



ADF INTERNATIONAL

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**ITALY**

**Submission by:**

ADF International  
Chemin du Petit-Saconnex 28  
1209 Geneva, Switzerland

Web: [www.ADFinternational.org](http://www.ADFinternational.org)  
Email: [gmazzoli@ADFinternational.org](mailto:gmazzoli@ADFinternational.org)

## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people. 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, and the Organization of American States. ADF International is also a participant in the FRA Fundamental Rights Platform.
2. This report explains why Italy must revise its laws and policies concerning the right to life, especially those concerning advance refusals of medical treatments, and continue to prohibit assisted suicide.

### a) Right to life and freedom of conscience

#### *Advance refusal of medical treatments*

3. To date, there is no legal framework in place concerning specifically euthanasia or assisted suicide in Italy. However, Articles 1 and 4 of Law No. 219/2017 allows for the possibility for a patient to make an advance refusal of life-prolonging medical treatments (so called DAT).
4. This legislation raises serious concerns with regard to the definition, provided by the legislator, of what medical treatments a patient can refuse. Indeed, according to Law No. 219/2017, "medical treatments" are understood in the broadest sense so as to include basic care such as artificial nutrition and hydration.
5. While this legislation does not formally regulate either euthanasia or assisted suicide, it achieves this result in practice insofar as it allows a patient to refuse a medical treatment that does not constitute therapeutic overkill.
6. Countries which have introduced laws on euthanasia and assisted suicide claim that adequate safeguards have been put in place to guarantee the autonomy of the patient, as well as the respect for his or her free, prior and informed consent. An increasing decline in societal regard for the human dignity of human life, especially people at 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.
7. Law No. 219/2017 also lacks an expression provision guaranteeing the right to conscientious objection of the medical and legal professionals, on the one hand, and the medical structures involved on the other. Compared to the Italian abortion law, which provided an opt-in system for the provision of abortion in private medical structures, Law No. 219/2017 establishes that every public and private health care facility must guarantee abidance to the will of a patient to refuse medical treatment, thereby compelling all medical structures, including religious health care institutions, to administer these end-of-life procedures.

#### *The right to life in international law*

8. Article 6(1) of the ICCPR states, '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.' Furthermore, Article 6(2) of the ICCPR sets out the conditions for applying the only

exception to the general rule: Article 6(2): In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide.

9. Furthermore, the right to life does not include a right to die, a principle set forth in the unanimous decision of the European Court of Human Rights in the 2002 case of *Pretty v. United Kingdom* and the 2011 case of *Haas v. Switzerland*. This particularly applies to the notion of state-endorsed doctor-assisted suicide. 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.

### *Freedom of conscience in international law*

10. The Universal Declaration of Human Rights (UDHR) states in its very first article that 'all human beings are... endowed with reason and conscience', in addition to a specific provision protecting conscience in Article 18. The International Covenant on Civil and Political Rights (ICCPR), which entered into force on 23 March 1976 and has 168 State Parties, has a similar provision in Article 18 (1), protecting thought, conscience, and religion.
11. In Europe, the European Convention on Human Rights provides that 'everyone has the right to freedom of thought, conscience and religion'. The Grand Chamber of the European Court of Human Rights (ECtHR) has ruled in favour of the right to conscientious objection in the military context in the case of *Bayatyan v. Armenia*<sup>1</sup>. In the health sector, the ECtHR has yet to rule specifically on the matter, but has clearly anticipated the existence of such rights of conscientious objection in holding: 'States are obliged to organize the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services'<sup>2</sup>.
12. Moreover, the Parliamentary Assembly of the Council of Europe (PACE) adopted unequivocal language in Resolution 1763 (2010), entitled 'The right to conscientious objection in lawful medical care': No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason'<sup>3</sup>.

<sup>1</sup> *Bayatyan v. Armenia* [GC], App No 23459/03, 7 July 2009.

<sup>2</sup> *RR v. Poland*, no 27617/04, 26 May 2011, § 83.

<sup>3</sup> Council of Europe Parliamentary Assembly, 'The right to conscientious objection in lawful medical care' (Resolution 1763, 2010)

## **b) Recommendations**

13. In light of the aforementioned, ADF International suggests that the following recommendations be made to Italy:

- (a) Recognize that the State has a duty and obligation to protect and defend the right to life under international law, acknowledging that there is no right to death under international law and that euthanasia and assisted suicide constitute a violation thereof;
- (b) Review its Law No. 219/2017 consistent with Italy's obligations under the ICCPR and other international and regional human rights instruments protecting the right to life as well as the right to freedom of conscience;
- (c) Fully guarantee the exercise of the right to conscientious objection by health professionals, in order to safeguard freedom of conscience of medical personnel;
- (d) Ensure that no individual or health care institution is compelled to participate in the performance of procedures they object to due to conscience or religious reasons.
- (e) Ensure that patients are provided with high-quality palliative care;
- (f) Refrain from decriminalizing assisted suicide, and instead implement laws aimed at protecting the right to life at every stage of human development.



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