association between the degree of religiousness and the tolerance towards euthanasia was found. There was, in every country, a lower degree of acceptance with a higher degree of religiosity. As we have seen these is due to the Official religious doctrinal viewpoints which: *“usually consider physician-assisted dying (including euthanasia and physician-assisted suicide) as morally wrong, applying a sanctity of life principle”*.<sup>20</sup>

Considering the rest of the variables: *“Euthanasia acceptance tended to decrease with age, to increase with income level, the level of education and urbanisation and to be lower among women”*. Also *“a strong relationship between the acceptance of euthanasia and the tolerance towards freedom of personal choices”* was found.

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<sup>18</sup> “Declaration on Euthanasia”. Congregation for the Doctrine of the Faith. 5 May 1980”.

[https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19800505\\_euthanasia\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19800505_euthanasia_en.html)

<sup>19</sup> *Pastor Bonus*, - John Paul II - Apostolic Constitution (June 28, 1988). (1988, junio 28).

Vatican.va.

[https://www.vatican.va/content/john-paul-ii/en/apost\\_constitutions/documents/hf\\_jp-ii\\_apc\\_19880628\\_pastor-bonus-roman-curia.html](https://www.vatican.va/content/john-paul-ii/en/apost_constitutions/documents/hf_jp-ii_apc_19880628_pastor-bonus-roman-curia.html)

<sup>20</sup> Cohen, J., Van Landeghem, P., Carpentier, N. *et al.* Public acceptance of euthanasia in Europe: a survey study in 47 countries. *Int J Public Health* 59, 143–156 (2014). [Public acceptance of euthanasia in Europe: a survey study in 47 countries | SpringerLink](#)

As a conclusion we can see that it would be nearly impossible to create a common European policy on the topic. As we have seen, religion is an important variable on the results of acceptance and nowadays still there is huge difference on religiosity among different European countries. Moreover, cultural and socio-economic factors were also a variant to take into account as to know the degree of acceptability to this practice.

#### 4. Comparison between legislations.

##### **4.1 The Netherlands**

In the Netherlands, euthanasia is regulated by the "*Termination of Life on Request and Assisted Suicide (Review Procedures) Act*" which entered into force the 1st of April of 2002. It was the first country in the world to legalise this practice.

Moreover, there is also the: "*Euthanasia Code 2022*", published by the Regional Euthanasia Review Committees (RTEs). This code was first published in 2015 and its aim is to update and improve the practice of euthanasia along the years. There were new changes in 2018, 2020 and the last one was in 2022. <sup>21</sup>

For this practice to come into force, the Netherlands criminal code had to be modified in order to permit this practice as in this country, any action with the aim of ending someone's life is a criminal offence according to its criminal code:

- Article 293.1: "*who intentionally ends the life of another at his express and earnest desire shall be punished by imprisonment for a term not exceeding 12 years or a fifth-category fine*". <sup>22</sup>

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<sup>21</sup> Euthanasia code 2022, review procedures in practice (2022). Regional euthanasia review committee. (PDF file). Downloaded from:

<https://english.euthanasiecommissie.nl/the-committees/documents/publications/euthanasia-code/euthanasia-code-2022/euthanasia-code-2022/euthanasia-code-2022>

<sup>22</sup> Dutch Criminal code (1881)

[https://sherloc.unodc.org/cld/uploads/res/document/nld/1881/penal-code-of-the-netherlands\\_html/Netherlands\\_Penal\\_Code\\_1881\\_as\\_amd\\_2014.pdf](https://sherloc.unodc.org/cld/uploads/res/document/nld/1881/penal-code-of-the-netherlands_html/Netherlands_Penal_Code_1881_as_amd_2014.pdf)



- Article 294.1: *“who intentionally incites another person to commit suicide shall, if the suicide follows, be punished by imprisonment of not more than three years or a fine of the fourth category”*.<sup>20</sup>

Which are the conditions to avoid criminal liability in the practice?

The only exemption from criminal responsibility in ending someone's life is that a patient is experiencing an excruciating suffering with no hope of improvement and that the attending physician complies with statutory due diligence standards.<sup>23</sup>

- Article 293
  - 2. *“The offence referred to in the first paragraph shall not be punishable if it is committed by a doctor who, in doing so, complies with the due diligence requirements referred to in Article 2 of the Act on the Assessment of Termination of Life at Request and Assisted Suicide”*.<sup>24</sup>
- Article 294
  - 2. *“who intentionally assists another in committing suicide or provides him with the means to do so shall, if the suicide follows, be punished with imprisonment of not more than three years or a fine of the fourth category. Section 293(2) shall apply mutatis mutandis”*.<sup>22</sup>

This mentioned standards can be found, as said in the criminal code, in Article 2 of the Act on the *“Assessment of Termination of Life at Request and Assisted Suicide”*

<sup>25</sup>Article 2: *“The requirements of due care, referred to in Article 293 second paragraph Penal Code mean that the physician:*

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<sup>23</sup> Ministerie van Volksgezondheid, Welzijn en Sport. (2018, 30 julio). *Euthanasia*. Government.nl. <https://www.government.nl/topics/euthanasia>

<sup>24</sup> Dutch *Criminal code (1881)*  
[https://sherloc.unodc.org/cld/uploads/res/document/nld/1881/penal-code-of-the-netherlands\\_html/Netherlands\\_Penal\\_Code\\_1881\\_as\\_amd\\_2014.pdf](https://sherloc.unodc.org/cld/uploads/res/document/nld/1881/penal-code-of-the-netherlands_html/Netherlands_Penal_Code_1881_as_amd_2014.pdf)

<sup>25</sup> Termination of Life on Request and Assisted Suicide (Review Procedures) Act. (April 1, 2002). Minister of Justice, Minister of Health, Welfare and Sports.

