Physician-Assisted Suicide and Euthanasia Law in Selected Jurisdictions

Belgium • Canada • Colombia • Luxembourg
Netherlands • Switzerland

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I. Introduction

This report describes laws on euthanasia and physician-assisted suicide in Belgium, Canada, Colombia, Luxembourg, the Netherlands, and Switzerland. For purposes of this report, “euthanasia” is defined as the practice of a physician ending a patient’s life in order to relieve extreme suffering, while “physician-assisted suicide” involves the deliberate ending of one’s own life to relieve extreme suffering with the assistance, but not direct participation, of a physician. Where they are deemed legal, eligibility criteria for euthanasia and/or physician-assisted suicide generally include factors such as unbearable suffering that cannot be relieved and well-considered requests from the patient.

II. Jurisdictional Surveys

Belgium

Belgium legalized euthanasia in 2002.1 To legally perform euthanasia, a doctor must verify that the following conditions are met:

- The patient is an adult, or an emancipated minor, or is a minor who is conscious and capable of discernment at the time of his/her request.
- The patient has made his/her request for euthanasia voluntarily, repeatedly, after reflection, and with no outside pressure.
- The patient’s medical situation has no solution, and the patient suffers constant and unbearable physical or mental pain that cannot be alleviated and is the result of a serious and incurable accident or pathology.
- If the patient is a minor, his/her medical condition is such that he/she is expected to die soon.2

Belgian law does not address physician-assisted suicide.

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2 Id. art. 3.
Canada

Until recently there was a blanket ban on physician-assisted suicide at the federal level in Canada. Section 241(b) of Canada’s federal Criminal Code stipulates that everyone who “aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.” Section 14 prohibits persons from consenting to death being inflicted on them. On February 6, 2015, in a unanimous decision in Carter v. Canada, the Supreme Court of Canada (SCC) struck down these provisions on the basis of section 7 of the Canadian Charter of Rights and Freedoms, which protects every person’s “right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” The Court held that the provisions “unjustifiably infringe” section 7 and are

of no force or effect to the extent that they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.

The Court suspended its ruling for twelve months to allow Parliament, provincial assemblies, and regulatory authorities to adopt or amend legislation and policies. However, the Court has not required lawmakers to enact legislation or establish new policies. In late April 2015, Canada’s Justice Minister announced that there would be no new legislation to govern physician-assisted death before the expected October federal election.

The Province of Quebec has already enacted its own right-to-die legislation, which received assent on June 10, 2014. The law includes provisions regulating “voluntary active euthanasia,”

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5 Id. § 14.


7 Id. § 7.


9 Ahmad, supra note 3.


which the law describes as “medical aid in dying.”

According to section 26 of the law, a patient can only receive medical aid in dying if he/she is

- an insured person within the meaning of the Health Insurance Act (chapter A-29),
- of full age and capable of giving consent to care,
- at the end of life,
- suffering from a serious and incurable illness,
- in an advanced state of irreversible decline in capability, and
- experiencing constant and unbearable physical or psychological suffering that cannot be relieved in a manner the patient deems tolerable.

**Colombia**

In 1997, the Constitutional Court of Colombia upheld the right of terminally ill persons to undergo euthanasia, if the consent is given voluntarily and no available medical treatment would reverse the patient’s condition. In this landmark decision, the Court ruled that when the patient has rendered his or her informed consent, the assisting physician cannot be held criminally liable because his/her conduct is justified. The Court also called on the legislature to pass legislation on the matter in accordance with the ruling.

This decision left both doctors and patients in an uncertain legal position because the Criminal Code still held euthanasia subject to criminal sanctions as follows:

**Article 106. Mercy Killing.** Anyone who kills another person out of pity, to end intense suffering from a bodily injury or an incurable or grave illness may be subject to imprisonment for one (1) to three (3) years.

**Article 107. Assisted Suicide.** Anyone who successfully induces another person to commit suicide, or effectively assists thereto, is subject to imprisonment for two (2) to six (6) years.

When the assistance or inducement is aimed at ending intense suffering from a bodily injury or grave and incurable decease, the sanction is imprisonment for one (1) to two (2) years.

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12 *Id.* § 3(6). Section 3(6) defines “medical aid in dying” as “care consisting in the administration by a physician of medications or substances to an end-of-life patient, at the patient’s request, in order to relieve their suffering by hastening death.”

13 *Id.* § 26.


15 *Id.*

In a decision rendered on December 15, 2014, the Constitutional Court directed the Ministry of Health to form an Interdisciplinary Committee to provide advice to patients and families on decisions to terminate life to ensure that such decisions are not taken out of depression or desperation, and to adopt related guidelines and protocols for health care professionals. The Ministry of Health responded on April 20, 2015, by issuing Resolution 00001216, which establishes the procedures and protocols to be followed by health care providers and by those patients who seek to undergo euthanasia. The Resolution provides that patients seeking euthanasia must have reached the age of majority and must be suffering from a terminal illness for which they have been offered or are undergoing palliative treatment.

Pursuant to the Resolution, the treating physician must present a petition to the Interdisciplinary Committee, comprised of a physician, a lawyer, and a psychologist. The Committee then determines whether the patient meets all the requirements and, if so, confirms the decision to carry out the procedure. If the patient ratifies the decision, the Committee then authorizes the procedure to take place on a date chosen by the patient or within fifteen days after the decision. The procedure is performed free of charge.

