

Luxembourg

[Excerpted from: [Carter v. Canada \(Attorney General\), 2012 BCSC 886 \(CanLII\)](#)]

[605] Euthanasia is treated as a form of murder under Article 397 of Luxembourg's *Penal Code* (Law of 16 June 1879), *Mémorial* 1879, 589 – Pas. 1879, 231. However, as a result of Art. 397.1, the criminal prohibition does not apply to a physician who has complied with the conditions of the *Law of 16 March 2009 on Euthanasia and Assisted Suicide*, *Mémorial* A-No. 46, 16 March 2009 [the Luxembourgish Act]. The Luxembourgish Act draws heavily from the Belgian Act. In describing the regime in Luxembourg, I rely on the evidence of Professor Lewis and Professor Shariff.

[606] Article 1 defines both euthanasia and assisted suicide. Euthanasia is an act, performed by a physician, which intentionally ends the life of a person at his or her express and voluntary request. Assisted suicide occurs where a physician intentionally assists a person to commit suicide or provides the means to that end on the person's express and voluntary request.

[607] Pursuant to Art. 2.1, a physician will not be prosecuted for euthanasia or assisted suicide where the following conditions are met:

- (a) the patient is an adult, capable and conscious at the time of the request;
- (b) the request is made voluntarily, after reflection, repeatedly, and is not the result of external pressure;
- (c) the patient suffers constant and unbearable physical or mental suffering without hope of recovery, arising from a pathological illness or accident; and
- (d) the request is in writing.

[608] Article 2.2 requires the physician to comply with the following conditions of form and procedure:

- (a) Inform the patient of his or her condition and life expectancy, and discuss with the patient his or her request for euthanasia and the therapeutic measures which could still be considered, including the availability and consequences of palliative care. The physician must believe that, in the patient's view, there is no other acceptable solution. These conversations must be recorded in the patient's medical file.
- (b) Ensure the persistence of the patient's suffering and of his or her request. To this end, the physician will conduct several interviews with the patient at reasonable intervals.
- (c) Consult with another physician, independent of both the patient and the treating physician, and competent in regards to the patient's condition. The consulting physician will review the medical file, examine the patient, confirm the patient's

suffering, and prepare a report to this effect. The treating physician will inform the patient of the outcome of this consultation.

- (d) Discuss the patient's request with the patient's medical team unless the patient opposes.
- (e) Discuss the patient's request with people designated in his or her living will unless the patient opposes.
- (f) Ensure the patient has the opportunity to discuss his or her request with those persons he or she wishes.
- (g) Ascertain whether the patient has registered an "end of life provision" with the National Control and Assessment Commission.

[609] If a patient in a state of irreversible unconsciousness and suffering from a serious and incurable condition has drafted and registered an "end of life provision" with the National Control and Assessment Commission ("NCAC"), a physician may provide euthanasia to the person (Article 4.3).

[610] Physicians must submit a registration document in the appropriate form to the NCAC within four days of performing euthanasia (Article 5). The NCAC is composed of nine members including physicians (including one specialized in pain management), legal professionals and members representing organizations defending patients' rights. The NCAC will determine whether the conditions of the Luxembourgish Act have been met. If it rules by a two-thirds majority that the physician has not complied with the due care requirements, it will notify the Medical College. Where it rules that the physician has not complied with the requirements of Article 2.1, it will notify the public prosecutor.

[611] The NCAC prepares a biennial report.

[612] Article 15 states that no physician no physician may be compelled to perform euthanasia. Should the physician consulted refuse to perform euthanasia, then he or she must inform the patient of this fact within 24 hours, and explain his or her reasons for refusing.