WRITTEN OBSERVATIONS

submitted to the European Court of Human Rights

in the case of

Mortier v. Belgium

(Application no. 78017/17)

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1. The Belgian law of 28 May 2002 concerning euthanasia decriminalized this practice on conditions that sought to be strict: "*The doctor who practices euthanasia does not commit an offense if he has verified that: - the patient is over the age of majority or is an emancipated minor, able and conscious at the moment of his request; - the request is formulated voluntarily, thoughtfully, and repeatedly, and does not arise from external pressure; - the patient is in a medical situation without issue and demonstrates constant and unbearable physical or psychological suffering which cannot be calmed and which is the result of a serious and incurable accidental or pathological affliction; and that he respects the conditions and procedures prescribed in the present law*" (Art. 3 §1). In 2014, the possibility of requesting euthanasia was also opened to minors "*capable of discernment*" without any limitation of age.

2. Although the European Court of Human Rights (ECHR) has not opposed assisted suicide and euthanasia in principle,[1] it has nonetheless judged that "*Article 2 cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life*" and that "*no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2 of the Convention*".[2] It thus has never admitted a right to euthanasia and observed that the "*emphasis (...) has been the obligation of the State to protect life*".[3] The Court has also declared that it is conscious that legislation legalizing euthanasia can lead to excesses and abuses: thus it has judged that on this subject, "*protecting everybody from hasty decisions and preventing abuse*"[4] are legitimate aims. It also stated that "*the risks of abuse inherent in a system that facilitates access to assisted suicide should not be underestimated*".[5]

3. Nevertheless, in Belgium, systematic errors in the supervision of the practice of euthanasia have led to abuses and excesses.[6] The current application, which sadly is not a textbook case,[7] brings these errors to light from the point of view of their material obligations (I), in particular that of protecting the right to life of each person, even against himself or herself, and from the point of view of the procedural obligations (II). It also describes the large-scale consequences (III).

I. Failure concerning material obligations in Article 2: the incompetence of the law to protect the life of vulnerable persons, even against themselves.

4. The current application, which deals with euthanasia because of psychological suffering (in this case, depression), brings to light several problems posed by the Belgian law concerning euthanasia. This law appears to be contrary to the obligations of the State despite the fact that the

[1] It dismissed as manifestly inadmissible a request written by Professor Olivier De Schuter and introduced by the Belgian association "Jurivie" against the law on euthanasia.
[2] *Pretty v. The United Kingdom*, no. 2346/02, 29.04.2002, § 39-40.
[3] *Ibid*., § 39.
[4] *Haas v. Switzerland*, n° 31322/07, 20.01.2011, § 56.
[5] *Ibid*., § 58.
[6] See in particular the report by Pierre Barnérias, « L'euthanasie, jusqu'où ? » (2013): https://www.youtube.com/watch?v=jN3PSI3XsFI&t=996s
[7] See for example the European Institute of bioethics, "Le Parquet de Bruxelles classe sans suite les plaintes contre Wim Distelmans", 06.02.2018 ; "Belgique : nouvelle plainte contre un médecin pour euthanasie", *Gènéthique*, 25.04.2014. These facts are similar to those of the following case: Margot Vandevenne lodged a complaint that her mother, having suffering from depression for 1 year, was euthanized without warning to the family. See also the case of Tine Nys, a woman who received the diagnosis of autism several months before her euthanasia: "Belgium launches first criminal investigation of euthanasia case", *The Guardian*, 26.11.2018; "En Belgique, trois médecins poursuivis pour empoisonnement après l'euthanasie d'une jeune femme pour souffrances psychiques ", *Gènéthique*, 23.11.2018.

ECHR has judged that "*Article 2 of the Convention . . . creates for the authorities a duty to protect vulnerable persons, even against actions by which they endanger their own lives*".[8]

