



ADF INTERNATIONAL

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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report denounces the incompatibility of Luxembourg's regulation of euthanasia and assisted suicide with the State's basic obligation to protect the equal right to life of all persons. In particular, it highlights the inevitable subjectivity in the assessment of what constitutes 'unbearable physical or mental suffering' under the law, and the challenges faced by medical professionals in the exercise of their right to conscientious objection in this regard.

### (a) Right to Life

3. Euthanasia and assisted suicide have been legal in Luxembourg since March 2009 following the adoption of Law 46 on Euthanasia and Assisted Suicide (hereinafter, the 'Law'). Specifically, the Law establishes that doctors who respond to requests for euthanasia or assisted suicide cannot be held criminally liable or be subject to a civil action if certain conditions are met.<sup>1</sup>
4. The conditions required under the Law are that the patient must be an adult who is capable and conscious at the time of the request, and that the request be made voluntarily after reflection and with no external pressure. The patient must also be in a 'hopeless medical situation (*fr: une situation médicale sans issue*) and in a state of constant and unbearable physical or mental suffering without prospects of improvement.'<sup>2</sup>
5. The eligibility criteria do not require the patient's condition to be terminal.<sup>3</sup> This is in contrast to the 2009 Law relating to Palliative Care, Advance Directives and End-of-life Support, which specifically applies to 'the person at the end of life'.<sup>4</sup> The two laws had been passed in parallel and reflect a clear legal distinction between palliative care and euthanasia or assisted suicide.
6. The patient's request for euthanasia must be recorded in writing and signed by the patient in the presence of the authorising doctor. The request remains valid for the entire period needed to perform the procedure, even if the patient loses consciousness during that time.<sup>5</sup>
7. The Law established a National Control and Evaluation Commission (hereinafter, the 'Commission'), reporting biennially to the Chamber of Deputies, tasked with monitoring its implementation and making recommendations in this regard.<sup>6</sup> The Commission's most recent report, published in 2022, showed a significant rise in

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<sup>1</sup> Law on euthanasia and assisted suicide (16 March 2009), art. 2, <https://legilux.public.lu/eli/etat/leg/loi/2009/03/16/n2/jo>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Law on relating to palliative care, advance directives and end-of-life support (16 March 2009), art. 1, <https://legilux.public.lu/eli/etat/leg/loi/2009/03/16/n1/jo>.

<sup>5</sup> Law on euthanasia and assisted suicide, art. 2.

<sup>6</sup> *Id.*, art. 9.

cases compared to previous years. In the year 2020, 25 people were euthanized compared to 16 people in 2019 and eight people in 2018.<sup>7</sup>

8. The Law also allows adult individuals to submit advance declarations expressing their consent to undergo euthanasia if they are in a state of non-temporary unconsciousness and their doctor deems that they are suffering from a serious and incurable condition.<sup>8</sup> Worryingly, the Commission's report found that 50 people aged between 18 and 40 had opted to complete such advance directives as of 2020.<sup>9</sup>
9. Although the patient's request is subject to evaluations from attending and authorising doctors, whose involvement is intended to safeguard patients against abuse, the determination of whether there is unbearable physical or mental suffering cannot be made on an objective basis. Paradigmatic of the risks associated with these evaluations is the euthanasia of a 96-year-old man in 2020, on grounds that the patient suffered 'fatigue of life' and a combination of physical ailments. The act was posthumously approved by the Commission.<sup>10</sup>
10. While, as of 2020, no euthanasia has been performed based merely on psychological suffering or mental illness, the Commission has received multiple requests in this regard, and has explicitly stated that such cases would fall within the scope of application of the Law.<sup>11</sup>
11. With regard to children's access to euthanasia or assisted suicide, the Commission – citing the case of Belgium, where the killing of minors via euthanasia has been legal since 2014 – has noted that while not currently permitted, 'the matter should not remain taboo in Luxembourg'.<sup>12</sup>

#### *The Right to Life in International Law*

12. There is no 'right to die' under international law. Rather, the state has an obligation to protect the right to life of all without discrimination, as well as to ensure the highest quality of care to those suffering from physical or psychological causes, including palliative care for persons with chronic or terminal conditions.
13. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that, 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'<sup>13</sup> Article 10 of the Convention on the Rights of Persons with Disabilities (CRPD) reaffirms the inherent nature of this fundamental human right, requiring States Parties to 'take all necessary measures to

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<sup>7</sup> National Control and Evaluation Commission 'Sixième rapport à l'attention de la Chambre des Députés' (2022), <https://sante.public.lu/fr/publications/r/rapport-loi-euthanasie-2019-2020.html>, 2.

<sup>8</sup> Law on euthanasia and assisted suicide, art. 4.

<sup>9</sup> National Control and Evaluation Commission 'Sixième rapport à l'attention de la Chambre des Députés' (2022), <https://sante.public.lu/fr/publications/r/rapport-loi-euthanasie-2019-2020.html>, 9.

<sup>10</sup> *Id.*, 11.

<sup>11</sup> *Id.*, 22.

<sup>12</sup> *Id.*, 23.

