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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Cooperation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Luxembourg must change its laws and policies concerning the sanctity of life, especially with respect to physician-assisted suicide.

(a) Euthanasia and Assisted Suicide

3. Euthanasia and assisted suicide have been legal in Luxembourg since March 2009. Grand Duke Henri, the country’s head of state, was reported in December 2008 to have stated that he would refuse to grant his assent to the law. In response to this, the government announced that it would be amending the constitution to remove the Grand Duke’s power to withhold assent to laws passed by the parliament, a reform which passed.¹
4. Unlike Switzerland, the criminal law of which allows an individual to assist in suicide as long as it is not done for “selfish reasons,” Luxembourg still maintains criminal sanctions on euthanasia and assisted suicide performed outside the legal framework of the Act specifically permitting it. The Luxembourg government claims that this prevents abuses of the law.²
5. The conditions required under the law are that the patient must be an adult, capable, and conscious at the time of the request, that the request must be made voluntarily after reflection and with no external pressure, and that the patient must be in a “severe and incurable terminal medical situation, and have constant and unbearable physical or mental suffering without prospects of improvement.”³
6. The patient must have his direct request recorded in writing, sign it himself or have an adult person of his choice sign it in the presence of the authorising doctor if he is unable to do so. The request remains valid for the entire period needed to perform the procedure even if the patient loses consciousness during that time.⁴

¹ Thaddeus M. Baklinski, Luxembourg Legalizes Euthanasia, 18 March 2009, available at: <https://www.lifesitenews.com/news/luxembourg-legalizes-euthanasia>.

² Luxembourg Ministry of Health and Social Security, Euthanasia and assisted suicide: Law of 16 March 2009 – 25 questions, 25 answers, available at: <http://www.sante.public.lu/fr/publications/e/euthanasie-assistance-suicide-questions-reponses-fr-de-pt-en/euthanasie-assistance-suicide-questions-en.pdf>, accessed 23 June 2017.

³ Ibid.

⁴ Ibid.

7. In determining whether or not the patient is undergoing “unbearable suffering without prospects of improvement,” the Ministry of Health claims that it is a “subjective and personal question from the patient and depends on their personality, [their] pain perception threshold, their conceptions and their values,” and gives this as the reason why a second doctor must give authorisation in addition to that of the treating doctor.⁵
8. The law also recognises freedom of conscience on the part of doctors who are permitted to refuse to perform euthanasia or assisted suicide, as well as individual carers, but denies that hospitals, retirement homes, rehabilitation centres, and other institutions cannot prohibit their doctors from agreeing to perform euthanasia and assisted suicide when the conditions provided by the law are satisfied. As a result, it is possible that institutions operated by religious organisations or according to religious values would be forced to allow such procedures to take place under their auspices.⁶
9. An official report from a commission designed to monitor the utilisation of the law released in April 2015 claimed that “no abuses had been detected and that all procedures were carried out within the legal framework,” that only 15 people underwent euthanasia from 2013 to 2014, and that the majority occurred in hospitals, with only three dying at retirement homes and one at home. The report prompted the president of the Chamber of Deputies, Mars Di Bartolomeo, to proclaim that “the law [is] no longer cause of polemic and [has] found its place in society.”⁷
10. This assessment, however, has been criticised by some opposed to the law, who have said that claims of no abuses “conveniently [omit] that the system of reporting euthanasia deaths in Luxembourg is not designed to uncover abuse.” This is due to the fact that euthanasia reports are sent to the commission post-mortem by the doctor who performed the procedure, and these doctors are not likely to voluntarily report their own failures to comply, making such claims unfalsifiable, more often than not.⁸
11. In truth, euthanasia and assisted suicide are phenomena which represent fundamental violations of basic human dignity and the right to life enshrined in Article 6 of the ICCPR. The right to life does not include a right to die, a principle set forth in the

⁵ Luxembourg Ministry of Health and Social Security, Euthanasia and assisted suicide: Law of 16 March 2009 – 25 questions, 25 answers, available at: <http://www.sante.public.lu/fr/publications/e/euthanasie-assistance-suicide-questions-reponses-fr-de-pt-en/euthanasie-assistance-suicide-questions-en.pdf>, accessed 23 June 2017.