Euthanasia for psychological suffering and self-determination

5. The possibility of euthanasia because of psychological suffering raises the problem of the autonomy of the person and his or her ability to express free and informed consent. In the *Haas* case, the ECHR indeed judged that "*an individual's right to decide by what means and at what point his or her life will end, provided he or she is capable of freely reaching a decision on this question and acting in consequence, is one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention*".[9] Thus, though the Court admitted, on the basis of the right to respect for private and family life, this form of the right to self-determination relating to one's own death, it is nevertheless conditional, and the condition relative to the level of will is not fulfilled when the person requesting euthanasia is psychologically affected. Such a request cannot, in this case, be considered to originate from a person in possession of full freedom of consent and of capability of discernment, as was explained by the Belgian advisory committee on bioethics: "*Based on the well-known Diagnostic and Statistical Manual of Mental Disorders (DSM 5) (American Psychiatric Association 2013), the wish to die is one of the indications for a diagnosis of depression. When someone is suffering from depression, the wish to die, and the ensuing request for euthanasia, can be a symptom of the condition rather than a well-considered expression of will in other words. In cases like these, patients can hardly be deemed to have the capacity to decide on their own death*".[10] This link between depression and suicide is regularly made by the ECHR which, for example, concluded that there was a violation of the right to life of the applicant who was allowed to use a weapon while "*suffering from depression, which gave him suicidal and homicidal ideas*".[11] One can no longer speak of autonomy or self-determination in such cases. Logically, if the Court claims to base the ability to have recourse to euthanasia on the respect of autonomy, then euthanasia ought to be permitted only for those in good physical and psychological health, for that is the condition to their freedom of consent. The respect of autonomy ought to prohibit euthanasia for those persons who are depressed or affected by psychological illnesses. We also observe that depression, as defined by the World Health Organisation (WHO) is indeed a "*disability*" according to the Convention on the Rights of Persons with Disabilities.[12] Indeed, depression is a "*mental disorder*" and a "*cause of disability*" (which constitutes the medical dimension of the disability).[13] It is characterized, particularly when chronic, "*by sadness, loss of interest or pleasure, feelings of guilt or low self-estime*" (the social dimension of the disability).[14] The suicidal ideas of a depressive person are thus the consequence of his or her handicap, and not a free expression of will. Depressive persons ought for this reason to be helped and protected, sometimes against themselves. Nevertheless, as one expert of the Committee on the Rights of Persons with Disabilities remarked during the consideration of the report of Belgium, "*the only possibility of autonomy given to them would be death*" and that in this way euthanasia would become "*a biological solution for certain social problems*".[15] Thus the Belgian law which provides

[8] *Haas v. Switzerland*, § 54. In the case of a depressive person who committed suicide, see *Yasemin Doğan v. Turkey*, no. 40860/04, 06.09.2016, § 45: the Court states the importance of "*the positive obligation to take all necessary preventative measures to protect individuals whose life is endangered by their own behavior".*

[9] *Haas v. Switzerland*, §51.

[10] Belgian advisory committee on bioethics, "Opinion no. 73 of 11 September 2017 on euthanasia in case of non-terminally ill patients, psychological suffering and psychiatric disorders", p. 18.

[11] *Aktepe and Kahriman v. Turkey*, no. 18524/07, 03.06.2014, § 66. See also *Serdar Yiğit and others v. Turkey*, no. 20245/05, 09.11.2010, § 44: the Court admits that "*Mevlüt may have been pushed to suicide by a form of unforseeable psychological depression*."

[12] *Convention on the rights of persons with disabilities,* 13 December 2006, Article 1: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

[13] WHO, "Depression: Key Facts", 22 March 2018

[14] WHO, "Depression: Definition".

[15] Committee on the Rights of Persons with Disabilities, "Le Comité des droits des personnes handicapées examine le rapport initial de la Belgique", 19 September 2014. The French reads: "Les personnes handicapées en Belgique étant

the possibility for euthanasia because of psychological suffering does not respect the jurisprudence of the Court which admits that the principle of respect for life "*obliges the national authorities to prevent an individual from taking his or her own life if the decision has not been taken freely and with full understanding of what is involved*".[16]

Euthanasia for psychological suffering and the principle of legality

6. The dispositions of the Belgian law regarding euthanasia for psychological suffering contain vague and subjective terms which thus challenge the principle of legality by preventing any legal predictability. Indeed, "*the legal framework relating to euthanasia for a psychological reason alone is debatable: the decision of death is not founded on a subjective assessment. In this case, the terms of the law do not enable one to precisely determine in which conditions euthanasia is an offense*".[17]