<sup>13</sup> International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 6.

ensure its effective enjoyment by persons with disabilities on an equal basis with others.’<sup>14</sup>

14. Article 12 of the International Covenant on Economic, Social, Cultural Rights (ICESCR) imposes an obligation on its States Parties to achieve the progressive realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>15</sup> The CRPD further specifies that ‘persons with disabilities have the right to the enjoyment of the highest attainable standard of health, without discrimination on the basis of disability,’<sup>16</sup> and that States Parties take measures ‘to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.’<sup>17</sup>
15. The legalization of practices such as euthanasia constitutes a blatant violation of the right to life. This right is to be protected by law and is not disposable. As affirmed inter alia by the European Court of Human Rights in *Pretty v United Kingdom* and *Haas v Switzerland* and more recently in *Mortier v. Belgium*, the right to life does not include a diametrically opposite right to die.<sup>18</sup>
16. In January 2021, a joint statement by the Special rapporteur on the rights of persons with disabilities and the Independent expert on the enjoyment of all human rights by older persons expressed alarm at the growing trend to promote medically assisted dying on the basis of disability or old age. They noted that laws permitting euthanasia for persons not terminally ill tend to rely on ‘ableist assumptions about the inherent quality of life or worth of the life of a person with a disability, resulting in implicit pressures into ending their lives prematurely.’ According to the experts, ‘under no circumstance should the law provide that it could be a well-reasoned decision for a person with a disabling condition who is not dying to terminate their life with the support of the State.’<sup>19</sup>
17. The legalization of euthanasia and assisted suicide is a grave violation of international human rights law as it disregards the equal dignity and right to life of all persons, including particularly older persons, persons with disabilities as well as those suffering from serious medical conditions. It is also incompatible with the State’s obligation to guarantee the right of those affected to the enjoyment of the highest attainable standard of physical and mental health.
18. Furthermore, as observed in other States where euthanasia and/or assisted suicide are legal, Luxembourg faces an imminent risk of a slippery slope towards expanded access and resort to euthanasia and assisted suicide, further undermining human

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<sup>14</sup> Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 2 May 2008) 2515 UNTS 3 (CRPD), art. 10.

<sup>15</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 171 (ICESCR), art. 12.

<sup>16</sup> CRPD, art. 25.

<sup>17</sup> *Id.*, art. 26.

<sup>18</sup> *Pretty v United Kingdom* (2002) 35 EHRR 1; *Haas v Switzerland* (2011) 53 EHRR 33; *Mortier v. Belgium* (2022) 119.

<sup>19</sup> UN News ‘Disability is not a reason to sanction medically assisted dying’ (25 January 2021) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26687>.

dignity and neglecting the underlying social, psychological, medical, economic as well as spiritual needs of the most vulnerable.

## **(b) Freedom of Conscience**

19. The Law provides that no physician is required to perform euthanasia or assisted suicide. However, doctors are required to both specify the reasons for the refusal and refer the patient, upon request, to another doctor.<sup>20</sup>
20. Worryingly, the Commission has affirmed that because freedom of conscience belongs only to individuals and not to institutions, 'no hospital establishment can validly invoke this freedom to refuse to allow a doctor to practice within that institution euthanasia or assisted suicide, when the conditions laid down in the law are fulfilled.'<sup>21</sup> This claim, which has not yet been retracted, is especially threatening to those health-care institutions that are either operated by religious organisations and/or legitimately reject the practice of euthanasia on ethical or deontological grounds.
21. In its most recent report, the Commission recommended that the Law be amended in order to compel conscientiously objecting medical professionals who invoke conscientious objection to provide the contact details of a 'specialized association on the right to euthanasia', as well as to require medical establishments to implement an 'effective and efficient procedure' for finding a doctor willing to carry out requests for euthanasia or assisted suicide.<sup>22</sup>

### *Freedom of Conscience in International Law*

22. Article 18(1) of the ICCPR guarantees everyone's right to freedom of thought, conscience and religion.<sup>23</sup>
23. With regard to the right to conscientious objection, the Human Rights Committee has noted that:

'The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.'<sup>24</sup>
24. Given that euthanasia and assisted suicide both entail the use of lethal means, it follows that this reasoning must also apply for medical professionals refusing to perform, or participate in performing, such practices on the ground of conscience.
25. Likewise, the requirement to refer patients seeking euthanasia to a non-objector constitutes an unacceptable double standard, incompatible with Luxembourg's human rights obligations.

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<sup>20</sup> Law on euthanasia and assisted suicide, Art. 15.

<sup>21</sup> One of Us 'Euthanasia deaths increase 56% in Luxembourg in 2020' (28 April 2021), <https://oneofus.eu/euthanasia-deaths-increase-56-in-luxembourg-in-2020/>.

<sup>22</sup> National Control and Evaluation Commission 'Sixième rapport à l'attention de la Chambre des Députés' (2022), <https://sante.public.lu/fr/publications/r/rapport-loi-euthanasie-2019-2020.html>, 19.

<sup>23</sup> ICCPR, art. 18(1).

<sup>24</sup> Human Rights Committee 'General Comment 22: Article 18' CCPR/C/21/Add.4, 11.

### **(c) Recommendations**

26. In light of the aforementioned, ADF International suggests the following recommendations be made to Luxembourg:

- a. Repeal Law No. 46 of 2009 on euthanasia and assisted suicide;
- b. Prohibit euthanasia and assisted suicide, and instead take measures to protect the right to life, health and non-discrimination of persons with disabilities, the elderly, sick and other vulnerable members of society;
- c. Strengthen policies and increase investments to promote the medical, psychological, social and economic well-being of elderly persons and other vulnerable members of society;
- d. Ensure that all patients are provided with high-quality palliative care;
- e. Pending the repeal of Law No. 46 of 2009 on euthanasia and assisted suicide, amend its Article 15 in order to remove the requirement for medical practitioners who are conscientious objectors to provide referrals for euthanasia and/or assisted suicide;
- f. Ensure that medical professionals and institutions have a right to object to performing, facilitating, or referring for euthanasia or assisted suicide and other procedures to which they object on grounds of conscience, in strict compliance with international human rights law.



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