Upper House, 26 691, no 137. <https://www.parlament.cat/document/intrade/223188>

- a) *holds the conviction that the request by the patient was voluntary and well-considered,*
- b) *holds the conviction that the patient's suffering was lasting and unbearable.*
- c) *has informed the patient about the situation he was in and about his prospects,*
- d) *and the patient holds the conviction that there was no other reasonable solution for the situation he was in,*
- e) *has consulted at least one other, independent physician who has seen the patient and has given his written opinion on the requirements of due care, referred to in parts a - d, and*
- f) *has terminated a life or assisted in a suicide with due care.*

Furthermore: *“there is no requirement that the medical condition should be a somatic (physical) disease or disorder. Nor does it have to be life- threatening. There is no provision in the Act that euthanasia may only be performed in the terminal stage”*.<sup>26</sup>

However: *“Physicians are not obliged to grant a request for euthanasia, even if the due care criteria set out in the Act have been fulfilled. Patients do not have a right to euthanasia, and physicians are entitled to refuse to carry out euthanasia. If a physician is unwilling to perform euthanasia, it is prudent from a medical professional point of view to inform the patient accordingly as early as possible. The patient can then, if they so wish, contact another physician. Physicians may also refer the patient to a colleague, or to the Euthanasia Expertise Centre”*.<sup>24</sup>

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<sup>26</sup> Euthanasia code 2022, review procedures in practice (2022). Regional euthanasia review committee. (PDF file). Downloaded from:

<https://english.euthanasiecommissie.nl/the-committees/documents/publications/euthanasia-code/euthanasia-code-2022/euthanasia-code-2022/euthanasia-code-2022>

## Who is capable of accessing to assisted suicide?

Assisted suicide is accessible for adults (+18) as well as for minors over the age of 12.

For minors we have different classification:

- Between the age of 12-16, the approval of the parents or the legal guardian is compulsory as well as the minor having an understanding of his/her interest.
- Article 2.4: *“If the minor patient is aged between twelve and sixteen years and may be deemed to have a reasonable understanding of his interests, the physician may can't out the patient's request, provided always that the parent or the parents exercising parental authority and/or his guardian agree with the termination of life or the assisted suicide”*.<sup>27</sup>
- At the age of 16-17 the approval of the parents is not mandatory but they must take part in the final decision addin the understanding of the interests in the minor.
- Article 2.3: *“If the minor patient has attained an age between sixteen and eighteen years and may be deemed to have a reasonable understanding of his interests, the physician may cant' out the patient's request for termination of life or assisted suicide, after the parent or the parents exercising parental authority and/or his guardian have been involved in the decision process”*.<sup>25</sup>
- There is another situation involving 16 years-old or older if they are no longer capable of expressing their will.
  - Article 2.2: *“If the patient aged sixteen years or older is no longer capable of expressing his will, but prior to reaching this condition was deemed to have a reasonable understanding of his interests and has made a written statement containing a request for termination of life, the physician may can't out this request”*.

Finally, for adults (+18) they have the right to requests assisted suicide without the need of any parental aproval.

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<sup>27</sup> Termination of Life on Request and Assisted Suicide (Review Procedures) Act. (April 1, 2002). Minister of Justice, Minister of Health, Welfare and Sports. Upper House, 26 691, no 137. <https://www.parlament.cat/document/intrade/223188>

### Assisted suicide and foreigners.

Can a foreigner access to euthanasia in the netherlands?

The answer is yes, however, there is a very specific requirement which involves the doctor having knowledge of the medical history of the patient which was thought as a barrier to avoid “*suicide tourism*”.

This term: “*suicide tourism*” is referred to people that travels to another country, a country where this practice is legal, with the purpose of ending their lives.

As we can find it explained in the official web page of the government of the netherlands: “*Demand for euthanasia of patients from abroad; a doctor who performs euthanasia on a patient must check whether all due diligence requirements of the law are met. To do so, the doctor must know the patient's medical history. He must be able to come to the conclusion that the patient is suffering hopelessly and that no other treatments are possible. The doctor must also be sure that the patient has thought the request through and that the suffering is unbearable for the patient.*

*If a patient from abroad asks for euthanasia, the Dutch doctor must also look at the six requirements in the law. If someone lives abroad, it may be more difficult for the Dutch doctor to know the medical history well. He also needs to assess whether all the rules of the law fit the patient's situation.*

*The doctor himself decides whether to respond to a euthanasia request from someone abroad and he also decides himself how he can investigate whether the euthanasia request meets the 6 due diligence requirements of the law. For example, by talking to social workers who are treating or have treated the patient”.*<sup>28</sup>

### Which is the process followed?

The “*Euthanasia code 2022*” published by the Regional Euthanasia Review Committees (RTEs) collects all the formal procedure in detail which needs to be followed to practise euthanasia.

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<sup>28</sup> Traducción propia: Ministerie van Algemene Zaken. (2022, 25 julio). *Wie kan om euthanasie vragen?*Rijksoverheid.nl.

<https://www.rijksoverheid.nl/onderwerpen/levenseinde-en-euthanasie/vraag-en-antwoord/wie-kan-om-euthanasie-vragen>

First of all, two kinds of assisted dying are recognised in the code:

1. Termination of life on request where the physician must perform every step of the process not allowing any relative or other person to administer the euthanasia. The professional will follow a guideline where an intravenous administration of a coma-inducing substance will be administered, followed by intravenous administration of a muscle relaxant.<sup>29</sup>
2. Assisted suicide where the physician will hand the substance to the patient who will ingest it. Premedication will be handed to avoid vomiting. As in the termination of life on request, the professional will follow a guideline with the types of substances and their dose.<sup>27</sup>

Once the euthanasia has been practised the doctor will have to follow a number of steps: *“A physician who has performed euthanasia must notify this to the municipal pathologist, completing the appropriate model notification form and handing it over at the post-mortem examination. The physician also provides the pathologist with a detailed report... together with the independent physician’s report... The municipal pathologist must send the notification, including the various documents, to the appropriate regional review committee, which then reviews the reports and the euthanasia procedure.”*<sup>27</sup>

The committee will distinguish between two kinds of notifications:

1. Straightforward notifications (which account for some 95% of cases). They are reviewed digitally but not at the committee meetings. In case they arise any kind of question the status of the notification can be changed to a non-straightforward notification.
2. Non-straightforward notifications: they raise questions (around 5% of cases). These notifications are reviewed in the committee meetings.