7. Indeed, suffering itself is a subjective notion and the seriousness of an illness is not absolute.[18] The Commission fédérale de contrôle et d'évaluation de l'euthanasie (CFCEE) also admits that the unbearable nature of suffering "*is to a large degree subjective and depends on the character of the patient, and on his personal concepts and values*", and that "*as for the unbearable nature of the suffering, one must take into account the fact that the patient has the right to refuse treatment for pain, even palliative, for example when this treatment has side effects or conditions of application which he considers to be unbearable*".[19] In addition, determining that psychological suffering is unbearable is impossible in the absence of "*measurable factors—neither tissue samples nor behavioral elements—which could make it objective. . . . It often happens in clinics that patients who could see no further perspective eventually do better and develop a satisfying life. There are also many examples of people who, after a long and painful process, suddenly recover—indeed not always through therapy, but sometimes due to unforeseen events.*"[20] This is illustrated by the case of Laura-Emily, 24 years old, who suffered from depression: having fulfilled the legal conditions, her request for euthanasia was accepted, but on the day of the euthanasia, she changed her mind, explaining that the previous weeks had been bearable.[21] In this way the predictability of the law is defeated and the risk of abuses and excesses is increased if the conditions for accepting a request for euthanasia can be adapted at the discretion of the will and subjectivity of the patient or of the physician. This is accentuated by the absence of prohibition of "medical shopping",[22] as is illustrated by the current application: Mrs. De Troyer used the technique which, for a patient who has encountered the refusal of her usual doctor, involves reiterating her request to other doctors until she finds one who agrees, that is to say, one more indulgent or more militant. In these conditions, adequate verification of the respect of the Belgian legal framework for euthanasia requests is an illusion.

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fortement institutionnalisée [sic], il pourrait sembler que la seule possibilité d'autonomie qui leur soit offerte soit la mort, a-t-elle fait observer, avant d'attirer l'attention sur la nécessité de veiller à ce que l'euthanasie ne devienne pas la solution biologique à certains problèmes sociaux." Which translates as "Since persons with disabilities in Belgium are highly institutionalized, it would appear that the only possibility of autonomy given to them would be death, she remarked, before raising awareness on the necessity to make sure that euthanasia did not become a biological solution to certain social problems" whereas the English reads: "Since for persons with disabilities in Belgium were highly institutionalized, it would appear that euthanasia could be misused to kill off persons with intellectual disabilities. Experts asked for an elaboration on legal safeguards that would prevent the misuse of euthanasia."

[16] *Haas v. Switzerland*, § 54.

[17] Group of signatories (38 university professors, psychiatrists, and psychologists), "L'euthanasie pour souffrance psychique : un cadre légal discutable et des dommages sociétaux", *Le Soir*, 10.09.2015.

[18] According to Pr Étienne Montero, head of the faculty of law in Namur, author of *Rendez-vous avec la mort : dix ans d'euthanasie légale en Belgique.* See "Euthanasie : la dérive belge", *Euthanasie stop*, 22.10.2013.

[19] CFCEE, Premier rapport aux Chambres législatives 22 septembre 2002 - 31 décembre 2003, p. 18.

[20] Group of signatories, "L'euthanasie pour souffrance psychique : un cadre légal discutable et des dommages sociétaux", *Le Soir*, 10.09.2015.

[21] Annick Hovine, "Euthanasie : Emily (24 ans) voulait mourir avant l'été, elle est toujours bien vivante", *LaLibre.be*, 08.12.2015.

[22] On this point see "L'euthanasie en Belgique sous la loupe de la Cour européenne des droits de l'homme", monthly letter Gènéthique no. 216, January 2019. Twins spent 2 years searching for a doctor who would accept to euthanize them: Bruno Waterfield: "Son challenges Belgian law after mother's 'mercy killing'", *The Telegraph*, 02.02.2015.

8. It is for this reason that during the debates concerning the adoption of the law concerning euthanasia in 2002, the Public Health Commission of the Chamber of Representatives had unanimously opposed the addition of the possibility of euthanasia for psychological suffering. It judged that "*suffering that is purely psychological can never lead to euthanasia. The subjective nature of psychological suffering is too high, and could thus open the door to abuses. It is practically impossible, for the doctor, to evaluate the level of psychological suffering; in addition, the will of those suffering from psychological illnesses is often ambivalent and uncertain. Finally, in these cases, all medical context is lacking. Patients who are depressive, who suffer from psychiatric illnesses, from dementia, or from Alzheimer's disease cannot fall within the purview of the projected law.*"[23] With the perspective of the years of application of this law, voices have been raised against this type of euthanasia asking for the removal, or *a minima*, the rigorous restriction of its scope. Realizing that "*the law on euthanasia for psychological suffering alone allows tolerating the intolerable*", 253 Belgian professional health workers have made the following appeal: "*Refine the criteria for psychological suffering, have each case evaluated* a priori *by a commission, or, preferably, reconsider the law on euthanasia in order to exclude unbearable and incurable psychological suffering alone as a motive for euthanasia; this would indeed bear life*."[24] As for the Belgian Advisory Committee on Bioethics, though some of its members consider that there is no need to modify the law, others point to the fact that its lack of clarity leads to applications contrary to the will of the legislator. Others seek for a law that would make euthanasia impossible for psychological suffering in the absence of irreversible tissue damage.[25]

