

euthanasia, in at least some instances, may prevent patients from receiving the health care to which they are entitled. Indeed, research has indicated that requests for death—even among terminally ill patients—are closely associated with depression that is potentially treatable.<sup>8</sup> Luxembourg’s euthanasia policy, moreover, allows the killing of patients with psychiatric problems, and such killing occurs regularly in the Netherlands, Belgium, and Switzerland, where the practice of euthanasia or assisted suicide is more established.

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A 2016 study published in *JAMA Psychiatry*, for example, reviewed the cases of 66 Dutch patients who were euthanized for psychiatric reasons. Depression was the primary issue in 55 percent of the cases. A majority of patients were described as socially isolated or lonely. Some had post-traumatic stress, eating disorders, or autism. And 56 percent of patients had refused some recommended treatment—yet were still granted euthanasia.<sup>9</sup>

This is a failure to protect the right to health. All patients deserve the highest standard of health.

### Conclusion

Luxembourg is committed to human rights instruments that protect the right to life, the right to health, and equality and non-discrimination. But Luxembourg’s practice of euthanasia and assisted suicide threatens all of these rights. To fulfill its international human rights obligations, Luxembourg should revise its law to prohibit euthanasia and protect the lives and health of all patients.



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## Euthanasia & human rights in Luxembourg

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### MCCL GO contribution to the Human Rights Council’s Universal Periodic Review of Luxembourg

Luxembourg is one of just three European countries to legalize euthanasia. This practice, however, has received little scrutiny. The Minnesota Citizens Concerned for Life Education Fund encourages the Human Rights Council to consider the human rights concerns raised by euthanasia in Luxembourg. We argue that euthanasia endangers the right to life, the right to health, and equality and non-discrimination. These are rights protected by international human rights instruments to which Luxembourg is a party.

### Overview of euthanasia in Luxembourg

In 2009, Luxembourg became the third country in Europe—following the Netherlands and Belgium—to legalize euthanasia. It also legalized assisted suicide. Euthanasia, according to the Luxembourg law, is when a physician intentionally kills a patient at his or her voluntary request. Assisted suicide is when a physician intentionally provides a patient, at the patient’s voluntary request, with the means to end his or her own life.

The Luxembourg law requires that patients who receive euthanasia or assisted suicide make a free and voluntary request. The patients must also have an incurable condition and be experiencing either physical or psychological suffering. Patients need not have a terminal illness in order to be eligible.

Because Luxembourg is a small country with a small population, and because euthanasia has been legal there for a relatively short period of time, the number of patients euthanized has been much smaller than in other countries where it is legal. During 2015 and 2016, according to the latest report by Luxembourg’s commission for monitoring and evaluating euthanasia, a total of 18 people were euthanized in Luxembourg; during the previous two-year period, 15 patients died by euthanasia. Since the law went into effect (through 2016), 52 patients

<sup>8</sup> H.M. Chochinov et al., “Desire for Death in the Terminally Ill,” *American Journal of Psychiatry*, Vol. 152, No. 8 (1995), 1185-91.  
<sup>9</sup> Scott Y. H. Kim et al., “Euthanasia and Assisted Suicide of Patients with Psychiatric Disorders in the Netherlands 2011 to 2014,” *JAMA Psychiatry*, Vol. 73, No. 4 (April 2016), pp. 362-68.

have been euthanized. Most of these have been cancer patients, but some have had neurodegenerative or other diseases.<sup>1</sup>

The annual number of euthanasia cases has increased every year except 2013 and 2014. This upward trend is consistent with other jurisdictions—including the Netherlands, Belgium, Switzerland, and the U.S. states of Oregon and Washington—where euthanasia or assisted suicide has been legalized and where the number of cases has grown substantially over time.

### Euthanasia and the right to life

The Universal Declaration of Human Rights (UDHR) affirms “the inherent dignity and ... equal and inalienable rights of all members of the human family” (preamble). It also states, “Everyone has the right to life, liberty and security of person” (Article 3). The International Covenant on Civil and Political Rights (ICCPR) declares, “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” (Article 6.1). The European Convention on Human Rights states, “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally” (Article 2.1).

Euthanasia in Luxembourg endangers the right to life in multiple ways. First, euthanasia, by definition, is the intentional killing of an innocent human being. This is a straightforward violation of the right to life. The right to life is *inherent* and belongs to all human beings, regardless of age, illness, and disability. Moreover, the right to life is *inalienable* and cannot simply be forfeited or waived by the one who bears the right. Euthanasia patients, therefore, have a right to life and may not be intentionally killed.