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<sup>29</sup> Euthanasia code 2022, review procedures in practice (2022). Regional euthanasia review committee. (PDF file). Downloaded from:

<https://english.euthanasiecommissie.nl/the-committees/documents/publications/euthanasia-code/euthanasia-code-2022/euthanasia-code-2022/euthanasia-code-2022>

*If the committee finds that the physician has satisfied all the requirements, it informs the physician in writing, and the review procedure ends. If the committee finds that the physician did not fulfil one or more due care criteria, it will also inform the physician in writing. But it is then also legally required to report its findings to the Public Prosecution Service (OM) and the Health and Youth Care Inspectorate (IGJ).<sup>10</sup> These bodies then consider what steps they think are appropriate.<sup>27</sup>*

*The committee examines whether the physician who performed euthanasia acted with due care in the context of the Act, the legislative history and relevant case law. It also takes into account previous findings of the RTEs, medical and other professional standards, and decisions made by the Public Prosecution Service regarding euthanasia cases. The committee establishes whether all the aforementioned due care criteria have been fulfilled...<sup>27</sup>*

*In principle, the committee informs the physician of its findings within six weeks of receiving the notification. That period can be extended by another six weeks if circumstances require it.<sup>30</sup>*

#### Regional euthanasia review committees, annual report 2021

The last annual report published by the regional euthanasia committee was in 2021. *“In this annual report the Regional Euthanasia Review Committees (‘RTEs’) report on their work over the past calendar year. They thus account – to society, government and parliament – for the way in which they fulfil their statutory task of reviewing notified cases of termination of life on request and assisted suicide on the basis of the due care criteria laid down in the Termination of Life on Request and Assisted Suicide (Review Procedures) Act (‘the Act’)... Another aim of the annual report is to give physicians and other interested parties insight into the way in which the committees have reviewed and assessed specific notifications”.*<sup>31</sup>

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<sup>30</sup> Euthanasia code 2022, review procedures in practice (2022). Regional euthanasia review committee. (PDF file). Downloaded from:

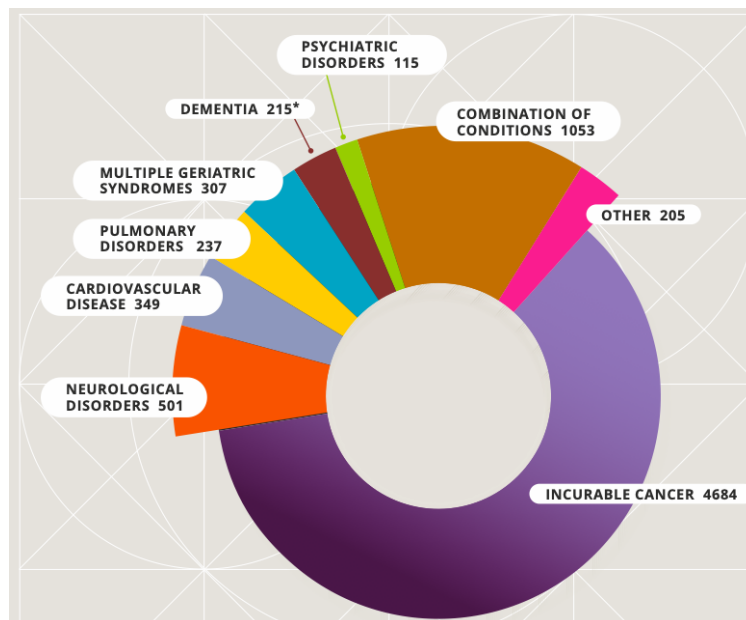
<https://english.euthanasiecommissie.nl/the-committees/documents/publications/euthanasia-code/euthanasia-code-2022/euthanasia-code-2022/euthanasia-code-2022>

<sup>31</sup> Regional euthanasia review committee (2021). Annual report 2021. (PDF file)

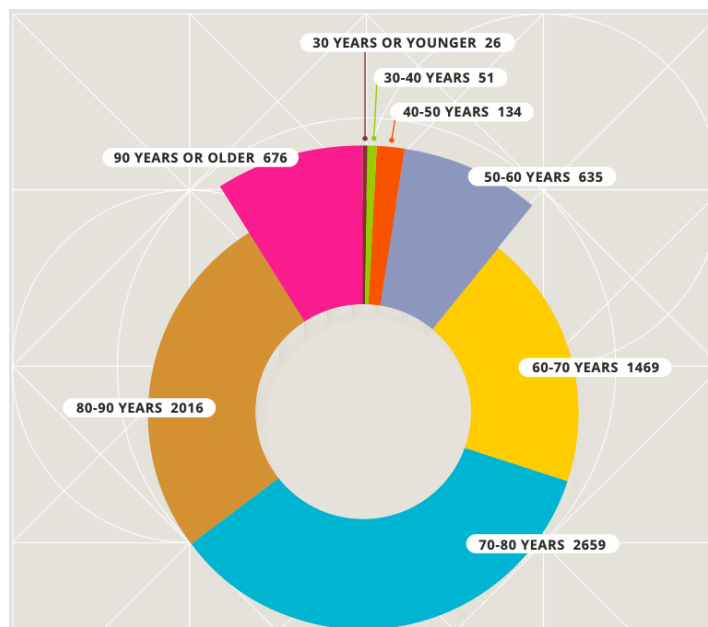
[https://wfrtds.org/wp-content/uploads/2022/08/RTE\\_JV2021\\_ENGELS\\_def.pdf](https://wfrtds.org/wp-content/uploads/2022/08/RTE_JV2021_ENGELS_def.pdf)

Having a look at it we can see several pieces of data. (data retrieved from Regional euthanasia review committee, Annual report 2021).