9. The Belgian law concerning euthanasia is thus seen to be defective and uncontrollable: it leads to the violation of Article 2 in its material aspect and causes excesses and abuses. The risk is increased with the procedure through the ineffectiveness of the control with which the CFCEE is entrusted.

II. Failure concerning procedural obligations in Article 2: the ineffectiveness of the CFCEE in the prevention of excesses and abuses in euthanasia

10. The law of 28 May 2002 concerning euthanasia (Art. 6) created the CFCEE, which is entrusted with verifying that all euthanasia practices respect legal conditions and procedures. The ECHR has judged that "*The obligation to protect the right to life under this provision (art. 2), read in conjunction with the State's general duty under Article 1 (art. 2+1) of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention', requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State*."[26] Jurisprudence relating to this procedural obligation must here be applied *mutatis mutandis*, considering that the CFCEE is an authority holding investigative powers in the area relating to the protection of the fundamental right to life.[27] Indeed, in the area of health care, "*the Court has interpreted the procedural obligation of Article 2 (...) as requiring States to set up an effective and independent judicial system so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable*".[28] However, as the present case demonstrates,

[23] Doc 50 1488/005 de la Chambre des Représentants de Belgique du 1er mars 2002, Projet de loi relatif à l'euthanasie, p. 9.
[24] "Euthanasie pour souffrance psychique : est-il (enfin) permis de poser des questions ?": https://www.rebelpsy.be/. See also Ariane Bazan e.a., "Schrap euthanasie op basis van louter psychisch lijden uit de wet. De dood als therapie?", *De Morgen*, 08.12.2015: 65 university professors, psychiatrists and psychologists ask for the elimination of the possibility of euthanasia for patients suffering from psychological illnesses whose death is not likely in the short term.
[25] European Institute of Bioethics, "L'euthanasie dans les cas de patients hors phase terminale, de souffrance psychique et d'affections psychiatriques", Synthèse de l'avis n° 73 du Comité de bioéthique de Belgique, 11.09.2017, p. 4-6.
[26] *McCann and Others v. The United Kingdom* [GC], no. 18984/91, 27.09.1995, § 161.
[27] Law of 28 May 2002, Art. 8: *The commission (...) may require the personal physician to provide all elements of the medical file relating to the euthanasia. (...) When (...) the commission judges that the conditions required by the present law have not been respected, it transfers the case to the King's prosecutor of the location where the patient died.*
[28] *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, 19.12.2017, § 214.

the composition of the CFCEE and its work cast doubt upon its conformity with the requirements of the Court as regards the procedure.

Absence of independence of the CFCEE

11. Concerning the requirement of independence of the inquiry, the ECHR has judged that "*Article 2 does not require that the persons and bodies responsible for the investigation enjoy absolute independence, but rather that they are sufficiently independent of the persons and structures whose responsibility is likely to be engaged. The adequacy of the degree of independence is assessed in the light of all the circumstances, which are necessarily specific to each case.*"[29] For the Court, independence is absent when those entrusted with the investigation of the case are potential suspects,[30] immediate colleagues of the person under investigation,[31] or those having a hierarchical relationship with potential suspects.[32] Thus it has also judged that there is a disagreement with the procedural obligations indicated in Article 2 when there is a professional relationship between the medical experts and the person investigated by the inquiry.[33]

12. The present case, however, reveals the flagrant absence of independence of the CFCEE. Several of its members are indeed also members of associations militating in favor of euthanasia[34] and some are doctors who practice euthanasia themselves. This is the case with Dr Wim Distelmans: it is disturbing that he should be co-president of the CFCEE while also a member of the LevensEinde InformatieForum and a fervent supporter of euthanasia, which he practices himself. He is, in fact, the person who euthanized the mother of the applicant. Thus, he is someone who is able to be investigated by an inquiry of the CFCEE, thus a potential suspect who himself is entrusted with the inquiry, and the members of the commission have a hierarchical, and even professional relationship with him. Thus some members are both judges and parties, prey to a flagrant conflict of interest: the CFCEE lacks the required impartiality and objectivity; this in turn affects its control.