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Second, even if voluntary euthanasia were not a violation of the right to life, the voluntariness of the practice cannot be guaranteed. Euthanasia deaths are reported after the fact by the doctors who perform the euthanasia. Abuses of Luxembourg’s euthanasia requirements would be difficult to uncover because doctors are unlikely to report their own violations of the law.

In addition, Luxembourg permits euthanasia when patients are not suffering physically but only “psychologically.” In other jurisdictions where euthanasia is practiced, the “suffering” required for eligibility has been interpreted very broadly and very subjectively, encompassing psychological and emotional pain, such as the pain caused by depression and mental illness. (Indeed, the commission responsible for overseeing euthanasia in Luxembourg calls the determination of suffering “subjective.”<sup>2</sup>) But depression, bereavement, and similar mental factors can hinder a person’s judgement and prevent proper consent.

Luxembourg’s euthanasia and assisted suicide policy has followed in the footsteps of three of the country’s European neighbors—the Netherlands, Belgium, and Switzerland. The evidence from all three nations shows how euthanasia and assisted suicide endanger the right to life of individuals who have mental health problems. For example, Dutch euthanasia patients include people with dementia and people with only psychiatric (non-physical) problems, such as depression, loneliness, and post-traumatic stress. They also include people who

are “tired of living.”<sup>3</sup> In 2015, 109 Dutch dementia patients were euthanized, and 56 people were killed for psychiatric reasons.<sup>4</sup>

In Switzerland, many patients with psychiatric disorders, including depression, have received assisted suicide. A study of assisted suicides performed by Swiss end-of-life groups found 20 cases in which a mental health problem was the sole underlying condition mentioned.<sup>5</sup> An older study of 43 assisted suicide cases published in *Swiss Medical Weekly* found that 14 percent of individuals dying by assisted suicide had been treated in a psychiatric institution. In 12 percent of cases, patients chose assisted suicide because of bereavement.<sup>6</sup>

### Euthanasia and nondiscrimination

Suicide is not considered generally acceptable in Luxembourg or elsewhere. Indeed, in its evaluation of Luxembourg, the United Nations Committee on Economic, Social, and Cultural Rights reported that it is “concerned about the high incidence of suicide in the State party, especially among young people.” It recommended “that the State party take measures to address the high incidence of suicide.”<sup>7</sup>

While Luxembourg aims to protect most people from suicide or intentional killing, however, its euthanasia law makes an exception by deeming people who meet certain criteria eligible to be killed.

This discrimination is contrary to the equality and non-discrimination required by international human rights instruments. The UDHR guarantees the rights and freedoms of everyone “without distinction of any kind” (Article 2) and states, “All are equal before the law and are entitled without any discrimination to equal protection of the law” (Article 7). The ICCPR also prohibits discrimination (Article 26).

The Convention on the Rights of Persons with Disabilities (CRPD) considers “discrimination against any person on the basis of disability ... a violation of the inherent dignity and worth of the human person” (preamble). Parties to the CRPD “reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others” (Article 10).

By authorizing the killing of some human beings, Luxembourg’s law creates a distinction in how it treats different categories of people. It also sends a message to society about the kind of lives that are worth living and the kind that are not. This discrimination must be rejected.

### Euthanasia and the right to health

The International Covenant on Economic, Social, and Cultural Rights protects “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (Article 12.1). The facilitation of

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<sup>1</sup> Commission Nationale de Contrôle et d’Evaluation de la loi du 16 mars 2009 sur l’euthanasie et l’assistance au suicide, *Quatrième rapport de la loi du 16 mars 2009 sur l’euthanasie et l’assistance au suicide (années 2015 et 2016)*, June 2017.

<sup>2</sup> Ibid.

<sup>3</sup> See, for example, Marianne C. Snijdewind et al., “A Study of the First Year of the End-of-Life Clinic for Physician-Assisted Dying in the Netherlands,” *JAMA Internal Medicine*, Vol. 175, No. 10 (October 2015), pp. 1633-40.

<sup>4</sup> Netherlands Regionale Toetsingscommissies Euthanasie, *Jaarverslag 2015*, April 2016.

<sup>5</sup> Nicole Steck et al., “Suicide Assisted by Right-to-Die Associations: A Population Based Cohort Study,” *International Journal of Epidemiology*, Vol. 43, No. 2 (2014), pp. 614-22.

<sup>6</sup> Andreas Frei et al., “Assisted Suicide as Conducted by a ‘Right-to-Die’-Society in Switzerland: A Descriptive Analysis of 43 Consecutive Cases,” *Swiss Medical Weekly*, Vol. 131 (2001), pp. 375-80.

<sup>7</sup> U.N. Committee on Economic, Social and Cultural Rights, “Concluding Observations of the Committee on Economic, Social and Cultural Rights, Luxembourg,” U.N. doc E/C.12/1/Add.86, June 26, 2003.