- Received notifications: 7,666. In 7 cases the physician had not acted in accordance with the due care criteria.
- Majority of them were straightforward notifications.
- Methods: assisted suicide: 189, termination of life on request 7459, combination of both 18 (there are cases in which by assistant suicide the patient doesnt die so the doctor has to take action).
- According to the sex: Male: 3829, Female: 3837
- Conditions



- Age:



## 4.2 Belgium

Followed by the Netherlands, Belgium legalised euthanasia on 28th of May 2002 by the Belgian euthanasia Act.<sup>32</sup>

In this country, unlikely in the Netherlands, euthanasia and assisted suicide are not mentioned in the Belgian criminal code. Furthermore, they can be considered as crimes and can be punished in first instance<sup>33</sup>: “*Euthanasia can be classified as manslaughter (art. 393), murder (art. 394) or poisoning (art. 397) of the Belgian Penal Code. Assisted suicide and the provision of lethal drugs can be punished, based on the notion that it is a citizen’s duty to help a person in great danger. This is laid down in articles 422bis and 422ter of the Penal Code*”.<sup>31</sup> However, since 2002 physicians who meet the legal requirements to perform these activities have been legally permitted.

According to the: Belgian euthanasia act, general provisions, section 2: “*euthanasia is defined as intentionally terminating life by someone other than the person concerned, at the latter’s request*”.<sup>34</sup>

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<sup>32</sup> ‘The Belgium Act on Euthanasia of May, 28th 2002’ [June 2002].

<https://apmonline.org/wp-content/uploads/2019/01/belgium-act-on-euthanasia.pdf>

<sup>33</sup> Laura. (2022). Belgium - The World Federation of Right to Die Societies. *The World Federation of Right to Die Societies*. <https://wfrtds.org/worldmap/belgium/>

<sup>34</sup> ‘The Belgium Act on Euthanasia of May, 28th 2002’ [June 2002].

<https://apmonline.org/wp-content/uploads/2019/01/belgium-act-on-euthanasia.pdf>



Which are the conditions to avoid criminal liability in the practice?

According to the Belgian euthanasia Act, chapter II, conditions and procedures, section 3.1: “*The physician who performs euthanasia commits no criminal offence when he/she ensures that:*

1. *the patient has attained the age of majority or is an emancipated minor, and is legally competent and conscious at the moment of making the request;*
2. *the request is voluntary, well-considered and repeated, and is not the result of any external pressure;*
3. *the patient is in a medically futile condition of constant and unbearable physical or mental suffering that can not be alleviated, resulting from a serious and incurable disorder caused by illness or accident;*
4. *and when he/she has respected the conditions and procedures as provided in this Act.”*<sup>32</sup>

However, this act was amended by the Law of 13 February 2014 introducing the next modifications:

The Belgian euthanasia Act, Chapter II, conditions and procedures, section 3.1<sup>35</sup>: “*The physician who performs euthanasia commits no criminal offence when he/she ensures that:*

- *...a legally competent emancipated minor, [or a minor with the capacity of discernment] and is conscious at the moment of making the request...*
- ...
- ...
- *The minor with the capacity of discernment is 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 that results from a serious and incurable disorder caused by illness or accident;*
- ...

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<sup>35</sup> The Belgium Act on Euthanasia of May, 28th 2002 (updated version) (2014).

<http://eol.law.dal.ca/wp-content/uploads/2015/06/Law-of-28-May-2002-on-Euthanasia-as-amended-by-the-Law-of-13-February-2014.pdf>

### Who is capable of accessing to euthanasia?

In Belgium, there is no minimum age to access to euthanasia. This right was extended to children in 2014 as we have already seen above. However, when it comes to a child, the law requires a written consent by the parents and its ability to understand the situation. Moreover, very strict criteria must also be followed in terms of medicine and procedure.

36

### Assisted suicide and foreigners

In the last few years, Belgium has experienced an increasing number of euthanasia tourism. In this country there is no barrier for foreigners to access to euthanasia as the only requirements needed are the ones stated in *“the belgian euthanasia Act, chapter II, conditions and procedures, section 3.1”*.

In the Belgian news agency, a news article posted on 27 January 2023 with the title: *“An increasing number of foreigners request euthanasia in Belgium”* can be read.

*““The phenomenon is becoming more common because people are finding their way faster through the internet,” says Wim Distelmans, professor of palliative medicine (VUB) and member of the Euthanasia Commission, a staunch advocate of the right to a dignified end-to-life. “Foreigners are more likely to realise that you don't have to be Belgian to qualify”, he told “Het Nieuwsblad”.* <sup>37</sup>

### Which is the process followed?

Once the conditions are fulfilled the patient must follow a number of steps.

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<sup>36</sup> *Requesting euthanasia*. (2022, 19 January). European Union Agency for Fundamental Rights.

<https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/requesting-euthanasia>

<sup>37</sup> Flanders News Service. (2023). An increasing number of foreigners request euthanasia in Belgium. *belganewsagency.eu*.