⁶ Ibid.

⁷ Luxemburger Wort, Luxembourg euthanasia report finds no abuses of the law, 22 April 2015, available at: <https://www.wort.lu/en/politics/15-cases-in-2013-and-2014-luxembourg-euthanasia-report-finds-no-abuses-of-the-law-5537989d0c88b46a8ce57d97>.

⁸ Alex Schadenberg, National Right to Life News, Luxembourg euthanasia report conceals more than it reveals, 24 April 2015, available at: <http://www.nationalrighttolifenews.org/news/2015/04/luxembourg-euthanasia-report-conceals-more-than-it-reveals/#.WU0WD2iGPgk>.

unanimous decision of the European Court of Human Rights in the 2002 case of *Pretty v. United Kingdom*⁹ and the 2011 case of *Haas v. Switzerland*.¹⁰

12. These cases affirm that the right to privacy under Article 8 and the prohibition of torture, inhuman, or degrading treatment or punishment under Article 3 of the European Convention on Human Rights must be understood in conjunction with Articles 2, which not only prohibits the State from intentionally and unlawfully taking life, but also obliges States to take appropriate steps to safeguard the lives of those within its jurisdiction.
13. Countries which have introduced so-called “euthanasia” laws claim that adequate safeguards have been put in place to guarantee the autonomy of the patient. An increasing decline in societal regard for the inherent dignity of human life, especially people at their most vulnerable stage of life, carries an inherent danger of causing older persons in particular to assent to assisted suicide after reaching a point of feeling that they are burdens on their loved ones and those caring for them.
14. As an example outside Luxembourg, in 2015, a healthy British former nurse specializing in palliative care ended her life at the age of 75 at a suicide clinic in Basel, Switzerland, stating that she did not want to become “a hobbling old lady,” and that “the thought that I may need help from my children appalls me. I know many old people expect, and even demand, help from their children but I think this is a most selfish and unreasonable view.”¹¹
15. The inadequacy of the ‘protections’ offered by the domestic law are further amplified by the rising number of euthanasia ‘deaths’ and concomitant abuse of the system. In *Haas v. Switzerland*, the Court stated that “when a country adopts a liberal approach, appropriate measures to implement such liberal legislation and measures to prevent abuse are required,” going on to say that “the risk of abuse inherent in a system which facilitates assisted suicide cannot be underestimated.”
16. It is the duty of the State to protect human life to any extent within its power, and it is the duty of a medical practitioner under the Hippocratic Oath to treat and to heal, and not to kill or do harm. When a State takes it upon itself to be the arbiter of when innocent life can be legally taken, it sets society down a path to a place in which the right to life will cease to have any real meaning.
17. In the context of the Council of Europe, of which Luxembourg is a member, while the European Court of Human Rights has explained that there is no “right” to assisted suicide under the Convention, the Parliamentary Assembly of the Council of Europe has gone further, stating in Recommendation 1418 (1999) that “the Committee of Minister [should] encourage the member states of the Council of Europe to respect

⁹ [2002] 35 E.H.R.R. 1.

¹⁰ (2011) 53 E.H.R.R. 33.

¹¹ The Telegraph, Healthy retired nurse ends her life because old age ‘is awful,’ 2015, <http://www.telegraph.co.uk/news/health/11778859/Healthy-retired-nurse-ends-her-life-because-old-age-is-awful.html>.

and protect the dignity of terminally ill or dying persons in all respects ... by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while (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; [and] (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."

18. In Resolution 1859 (2012), the Assembly went even further by stating 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."

(d) Recommendations

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

- a. Recognize the right to life from conception until natural death and the State's duty and obligation to protect and defend this right;
- b. Repeal all laws which allow assisted suicide or euthanasia, acknowledging that there is no right to death under international law and that such practices violate the right to life; and
- c. Until the law on euthanasia and assisted suicide is repealed, ensure that no hospital, retirement home, care or rehabilitation facility, or other institution is required by law to allow or facilitate such procedures, especially in light of religious and moral values underpinning many organisations providing end-of-life care.



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