Ineffectiveness of the control of the CFCEE

13. The ECHR has admitted that "*The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility"* and that "*The authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to request particular lines of inquiry or investigative procedures.*"[35]

14. Though the CFCEE is entrusted with the verification that the practice of euthanasia respects the law, it has on numerous occasions admitted its inability to do so: thus it declared that it is "*conscious of the limits of control in the application of the law of 28 May 2002 that it is entrusted to exercise*" for "*it is obvious that the efficiency of its mission relies partly on the respect by the medical body of the obligation to declare acts of euthanasia, and partly on the manner in which these declarations are written.*"[36] Nevertheless, it admits that it "*is unable to evaluate the proportion of acts of euthanasia declared compared to the number of acts of euthanasia practiced in reality*"[37], as Wim Distelmans notes: "*Obviously, doctors do not declare the doubtful cases, so of course we don't control them.*"[38] It is thus impossible to attain transparency regarding the practice of euthanasia in

[29] *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, 14.04.2015, § 223.
[30] *Bektaş and Özalp v. Turkey*, no. 10036/03, 20.04.2010, § 66.
[31] *Ramsahai and others v The Netherlands* [GC], no. 52391/99, 15.05.2007, §§ 335-341.
[32] *Şandru and others v. Romania*, no. 22465/03, 08.12.2009, § 74.
[33] *Bajić v. Croatia*, no. 41108/10, 13.11.2012, §§ 98-102.
[34] É. de Diesbach, M. de Loze, C. Brochier et E. Montero, *Euthanasie : 10 ans d'application de la loi en Belgique*, Institut Européen de Bioéthique, Avril 2012, Bruxelles, p. 6: "*nearly half of the effective members of the Commission having the right to vote are members of collaborators of the Association pour le Droit de Mourir dans la Dignité (ADMD)".*
[35] *Natchova v. Bulgaria* [GC], nos. 43577/98 and 43579/98, 06.07.2005, §§ 110-111.
[36] CFCEE, Premier rapport aux Chambres législatives 22 septembre 2002-31 décembre 2003, p. 23.
[37] CFCEE, Huitième rapport aux Chambres législatives (années 2016-2017), p. 58.
[38] Complément d'enquête : "Santé, GPA, vieillesse : quand l'homme défie la nature", France 2, October 2014.

Belgium, as is shown by studies, one of which reveals that approximately 50% of euthanasia would not have been not declared in 2007.[39] The declarative system thus partially explains the failure of control.

But in fact, this control is shown to be non-existent by reason of the interpretation that the CFCEE gives to the terms of the law. Though these terms are indeed subjective and lacking clarity, the Commission plunges through the gap by interpreting them in a sense that is excessively extendable and liberal, and which goes against the intention of the legislator.[40] Thus it endorses cases of euthanasia which are at the limit of legality, or even beyond what is permitted by the law. According to the CFCEE, the coexistence of several non-serious and non-incurable conditions meets the requirements of a serious and incurable affliction,[41] or that "*the dramatic future progression (such as a coma, a loss of autonomy or progressive dementia) is sufficient for being qualified as a unbearable and intolerable psychological suffering according to the terms of the law*".[42] It has also approved cases resembling assisted suicide, though this is not included in the scope of the law.[43] Nevertheless, the law of 28 May 2002 does not sanction the right to euthanasia, but rather decriminalizes it under conditions: as a penal text, it ought to be interpreted strictly.

15. The control also shows to be powerless to provide effective protection of the right to life in any situation where it is done *a posteriori.* It is of no avail to hope to protect human life through a verification conducted after death; this is especially true in the case of euthanasia because of psychological suffering. The principle of a control *a posteriori* is entirely contradictory with the protection of life, because it consists of simply approving or not approving the euthanasia that has already been practiced. Thus it constitutes a flagrant failure concerning the procedural obligations of the State regarding the right to life: how is it possible to guarantee the right to life of vulnerable persons if the control is conducted after they are deceased?