<https://www.belganewsagency.eu/an-increasing-number-of-foreigners-request-euthanasia-in-belgium>

First a written and signed request for euthanasia must be made by the patient in front of two witnesses, one of whom cannot be a relative or heir. For making it, the patient must have a severe and incurable illness, either mental or physical, that results in excruciating pain or emotional distress that cannot be eased in any way.

Two doctors, one of whom is an expert in the relevant medical condition, must assess and approve the patient's request for euthanasia. The doctor who will carry out the euthanasia must explain to the patient the purpose, timing, and method of the procedure as well as any potential alternatives. Additionally, the doctor will be required to notify the Federal Control and Evaluation Committee of the euthanasia which reviews all cases of euthanasia.

#### 4.2.1 ECHR

Recently, in October 2022, The European Court of Human Rights (ECHR) published its judgement on the *Mortier versus Belgium* case (*application no. 78017/17*). This case reached the European Court after Tom Mortier sued Belgium for having practised Euthanasia on his depressed mother without his knowledge. While the ECHR had already dealt with cases of assisted suicide this was the first time where it dealt with an Euthanasia case.<sup>38</sup>

To a better understanding of the judgement let's first go along with the happenings. We will be attending to a press release issued by the Registrar of the European Court<sup>39</sup>: “*The applicant, Tom Mortier, is a Belgian national who was born in 1976 and lives in Rotselaar (Belgium). Mr Mortier’s mother had been suffering from chronic depression*

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<sup>38</sup> Euthanasia: The ECHR condemns Belgium while validating its legal framework. (2022, 11 october). European Centre for Law and Justice.

<https://eclj.org/euthanasia/chr/euthanasie-la-cedh-condamne-la-belgique-tout-en-validant-son-cadre-juridique>

<sup>39</sup> “European court of human rights, (2022, October 4th). *Court finds procedural defects in subsequent review of death by euthanasia of applicant’s mother.* (Press release).

<https://www.politico.eu/wp-content/uploads/2022/10/04/Judgment-Mortier-v.-Belgium-Death-by-euthanasia-of-the-applicants-mother-without-his-being-informed-1.pdf>

*for about 40 years. In September 2011 she consulted Professor D. and informed him of her intention to have recourse to euthanasia. At the end of the interview, the doctor concluded that she was severely traumatised, that she had a serious personality and mood disorder and that she no longer believed in recovery or treatment. He agreed to become her doctor under the Euthanasia Act.*

*Between 2011 and 2012 Mr Mortier's mother continued to consult Professor D. and other doctors in connection with the euthanasia procedure. The doctors involved in this procedure suggested on several occasions that she contact her children to inform them of her request, but she refused. However, in January 2012 she sent them an email informing them of her wish to die by euthanasia. Her daughter replied that she respected her mother's wishes. According to the case file, her son did not reply. Subsequently, she continued to meet the doctors and to reiterate her wish not to call her children, explaining that she wanted to avoid any further difficulties in her life and feared that her euthanasia would be delayed. However, she wrote a farewell letter to her children on 3 April 2012 in the presence of a person of confidence. Finally, the act of euthanasia was performed in a public hospital by Professor D. on 19 April 2012... The following day, Mr Mortier was informed by the hospital that his mother had died by euthanasia. He sent a letter to Professor D. stating that he had not had the opportunity to bid farewell to her and that he was in pathological mourning. He said that he had appointed a doctor to examine his mother's medical records. The doctor later noted, among other things, that the declaration of euthanasia was not in the file.*

*In June 2013, as part of its automatic review, the Federal Board for the Review and Assessment of Euthanasia – of which Professor D. was co-chair – concluded that the euthanasia of Mr Mortier's mother had been carried out in accordance with the conditions and procedure laid down in the Euthanasia Act.*

*In October 2013 Mr Mortier requested a copy of the document recording the euthanasia from the Board, which, in March 2014, refused to provide it on the ground that it was prohibited from disclosing it by law.*

*In February 2014 Mr Mortier lodged a complaint against Professor D. with the Medical Association. Owing to the confidentiality of the proceedings, he was not informed of the outcome of his complaint. In April 2014 Mr Mortier lodged a criminal complaint*

*against persons unknown concerning the euthanasia of his mother. It was first discontinued in 2017 for insufficient evidence. Then, in May 2019, the judicial authorities reopened a criminal investigation into the circumstances surrounding the euthanasia. The appointed expert noted, in particular, that neither the declaration of euthanasia submitted to the Board or its assessment could be found in the file. The investigation was finally closed in December 2020, as the prosecutor's office had found that the euthanasia of the applicant's mother had complied with the substantive conditions prescribed by law and had been carried out in accordance with the statutory requirements.*<sup>40</sup>

On his declaration M. Mortier alleged that article 2: the right to life of the European Convention on Human Rights was violated because the state had failed in its duty of protecting his mother's life as the legal process of euthanasia was not correctly followed. Moreover, he alleged that Article 13: right to an effective remedy, was also violated as he considered that there was no effective investigation into his mothers case. Finally, looking at article Article 8: right to respect for private and family life of the convention, under his allegations, it was also violated as he alleged that there was no effective protection of his mothers right to life.

Concerning the court's decision as a sum up; it was concluded that there had been no violation of article 2: the right to life of the convention as: *“The legislative framework put in place by the Belgian legislature concerning pre-euthanasia measures ensured that an individual's decision to end his or her life had been taken freely and in full knowledge of the facts”*. Moreover: *“the Euthanasia Act had been the subject of several reviews by the higher authorities, both prior to enactment (by the Conseil d'État) and subsequently (by the Constitutional Court), and those bodies had found, following an in-depth analysis, that it remained within the limits imposed by Article 2 of the Convention. Consequently, as regards the acts and procedure prior to euthanasia, the provisions of the Euthanasia Act constituted in principle a legislative framework*

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<sup>40</sup> “European court of human rights, (2022, October 4th). *Court finds procedural defects in subsequent review of death by euthanasia of applicant's mother.* (Press release).