**Luxembourg**

Luxembourg legalized euthanasia and physician-assisted suicide in 2009. For either to be legally performed, the patient must fulfill the following criteria:

- Be a competent adult, and conscious, at the moment of his/her request
- Have submitted his/her request repeatedly, voluntarily, after reflection, and without any exterior pressure
- Be in a medical situation that does not have a solution as the result of an irreversible accident or pathology

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18 Id. Decisión ¶ 4.
20 Id. art. 15.
21 Id. art. 6.
22 Id. art. 16.
23 Id. art. 16, ¶ 2.
24 Id.
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• Express constant suffering and unbearable physical or mental pain, with no hope of improvement\textsuperscript{26}

Netherlands

Both euthanasia and physician-assisted suicide\textsuperscript{27} are criminal offenses under the Dutch Criminal Code,\textsuperscript{28} but an exception from criminal liability has been carved out for doctors who can satisfy certain criteria. In general, anyone who terminates the life of another at that other person’s express and earnest request is liable to a term of imprisonment of not more than twelve years.\textsuperscript{29} According to article 293, paragraph 2 of the Criminal Code, a doctor who satisfies the due care criteria of article 2 of the Dutch Termination of Life on Request and Assisted Suicide (Review Procedures) Act\textsuperscript{30} and reports the act to the municipal pathologist will not be held criminally responsible. Article 294, paragraph 2, sentence 2 of the Criminal Code applies the same exception to doctors performing assisted suicide.

The Termination of Life on Request and Assisted Suicide (Review Procedures) Act was enacted in April 2001. Article 2 of the Act lists the following due care criteria for doctors:

• Be satisfied that the patient’s request is voluntary and well-considered
• Be satisfied that the patient’s suffering is unbearable and that there is no prospect of improvement
• Inform the patient of his or her situation and further prognosis
• Discuss the situation with the patient and come to the joint conclusion that there is no other reasonable solution
• Consult at least one other physician with no connection to the case, who must then see the patient and state in writing that the attending physician has satisfied the due care criteria listed in the four points above
• Exercise due medical care and attention in terminating the patient’s life or assisting in his/her suicide

The doctor is obligated to report every unnatural death to the municipal pathologist, who then informs the Regional Euthanasia Review Committee (Regionale Toetsingscommissies

\textsuperscript{26} Id. art. 2.


\textsuperscript{28} WETBOEK VAN STRAFRECHT [SR] [CRIMINAL CODE], Mar. 3, 1881, as last amended by Stb. 2014, p. 10.

\textsuperscript{29} SR art. 193, ¶ 1.

\textsuperscript{30} Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding art. 2.
Euthanasia). The regional euthanasia review committees consist of one legal specialist, one physician, and one expert on ethical or philosophical issues, together with three alternate members with such backgrounds. They determine if the abovementioned due care criteria are fulfilled in a particular case. If the criteria are not met, the regional euthanasia review committee informs the Board of Procurators General and the regional health care inspector, and the doctor may face criminal charges. The regional euthanasia review committees have published guidance, annual reports, and important decisions from 2012 onwards on their website for physicians to consult in order to determine if their actions will be considered legal.

**Switzerland**

Switzerland has not enacted a specific law that deals with active euthanasia and assisted suicide, but covers them under normal criminal law rules. The relevant provisions are articles 114 and 115 of the Criminal Code. Active euthanasia, even if performed at the person’s genuine and insistent request and out of compassion, is a criminal offense. Different rules apply to assisted suicide. According to article 115 of the Criminal Code, anyone who incites or assists another to commit or attempt to commit suicide is criminally liable only if he/she acts out of “selfish motives.” The Swiss Academy of Medical Sciences (Schweizerische Akademie der Medizinischen Wissenschaften, SAMW) published medical-ethical guidelines in 2004 for physicians to determine when assisted suicide is performed out of unselfish motives. The guidelines were incorporated into the Statutes of the Swiss Medical Associations in 2005 and are therefore mandatory for physicians who are members. The Swiss Medical Association is a professional association that represents about 95% of Swiss physicians.

According to the SAMW guideline, a patient must not only have an incurable, progressive disease, but must also be approaching the terminal phase of the illness. If a patient requests his/her physicians to assist him/her in committing suicide, the physician must make sure that the following conditions are fulfilled:

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31 Id. art. 4, ¶ 2.
32 Id. art. 8, ¶ 1.
33 Id. art. 9, ¶ 2.
36 StGB art. 114.
38 Swiss Medical Association, Mitgliedschaft [Membership], http://www.fmh.ch/services/fuer_die_mitglieder/mitgliedschaft.html (last visited May 6, 2015).
39 SAMW, supra note 36, at 10.
• The patient’s disease justifies the assumption that he/she is approaching the end of life.
• Alternative possibilities for providing assistance have been discussed and, if desired, have been implemented.
• The patient is capable of making the decision; his/her wish has been well thought out, without external pressure; and he/she persists in this wish.
• A third person, who is not necessarily a physician, has checked the preceding conditions.
• The final action in the process leading to death is taken by the patient him- or herself.\textsuperscript{40}

\textsuperscript{40} \textit{Id.} at 9.