16. The CFCEE is thus an authority of control which is in practice ineffective, and indeed quite unable to prevent excesses and abuse. In fact, between 2002 and 2016, it transmitted to the King's prosecutor only one case among 14,573 acts of euthanasia.[44] It was for this reason that one of its members, a physician, recently resigned, stating that the Commission "*consciously transgresses the law while seeking to hide this fact... it is neither independent nor objective*", accusing it of having neglected to refer to the courts a physician who put a patient to death at the request of the family.[45]

III. The deeper consequences of the failures of the legislation concerning euthanasia

17. An act of euthanasia does not concern only the person who makes the request: this practice and its conditions have deep social consequences. This is demonstrated by the present application in which the applicant complains, based on Article 8 of the Convention, of a violation of his right to respect of his psychological integrity and his family life because of the conditions in which his mother was euthanized.

18. In fact, euthanasia can indeed have significant psychological consequences on members of the family.[46] It leads to the deterioration of family relationships, and beyond this, of the family itself,

[39] Smets T., Bilsen J., Cohen G., Rurup ML., Mortier F., Deliens L., "Reporting of euthanasia in medical practice in Flanders, Belgium: cross sectional analysis of reported and unreported cases", *BMJ,* 2010;341:c5174. In 2007, in Flanders, only 53% of acts of euthanasia were declared according to: "A post mortem survey on end-life decisions using a representative sample of death certificated in Flanders", *BMC Public Health*, 2008, August 27, 8; 299.

[40] See the "Brochure d'information à l'intention du corps médical" which explains the interpretation to be given to the terms of the law: CFCEE, Deuxième rapport aux Chambres législatives (années 2004 et 2005), p. 59 et s.

[41] CFCEE, Quatrième rapport aux chambres législatives (années 2008-2009), p. 22.

[42] CFCEE, Troisième rapport aux Chambres législatives (années 2006-2007), p. 24.

[43] CFCEE, Premier rapport aux Chambres législatives 22 septembre 2002-31 décembre 2003, p. 17.

[44] Dominique Grouille, "Fin de vie : les options belge, suisse et orégonaise", *La revue du praticien*, vol. 69, January 2019.

[45] See "La Commission Euthanasie belge 'enfreint consciemment la loi et tente de le dissimuler'", *Gènéthique*, 28.02.2018.

[46] "Témoignage : 'Je suis tellement contrariée que mon mari ait choisi le suicide assisté'", *Gènéthique*, 08.11.2018: a woman "denounces the subsequent effects of an assisted suicide on the members of the family and on friends".

and finally of society, as the family is its foundational component. On the occasion of the 10th anniversary of the law concerning euthanasia, 70 leading figures, most of them health professionals, denounced the fact that "*euthanasia deteriorates trust within families and between generations; it instills suspicion towards physicians; it weakens the most vulnerable persons. . . . Experience shows that a society which recognizes euthanasia breaks the links of solidarity, confidence and authentic compassion which are at the foundation of what it means to 'live together'; such a society in the end destroys itself.*"[47] This is the same conclusion which was reached in 2013 by Christian, Jewish and Muslim leaders in a historic statement expressing their opposition to the extension of the law on euthanasia to minors and to people with dementia, and their concern with its trivialization: "*We cannot thus enter into a form of reasoning which leads to the destruction of the foundations of society*".[48]

19. The trivialization of the pro-euthanasia mindset is real. Both the extension of euthanasia to minors in 2014 and the official figures show this: 235 acts of euthanasia were performed in 2003, and this number quickly rose from year to year, reaching 2537 in 2018, representing 2% of total yearly deaths.[49] This trivialization is particularly linked to the flexibility of the legal conditions which permit euthanasia. The Belgian Advisory Committee on Bioethics specified that "*the general public should be far better educated and informed, this to avoid the current common misconception that the Act of 2002 entitles everyone to euthanasia while it only provides for the right to ask for euthanasia.*"[50] A collective letter emphasized that euthanasia because of psychological suffering, whose legal framework is seen to be permissive, encourages suicide[51] and thus compromises the efforts of prevention, which is a paradox.[52] Quoting Dr. Distelmans, who declares that "*as long as there are people who throw themselves in front of a train or off an apartment block, euthanasia will remain a subject that is too taboo*", the collective letter explains that this type of euthanasia can lead "*certain persons, who until then were reluctant to resort to the violent, solitary and/or complicated aspect of suicide, to choose death. It is inconceivable to attribute to the State, or to relate to the effect of a law, the task of persuading individuals to prefer death.*"[53]