<https://www.politico.eu/wp-content/uploads/2022/10/04/Judgment-Mortier-v.-Belgium-Death-by-euthanasia-of-the-applicants-mother-without-his-being-informed-1.pdf>

*capable of ensuring the protection of the right to life of the patients concerned, as required by Article 2 of the Convention*".<sup>41</sup> Regarding the present case, Mortier's mother received euthanasia 2 months after her formal request which was made freely and several times. Doctors had already concluded that her situation was incurable and that it would be impossible to alleviate it. As a result, the judicial authorities concluded that no violation was made to article 2 of the convention as all the substantive and procedural conditions that the euthanasia act established had been fulfilled.

However, in the post-euthanasia review the lack of independence of the federal board did cause a violation of article 2 of the convention. Mortier alleged that the doctor, who was taking part in the examination of the case, was also the co-chair in the federal board which meant that it was impossible for the board to give a 100% independent opinion. As it was said: *"If the euthanasia registration document had been completed by a doctor present, he or she would never take part in the discussion and would not influence it in any way. With due respect for ethical rules and principles, the doctor would remain silent when the Board was examining a case which concerned him or her in some way or another. The Court understood that... the system put in place by the Belgian legislature for the review of euthanasia... did not satisfy the requirements under Article 2 of the Convention. The procedure under section 8 of the Euthanasia Act did not prevent the doctor who performed the euthanasia from sitting on the Board and voting on whether his or her own acts were compatible with the substantive and procedural requirements of domestic law. The Court considered that the fact of leaving it to the sole discretion of the member concerned to remain silent when he or she had been involved in the euthanasia under review could not be regarded as sufficient to ensure the independence of the Board"*.

Going on to article 8: right to respect for private and family life, the court concluded that there had been no violation of article 8. The euthanasia act indicates that doctors should discuss the decision of a patient to have the euthanasia done with their relatives

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<sup>41</sup> "European court of human rights, (2022, October 4th). *Court finds procedural defects in subsequent review of death by euthanasia of applicant's mother*. (Press release).

<https://www.politico.eu/wp-content/uploads/2022/10/04/Judgment-Mortier-v.-Belgium-Death-by-euthanasia-of-the-applicants-mother-without-his-being-informed-1.pdf>

but only if the patient wishes so. As we have already seen Mortiers mother did not want to have any kind of relationship with her children, nevertheless, at the request of doctors, Mortiers mother finally decided to send an email to her children. Concluding, doctors assisted the patient correctly and did every reasonable thing according to the law. *“The Court considered that the doctors assisting the applicant’s mother had done everything reasonable, in accordance with the law, their duty of confidentiality and medical secrecy, as well as the ethical guidelines, to ensure that she contacted her children about her request for euthanasia”*.<sup>42</sup>

On the grounds of article 41 of the convention: Just satisfaction: *“The Court held that Belgium was to pay Mr Mortier 2,211.30 euros (EUR) in respect of costs and expenses and rejected the remainder of the request for just satisfaction”*.

### 4.3 Spain

In Spain, Eutanasia as such was legalised by the constitutional law of 24th March 2021: *“Regulation of euthanasia”* becoming the 4th country in Europe and the 6th in a global scale to legalise this practice.<sup>43</sup>

However, it was in 2002 with the *“Patient Autonomy Law 41/2002”* that a kind of passive euthanasia was recognised. This law permits people to establish on a last will document the situations in which they do not want their life to be artificially prolonged when they reach a terminal situation; when medical treatment should not be started, or that it should be withdrawn, when they are convinced that it will not alleviate irreversible suffering. This way, refusal of treatment must be written and must be in accordance with the cases provided for by law, ethics and good medical practice. In case of refusal of treatment, the doctor should propose discharge to the patient, and if the

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<sup>42</sup> “European court of human rights, (2022, October 4th). *Court finds procedural defects in subsequent review of death by euthanasia of applicant’s mother*. (Press release).

<https://www.politico.eu/wp-content/uploads/2022/10/04/Judgment-Mortier-v.-Belgium-Death-by-euthanasia-of-the-applicants-mother-without-his-being-informed-1.pdf>

<sup>43</sup> Admin. (2021). España se convirtió en el cuarto país de Europa en legalizar la eutanasia. *Bravo Advocats*. <https://www.bravoadvocats.com/eutanasia-en-espana/>

patient would not accept the treatment, the institution could force the patient to be discharged.<sup>44</sup>

In the process of legalising assisted dying the Criminal code of the country had to be modified. According to article 143 of the Spanish Criminal Code:

1. *Whoever induces the suicide of another shall be punished by imprisonment for a term of four to eight years.*
2. *A term of imprisonment of two to five years shall be imposed on anyone who cooperates by acts necessary for the suicide of a person.*
3. *A term of imprisonment of six to ten years shall be imposed on anyone who cooperates to the extent of executing death.*
4. *Whoever causes or actively cooperates by necessary and direct acts in the death of a person suffering from a serious, chronic and incapacitating illness or a serious and incurable illness, with constant and unbearable physical or mental suffering, at the express, serious and unequivocal request of this person, shall be punished with a penalty one or two degrees lower than those indicated in paragraphs 2 and 3.*<sup>45</sup>

After the legalisation of euthanasia paragraph 4 was amended and paragraph 5 was added, with effect from 25 June 2021, by final provision 1 of Organic Law 3/2021 of 24 March.

