

# BELGIAN ADVISORY COMMITTEE ON BIOETHICS

## *Opinion no. 1 of 12 May 1997 concerning the advisability of a legal regulation on euthanasia*

### I.

“Requests for an opinion submitted by the Presidents of the Chamber and the Senate concerning the question of the advisability of a legal regulation on ending life at the request of patients with incurable illnesses (“euthanasia”); palliative care; statement of wishes concerning treatment and “living will”; bills currently tabled on this issue.”

In order to reduce the scope of its deliberations to a sufficiently well-defined subject, the Committee limited itself initially to the question of the advisability of legislative intervention in the matter of euthanasia.

The members of the Committee agreed on the following definition of euthanasia “*act performed by a third party who intentionally puts an end to a person’s life at the request of the said person*”. On the basis of this definition, the members decided to limit their debates for the time being to cases in which the patient’s position is hopeless and the act is performed by a doctor. Furthermore, the accent placed in the definition on the *intention* to end life makes it necessary to distinguish euthanasia properly speaking from other acts performed by the doctor such as the administration of sedatives or analgesics which carry the risk of shortening life or the withdrawal of futile medical treatment. Finally, the members considered that in the first stage this opinion should be limited to cases of patients able to express their wishes, keeping for the future the more difficult question of patients unable to express their wishes. The members also kept for the future questions concerning what is commonly called the “living will”.

It is necessary when talking about euthanasia to distinguish between two questions of a substantially different nature : the strictly ethical question of its moral legitimacy and the legal question of the advisability of a legislative amendment on this subject.

### II.

Faced with the question “*is euthanasia a morally or ethically acceptable act ?*”, insurmountable differences of opinion emerge. For some, euthanasia is justified from the moral point of view in cases in which there is a combination of a medically hopeless situation, intense suffering and the elementary right of every human being to autonomy. For others, however, it remains in its very principle a morally unacceptable act which constitutes an attack on the intangible value of the life of another, and they consider it to be a denial of the doctor’s responsibility towards the lives of his patients. And for others still, euthanasia can be justified from an ethical point of view but only on an absolutely exceptional basis, in certain extreme situations, and provided that the decision is the subject of an ethical debate.

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The discussion on the ethical justification for euthanasia has led to a wider debate on the values involved in any situation where life is coming to an end. Some members expressed the view that before envisaging euthanasia as the solution for a dying patient, priority should be given to the patient's trust in his doctor, the quality of care and the link of intersubjectivity between the patient (and family) and the nursing staff as a whole – three factors which contribute towards the *quality of life*. The defenders of euthanasia object that their conception of the quality of life, which is centred more on the patient's subjective experience, includes the eventuality of helping the patient to die if he so requests. Solutions such as palliative or continuous care cannot, in their view, be appropriate in all end-of-life situations.

### III.

In response to the question “*is it appropriate to legislate on euthanasia ?*”, the discussion within the select commission, examined by the Committee, led to four separate proposals :

#### 1. **A legislative amendment decriminalizing euthanasia**

The first proposal envisaged is a legislative amendment decriminalizing euthanasia. It is based on the idea that the law, in a democratic society, cannot prohibit an act which does not constitute at least a potential danger for another person or for society. The law must explicitly guarantee the right of every individual to do as he wishes with his own life and to live according to his own convictions, with respect for those of others.

Decriminalization of euthanasia would have the advantage of guaranteeing the doctor an area of unambiguous legal security. Furthermore, it would allow a genuine relationship of trust between the patient and his doctor. Finally, a law would clearly define the conditions to be fulfilled for the act of inducing death not to be regarded as a crime (one of the conditions being that the act is performed by a doctor).

#### 2. **An *ex post facto* “procedural” regulation of euthanasia decided on in a confidential patient-doctor consultation**

The second proposal envisaged is an *ex post facto* “procedural” regulation on euthanasia decided on in a confidential patient-doctor consultation. It is based on the model of the Dutch compromise, which proposes symbolic maintenance of the criminal prohibition of euthanasia whilst defining the conditions in which the doctor performing euthanasia can be regarded, from a legal point of view, as being in a “situation of sudden and urgent necessity”. These conditions are as follows : the patient must be in a situation of unbearable suffering or experience it as such; his request must be well-considered and lasting; the decision to perform euthanasia can only be accepted and implemented by a doctor; the latter must have consulted another doctor; he must inform the close relatives and the nursing staff of his decision; he must decide on the appropriate substance with which to administer death.

This procedure is based on a confidential consultation between the patient and his doctor. It does not require the nursing team, the family or the local ethics committee to be involved in the euthanasia decision. Social regulation here is *ex post facto*, through a specific formula with which the doctor is bound to comply and which he must communicate to the judicial authorities, *via* the medical expert commissioned by the court.