20. This case brings to light the "*ideology which declares that an individual is the only master of his or her life, and alone in the world*".[54] It is abusive and dangerous to raise up the autonomy of a patient as the supreme ethical value in order to justify a practice that is detrimental to the whole of society and which challenges the common good. The question of euthanasia shows the extreme individualism which is common in our society and which contaminates human rights. It is a case of the "*absorption of Article 2 by Article 8 [which] demonstrates the domination of the power of the individual over a value as central as the respect for life*", whereas "*the whole effort of the composition of the declarations of human rights consisted in producing [values as objective and as universal as possible] by liberating them from the control of States or ideologies; it is right, in contemporary culture, to preserve these values from the control, this time of the Individual.*"[55]

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[47] "Dix ans d'euthanasie : un heureux anniversaire?", *LaLibre.be*, 13.06.2012. See also Claire-Marie Le Huu-Etchecopar, *DOSSIER : Le « modèle » belge à la dérive*, Collectif Plus digne la Vie.

[48] "Communiqué des chefs religieux en Belgique au sujet de l'euthanasie", *La Croix*, 06.11.2013.

[49] On which see: "Belgique : 2537 euthanasies en 2018", *Gènéthique*, 28.02.2018; Institut européen de bioéthique, *Euthanasie : 10 ans d'application de la loi en Belgique*, Les dossiers de l'IEB, April 2012, p. 3.

[50] Belgian advisory committee on bioethics, "Opinion no. 73 of 11 September 2017", cited above, p. 57.

[51] See David Albert Jones, David Paton, "How Does Legalization of Physician-Assisted Suicide Affect Rates of Suicide?", *Southern Medical Journal*, Vol. 108, 10.10.2015, p. 599-604 : "*legalizing PAS was associated with a 6.3% (...) increase in total suicides (including assisted suicides)*".

[52] "L'euthanasie en Belgique sous la loupe de la Cour européenne des droits de l'homme", monthly letter of Gènéthique n° 216, January 2019: "*on the one hand our governments set up assistance and suicide prevention services, spaces for support, teams which are ready in the middle of the night to save the lives of people who are depressed or suffering from psychiatric illnesses. On the other hand, they suggest euthanasia for those same people, after 'careful collective thought'!*"

[53] Collective letter, "L'euthanasie pour souffrance psychique : un cadre légal discutable et des dommages sociétaux", *Le Soir*, 10.09.2015.

[54] "Euthanasie : que fait la Belgique ?!", *Gènéthique*, 25.10.2016.

[55] Grégor Puppinck and Claire de La Hougue, "The right to assisted suicide in the case law of the European Court of Human Rights", *The International Journal of Human Rights*, 2014 DOI: 0.1080/13642987.2014.926891.

21. In order to find in this case the timeless concept of humanity, and its value which gives body to human rights, the following question should be asked: which behavior is the most human? To kill a person because he or she has requested it, whatever the reason? Or to be able to say: "*You matter because you are you, and you matter until the end of your life. We will do all we can not only to help you die peacefully, but also to live until you die.*"[56] As in the case of Vincent Lambert, these are "*two opposing conceptions of humanity and human rights . . . the humanist conception which values and protects the intrinsic dignity of each person, and the individualistic conception which does not believe in human nature, but only in individual will. These two concepts lead to two radically different societies.*"[57]

Conclusion

22. This application demonstrates that the objectives of the 2002 law on euthanasia *("to end clandestine practice of euthanasia, supervise requests for euthanasia and control the application of the decriminalization of euthanasia*"[58]) have not been met and that the guarantees provided have proven to be illusory. But could the situation be any different? The conclusion of a study directed by Professor Hendin, who teaches psychiatry at the *New York Medical College* and is the medical director of the *American Foundation for Suicide Prevention* in New York, is that it is difficult, if not impossible, to control the practice of euthanasia once it has been decriminalized.[59] Having opened "Pandora's box" through legislation on euthanasia and/or assisted suicide, Belgium faces the same excesses and abuses as other States.[60] Refusing to find the State guilty in the present case would effectively mean turning a blind eye to these abuses, despite the many warnings of the "*slippery slope*" down which Belgium is progressing, and especially when the cases of euthanasia in which the consent of the patient was not obtained are taken into account.[61] It is not without pertinence that we point out that following the Second World War, the practice of euthanasia which had killed thousands of people was condemned by the Nuremberg trials.[62] In France, the Académie des sciences morales et politiques adopted, on 14 November 1949, a declaration formally rejecting "*all methods having as their goal the death of subjects who are considered monstrous, malformed, deficient or incurable*", considering that "*euthanasia, and more generally, all methods which seek, through compassion, to induce the 'soft and peaceful' death of dying persons must also be rejected*". Otherwise, the physician

[56] This quotation of Dame Cicely Saunders, founder of the movement of palliative care, opens the following report, adopted on 18 September 2018 by the PACE: Commission des questions sociales, de la santé et du développement durable, *L'offre de soins palliatifs en Europe* / Rapporteur : M. Rónán Mullen (Irl., PPE/DC).