5. *Notwithstanding the provisions of the previous section, criminal liability shall not be incurred by anyone who causes or actively cooperates in the death of another person in compliance with the provisions of the organic law regulating euthanasia.*<sup>38</sup>

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<sup>44</sup> Traducción propia de: De Aragón, E. P. (2005, 22 marzo). La ley española prevé la eutanasia pasiva, pero no la ayuda para morir. *El Periódico de Aragón*.

<https://www.elperiodicodearagon.com/sociedad/2005/03/22/ley-espanola-preve-eutanasi-a-pasiva-48187203.html>

<sup>45</sup> Ley Orgánica 10/1995, artículo 143, 23 de noviembre, del Código Penal.



Which are the conditions to avoid criminal liability in the practice?

Patients must fulfil a number of conditions to have access to this practice. These conditions are regulated in the constitutional law 3/2021 of regulation of euthanasia.

<sup>46</sup>According to article 5 of the mentioned law: Eligibility criteria for receiving the death grant.

1. *In order to receive the death benefit, the person must meet all of the following requirements:*

- *Have Spanish nationality or legal residence in Spain or census registration certificate accrediting a period of residence in Spanish territory of more than twelve months, be of legal age and be capable and conscious at the time of application.*
- *Have written information on their medical process, the different alternatives and possibilities of action, including access to comprehensive palliative care included in the common portfolio of services and to the benefits to which they are entitled in accordance with the regulations on care for dependency.*
- *Have made two requests voluntarily and in writing, or by any other means that allows a record to be kept, and which are not the result of any external pressure, leaving a separation of at least fifteen calendar days between the two.*
  - *If the responsible physician considers that the loss of the applicant's capacity to give informed consent is imminent, he/she may accept any shorter period...*
- *Suffer from a serious and incurable illness or a serious, chronic and incapacitating condition under the terms established in this Act, certified by the responsible physician.*
- *Give informed consent prior to receiving the aid in dying benefit. Said consent shall be included in the patient's medical record.*

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<sup>46</sup> Traducción propia: Ley Orgánica 3/2021, de 24 de marzo, de regulación de la eutanasia. [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2021-4628](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-4628)

2. *The provisions of letters b), c) and e) of the previous section shall not apply in those cases in which the responsible physician certifies that the patient is not in the full use of his or her faculties nor can give free, voluntary and conscious consent to make the requests, complies with the provisions of section 1.d), and has previously signed a document of advance directives, living will, advance directives or legally recognised equivalent documents, in which case the provision of assistance in dying may be facilitated in accordance with the provisions of said document. In the event that a representative has been appointed in this document, he/she shall be the valid interlocutor for the responsible physician.*
- *The assessment of the situation of de facto incapacity by the responsible doctor shall be made in accordance with the action protocols determined by the Interterritorial Council of the National Health System.* <sup>47</sup>

#### Who is capable of accessing to euthanasia? Is it possible for foreigners?

As stated in the constitutional law 3/2021 of regulation of euthanasia, article 5.1: “*In order to receive the death benefit, the person must meet all of the following requirements: Have Spanish nationality or legal residence in Spain or census registration certificate accrediting a period of residence in Spanish territory of more than twelve months, be of legal age and be capable and conscious at the time of application.*” <sup>48</sup>

In this country, as a difference with Belgium and the Netherlands, euthanasia can only be applied to people that are at the legal age (+18). Moreover, no foreigner will have the possibility to travel to Spain with the only objective of getting the euthanasia.

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<sup>47</sup> Traducción propia: Ley Orgánica 3/2021, de 24 de marzo, de regulación de la eutanasia. [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2021-4628](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-4628)

<sup>48</sup> Traducción propia: Ley Orgánica 3/2021, de 24 de marzo, de regulación de la eutanasia. [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2021-4628](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-4628)

### Which is the process followed?

Once the patient has fulfilled the requirements already mentioned above the process will start. The “*Derecho a Morir Dignamente (DMD)*” is the organisation of reference in the defence of the decriminalisation of euthanasia and the free disposal of one's own life in Spain. The process which a patient has to undergo is explained on their web page so I will make use of it in terms of explaining the procedure.<sup>49</sup>

First of all the patient will have to search for the doctor that will be responsible of the process. According to the '*Manual of good practice*', "the patient may choose the doctor responsible for the process of providing assistance in dying. This can be his or her primary care or hospital doctor."<sup>49</sup>

The doctor will always have the option to be a conscientious objector. If that's the case he/she must inform the patient about it from the beginning, sign the application and give it to a colleague or to his/her superior. Under no circumstances may the doctor refuse to collect the 1st application. Once a doctor accepts responsibility for handling the euthanasia request, he/she will become the responsible doctor.<sup>49</sup>

Secondly, Once a minimum of 15 days have passed since the 1st application, the applicant must submit the 2nd application to the responsible doctor. In two days, she/he will resume the deliberative process. If 24 hours after the deliberative process, the applicant reiterates his/her wish to continue, the doctor in charge will inform the infirmary and the relatives and he/she will sign the informed consent.<sup>50</sup>

In the third step the doctor in charge must consult with a consultant doctor, who, after studying the patient history and examining it, corroborates that the requirements of the Law are met and he/she will issue a report within 10 days of the 2nd request.<sup>50</sup>

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<sup>49</sup> Traducción propia: *Eutanasia en España*. (s. f.). Derecho a morir Dignamente. <https://derechoamorrir.org/eutanasia-en-espana/>

<sup>50</sup> Traducción propia: *Eutanasia en España*. (s. f.). Derecho a morir Dignamente. <https://derechoamorrir.org/eutanasia-en-espana/>

In the fourth step, the commission for assurance and evaluation will make a prior verification. The doctor in charge will submit all the documents to the commission and the chair of the commission will appoint two people (doctor and lawyer) who will examine the history and may interview the healthcare team and the applicant. The verdict will be communicated to the responsible doctor and it will be possible to appeal.<sup>50</sup>