**3. An *a priori* “procedural” regulation of the most important decisions concerning the end of life, including euthanasia, following collegial consultation**

The third proposal envisaged is an *a priori* “procedural” regulation of the most important decisions concerning the end of life, including euthanasia, following collegial consultation. It is based on the idea that the euthanasia problem cannot be isolated from a wider context : that of all medical decisions taken as regards patients at the end of their lives and the most humane treatment of all patients in this situation. This position emphasizes the empirical development of medical ethics, which takes account of the singularity of each case and cannot be subjected to the rigour of a positive law.

The proposal is to make procedures legally compulsory for a number of medical decisions concerning the end of life. One of these procedures concerns the decision to be taken if euthanasia is requested. Within the context of a procedural approach to assistance at the end of life, the decision-making responsibility is shared between the patient and the attending physician, after consulting the nursing staff and the family. This solution ensures that for every procedure an ethical debate takes place within the nursing team and guarantees, for the euthanasia procedure in particular, attendance at the ethical debate by a third person (non-doctor) appointed by the local ethics committee, together with social (possibly judicial) supervision of the act of euthanasia. Some members of the Committee consider that this procedural regulation presupposes that the legislator must regulate more precisely on the statement of cause of death on death certificates.

This proposal guarantees the doctor a certain legal security in so far as the decision taken after consultation states that at the moment of the act of euthanasia he was legally in a “situation of sudden and urgent necessity”.

**4. Maintenance pure and simple of the legal prohibition of euthanasia**

The fourth proposal envisaged is maintenance pure and simple of the legal prohibition of euthanasia. It expresses a desire to maintain the *status quo*, i.e. the prohibition in all circumstances of the practice of euthanasia, so as not to detract from the eminent value of life as the natural medium for all the other rights of the person. The legal and medical institutions must give precedence to the right to live by seeking to relieve suffering by means other than homicide (especially through palliative care, in which all the players concerned should be trained).

Those in favour of this position put forward the following objections to any form of procedure :

1. the risk that establishing a procedure for euthanasia may be the antechamber for decriminalization, which they do not want;
2. the impossibility of citing the situation of sudden and urgent necessity, which calls for the objective comparison of two duties, whereas assessment of the mental suffering of the patient is essentially subjective;
3. official recognition thenceforth of the doctor's disproportionate power of life and death over the patient;

4. the anguish of the dying person who would have to decide himself on his own disappearance and the implicit pressures from the family as regards such a decision.

#### **IV.**

The examination of proposal No. 3 allowed several opponents and advocates of the prohibition of euthanasia to move closer together. The discussion in the select commission was thus marked by a dynamic favouring examination of this proposal. The two proposals No. 2 and No. 3 share a common factor in that they maintain the legal prohibition of murder as it exists at present, whilst making the euthanasia process possible in certain conditions. But they diverge on several points, the most important of which is to know whether or not euthanasia requires intervention between doctor and patient by a body independent of both of them. According to the supporters of proposal No. 3, this third body is essential to prevent medical arbitrariness and to objectivize the situation of sudden and urgent necessity. For those in favour of proposal No. 2, on the other hand, the decision to perform euthanasia can only be the result of a confidential consultation between the patient and his doctor, so as to preserve the values of autonomy and dialogue. It should also be underlined that some members within the select commission stated that they could not endorse either of these proposals.

In conclusion, the Committee considers that it cannot and must not decide in a debate in which ethical orientations and conceptions of life are fundamentally divergent. However, even though some members continue to reject any form (even 'procedural') of legality for the act of euthanasia, the Committee observes that, going beyond what at first sight seemed to be insurmountable differences of opinion between them, numerous members managed to bring their views closer together, which suggests, according to them, that it should be possible to reach a practical solution to the problem of euthanasia.

Whatever the case may be, the whole Committee urges the authorities to encourage a broad democratic debate on this issue among the main players concerned and, more widely still, among all citizens.

**The opinion was prepared by select commission 96/3, consisting of:**

<b>Joint chairmen</b>	<b>Joint reporters</b>	<b>Members</b>	<b>Member of the Bureau</b>
P-Ph. Druet <i>replaced by L. Cassiers</i> H. Van den Enden <i>Replaced by E.Vermeersch</i>	E. Delruelle F. Van Neste	Ch. Aubry X. Dijon Y. Galloy J. Messine M. Roelandt P. Schotsmans J. Vermynen B. Wouters	Y. Englert

**External experts attached to the commission :** Ch. Deckers and W.Distelmans.

**External experts heard :** Dr. De Buysser (Sister Léontine), A.Jitta and Y. Kenis.

**The working documents of select commission 96/3** – request for opinion, personal contributions of the members, minutes of meetings, document consulted - are stored as Annexes no. 96/3 at the Committee's documentation centre, where they may be consulted and copied.

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