[57] Grégor Puppinck and Claire de La Hougue, "'L'effrayant' arrêt Lambert – Commentaire de l'arrêt CEDH, Lambert et autres contre France, GC n° 46043/14, 5 June 2015", *Revue Générale de Droit Médical*, n° 56, 2015, p. 19-42.

[58] Dominique Grouille, "Fin de vie : les options belge, suisse et orégonaise", *op. cit.*, p. 25.

[59] H. Hendin, *Seduced by death. Doctors, patients and assisted suicide*, New York, W.W. Norton, 1998.

[60] Concerning the Netherlands, see: Observations finales du Comité des droits de l'homme de l'ONU sur les rapports présentés par les Pays-Bas, 25.08.2009, CCPR/C/NLD/CO/4, § 7. In Switzerland see: Problèmes de l'assistance médicale au suicide, Prise de position de la Commission Centrale d'Éthique (CCE) de l'Académie suisse de sciences médicales, 20.01.2012, which reveals "*the undefendable practice of medically assisted suicide, whether with or without the participation of an organization for assisted suicide. The questionable situations especially concern the evaluation of the capacity for discernment and the persistence of the desire to die, the exclusion of family members or the personal physician (in these cases the problem lies in the fact that the family members or the personal physician can only be informed with the authorization of a patient who is capable of discernment), sufficient consideration for the medical background of the patient, assisted suicide for persons with psychiatric illnesses, chronic illnesses, and elderly people 'tired of living'.*"

[61] See for example Charles L. Sprung, Margaret A. Somerville, Lukas Radbruch e.a., "Physician-Assisted Suicide and Euthanasia: Emerging Issues From a Global Perspective", Journal of Palliative Care, Volume: 33 issue: 4, page(s): 197-203 : "*Slippery slopes: There is evidence that safeguards in the Netherlands and Belgium are ineffective and violated, including administering lethal drugs without patient consent, absence of terminal illness, untreated psychiatric diagnoses, and nonreporting*".

[62] *Unites States v. Pohl et al.*, 13.01.1947, Trials of the War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, Nuremberg October 1946-April 1949, Volume V, Washington, DC: Government Printing Office, 1950.

would be granting himself "*a form of sovereignty over life and death*".[63] This explicit declaration was signed, among others, by René Cassin, one of the main authors of the Universal Declaration of Human Rights. The preparatory work that led to this Declaration showed that the possibility of euthanasia founded on the humanistic concerns or a medical diagnosis was unthinkable at that time, for it was never discussed; on the contrary, while reference is commonly made to the "consent" of the holder of certain rights (marriage, private life, work, governance, migration), the right to life must be protected independently of the holder's will.[64]

23. The only way to effectively protect the right to life is thus to prohibit euthanasia, in accordance with the appeals of the Parliamentary Assembly of the Council of Europe. Recommendation 779 (1976) of the Assembly stated that "*the doctor must make every effort to alleviate suffering, and that he has no right, even in cases which appear to him to be desperate, intentionally to hasten the natural course of death*" (§ 7). In its Recommendation 1418 (1999), this same Assembly affirmed forcefully that the right to life of those who are ill and those who are dying must be guaranteed even when they express the wish to die.[65] Resolution 1859 (2012) of 25 January 2012[66] stated that "*Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited.*"

[63] Revue des Travaux de l'Académie des Sciences morales et politiques, procès-verbaux, 1949/2, p. 258.

[64] William SCHABAS and UNITED NATIONS (dir.), *The Universal Declaration of Human Rights*, Cambridge University Press, 2013, pp. 224, 1058, 1126, 1393, 2716.

[65] "*i. recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with Article 2 of the European Convention on Human Rights which states that "no one shall be deprived of his life intentionally";*
ii. recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person;
iii. recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death."

[66] Resolution 1859 (2012), 25.01.2012 *Protecting human rights and dignity by taking into account previously expressed wishes of patients.*