Finally, the fifth step will be the aid to die. The patient will be responsible to choose where and when to die. Legally there is no time limit but it is recommended to make the request within the time of 1 to 2 months. Nevertheless, it is ultimately up to the health care team.<sup>50</sup>

#### 4.4 France

*“A 2016 French law provides that doctors can keep terminally ill patients sedated before death but stops short of allowing assisted suicide and euthanasia”<sup>51</sup>*

In France, the law prohibits active euthanasia, this is: *“the deliberate administration of lethal substances with the intention of causing death, at the request of the patient who wishes to die or without their consent, upon the decision of a relative or the medical profession”*. According to the French penal code, this practice is murder, a crime that could be punished with a sentence of 30 years up to life imprisonment. Moreover, the French law also prohibits assisted dying which involves a 3 person offering a patient that wants to end their life the means to do so.<sup>52</sup>

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<sup>51</sup> Corbet, S. (2023, 3 abril). France’s Macron to draft bill legalizing end-of-life options. *AP NEWS*.

<https://apnews.com/article/france-macron-euthanasia-assisted-suicide-f26f7474c76abc13727356b97e1936c8>

<sup>52</sup> Apetogbor, C. (2022, 15 septiembre). Assisted dying: What French law does and doesn’t allow. *Le Monde.fr*.

[https://www.lemonde.fr/en/france/article/2022/09/15/assisted-dying-what-french-law-does-and-doesn-t-allow\\_5996999\\_7.html](https://www.lemonde.fr/en/france/article/2022/09/15/assisted-dying-what-french-law-does-and-doesn-t-allow_5996999_7.html)

However, in this country they have the: “*Claeys-Léonetti law*”, which came into force in 2005 and afterwards was modified in 2016 and it regulates end-of-life procedures for incurable patients. It allows deep permanent sedation until death for terminally ill patients with no hope of short-term survival, this is, from a few hours to several days. In the process: *“the patient is put to sleep, treatments (including hydration and nutrition) are stopped and pain medication is administered. Sedation can take place at the patient's home, if desired, or in the hospital”*.<sup>43</sup>

The “*Claeys-Léonetti law*” of 2016 brings new rights for sick people and people at the end of life. According to the Ministère de la Santé et de la Prévention this law: *“has strengthened the right of access to palliative care put in place in the law of June 9, 1999. It makes available the advance directives and the designation of the trusted person, to allow our fellow citizens to express their wishes. She clarified the conditions for stopping treatment under the duration of unreasonable obstinacy, reaffirming the patient's right to discontinue all treatment, to benefit from deep and continuous sedation until death when life-threatening is committed in the short term, placing the patient at the heart of the decision-making process by making his advance directives binding on the doctor. The law establishes rights in terms of access to palliative care and end-of-life support and sets the framework for the collegial procedure and medical decision”*.<sup>53</sup>

In other words, this law permits people to accept palliative care instead of therapy. As long as the primary goal is to relieve pain and suffering, the law also permits doctors to give patients painkillers even if doing so could speed up their death.

In 2021, a bill allowing terminally ill individuals to ask for medical aid to terminate their lives, under specified conditions and safeguards, was approved by the French

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<sup>53</sup> Comprendre la loi Claeys-Léonetti de 2016 – Ministère de la Santé et de la Prévention. (2023, 4 avril). Ministère de la Santé et de la Prévention.

<https://sante.gouv.fr/soins-et-maladies/prises-en-charge-specialisees/les-soins-palliatifs-et-la-fin-de-vie/la-prise-en-charge-palliative-et-les-droits-des-personnes-malades-et-ou-en-fin/article/comprendre-la-loi-claeys-leonetti-de-2016>

National Assembly. The Senate has yet to approve the measure, and the President must yet sign it into law.

Recently, in 2023: *“the citizens' assembly voted by a large majority in favour of legalising assisted dying. 75.6 percent of the participants voted in favour. The final report of the assembly with 67 recommendations was adopted with a majority of 92 percent. It was handed over to President Emmanuel Macron on 3 April 2023. By the end of summer 2023, he now wants to present a draft law to improve palliative care”*.<sup>54</sup>

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<sup>54</sup> French citizens' assembly supports assisted dying. (s. f.).  
<https://www.buergerrat.de/en/news/french-citizens-assembly-supports-assisted-dying/>

## 8. CONCLUSION

Should there be then a right to die? Well, it is a complex question to answer as we find a controversy between each one's right to make a choice on their body and the way they want to live and the undermining of the value of human life. Should we then give more importance to the principle of individual autonomy or to the value that has been created over thousands of years around human life?

In conclusion, the issue of euthanasia is a complex and controversial topic that is subject to varying legal frameworks and cultural values in different countries.

As we have seen the Netherlands and Belgium were the first countries to legalise this practice and also the most flexible ones in terms of executing euthanasia. Especially in terms of age, they are one of the few countries that permit euthanasia in people under the age of 18. Both established more strict conditions than in +18 patients, however, it is shocking.

Spain is another country that is among the few where euthanasia is legally permitted. It will always be under certain conditions and on people that are +18. In France it is currently prohibited but it does allow for other end-of-life options such as palliative care.

Each country has its own unique legal and ethical considerations surrounding euthanasia, including the conditions under which it is permitted, the involvement of medical professionals, and the rights and autonomy of patients. In addition, the cultural, social, and religious values of each country play a significant role in shaping public opinion and attitudes towards euthanasia, which was perfectly seen in the analysis of the European survey on the acceptability of euthanasia among the European population.

Overall, the issue of euthanasia remains a complex and divisive topic that requires careful consideration of legal, ethical, and cultural factors in each country. This debate is likely to continue as society grapples with questions of end-of-life care and individual autonomy in the face of terminal illness and suffering.

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