

# NGO: EUROPEAN CENTRE FOR LAW AND JUSTICE (ECLJ)

# UNIVERSAL PERIODIC REVIEW 43RD SESSION

STATUS OF HUMAN RIGHTS IN THE FRENCH REPUBLIC FOR THE 43<sup>RD</sup> SESSION OF THE UNIVERSAL PERIODIC REVIEW

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#### Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding human rights violations in the French Republic (France) for the 43rd Session of the Universal Periodic Review (UPR).

# **Background**

- 2. France is located in Western Europe and has a population of approximately 62.8 million people. Approximately 47% of the population identify as Roman Catholic, 4% as Muslim, 2% as Protestant, 2% as Buddhist, 1% as Orthodox, 1% as Jewish, 1% as other, 33% as no religion, and 9% as unspecified.
- 3. France's previous UPR was held on January 15, 2018.<sup>3</sup> As a result of the review, France received 297 recommendations, 239 of which France supported.<sup>4</sup> During the UPR, France received no recommendations regarding its liberal abortion laws. Since the last UPR, France has expanded access to abortion. Additionally, we are concerned about France's growing trend toward legalizing euthanasia. Further, France has taken steps to restrict parents' ability to homeschool their children.

# **Legal Framework**

### Abortion

- 4. In March 2022, France expanded access to abortion by providing abortion on demand up until the 14th week of pregnancy, and allowed midwives to carry out surgical abortions.<sup>5</sup> Previously, abortion was permitted until the 12th week of pregnancy.<sup>6</sup> In addition, this law provides that women no longer need to go to a doctor to receive abortion pills.<sup>7</sup> This process can now be done via a teleconsultation.<sup>8</sup> Further, this law also codified previous case law that established that pharmacists do not have a right to refuse to sell abortion pills.
- 5. Additionally, under the French Public Health Code, a therapeutical abortion can be carried out up to birth if two approved doctors consider that there is "a strong probability that the fetus is affected by a particularly serious condition recognized as incurable at the time of diagnosis." 9
- 6. French law also allows minors to have an abortion without the consent of their parents. For these situations, abortion is 100% covered.<sup>10</sup>

- 7. Although this occurred during the last review period, it is important to note that in February 2017, French lawmakers passed a law "sanctioning websites that aim to dissuade women from terminating a pregnancy by using 'misleading claims' on abortion."<sup>11</sup>
- 8. As a party to the Convention on the Rights of the Child (CRC),<sup>12</sup> France is required to protect all human life, including children who have "the inherent right to life" and, as such, is also required to "ensure to the maximum extent possible the survival and development of the child."<sup>13</sup>
- 9. Additionally, France is a party to the International Covenant on Civil and Political Rights (ICCPR). Under Article 6 of the ICCPR, "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. France also holds a responsibility to uphold pro-life principles enshrined in other international agreements such as the UN Charter, Universal Declaration of Human Rights (UDHR) and the 1994 Cairo Conference on Population and Development.

#### Education

- 10. The French law No. 2021-1109 to strengthen respect for the principles of the Republic, adopted on August 24, 2021, strongly restricts homeschooling. <sup>16</sup> Before this new restriction, families wanting to homeschool their children simply had to make an annual declaration to the public authorities. The government's original intention for this law was to ban homeschooling completely, except for children with serious disabilities that prevent their school attendance. Eventually, the government decided to change the status of homeschooling from a freedom to an exception to the new principle of compulsory schooling, and to subject it to a system of prior authorization. <sup>17</sup>
- 11. Article 18 of the CRC recognizes that it is the responsibility of the parents to raise their children. Under Article 18 of the CRC, "Parents . . . have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern." 18
- 12. Additionally, under Article 26 of the UDHR, "[p] arents have a prior right to choose the kind of education that shall be given to their children." 19

#### Assisted Suicide

- 13. In February 2016, France adopted a law which grants terminally ill patients the option to be "sedated until death" but stops just short of allowing euthanasia or assisted suicide.<sup>20</sup> Under this law, patients are allowed to request "deep, continuous sedation altering consciousness until death."<sup>21</sup> Additionally, this law allows doctors to "stop life-sustaining treatments, including artificial hydration and nutrition."<sup>22</sup>
- 14. As stated above, Article 6 of the ICCPR states that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Additionally, under Article 10 of the Convention on the Rights of Persons with Disabilities (CRPD), to which France is also a party, "States Parties 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." Moreover,

Article 17 of the CRPD holds that "[e]very person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others." <sup>26</sup>

# Right to Life

#### Abortion in France

- 15. Recourse to abortion is at its highest in 30 years in France, with more than 230,000 abortions performed every year. Instead of preventing abortion, as required by the 1994 Cairo Conference on Population and Development where U.N. Member States were urged to "reduce the recourse to abortion" and to "take appropriate steps to help women avoid abortion, *which in no case should be promoted as a method of family planning*," in March 2022, France adopted a new law extending the time limit for abortion on demand to 14 weeks of pregnancy, instead of 12 weeks. Further, the law now allows midwives to perform surgical abortions in hospitals.<sup>29</sup>
- 16. France must realize that its position on abortion is an extreme position, as it is one of only eight countries in the world that has gestational limits on abortion up to the 14th week of pregnancy. Most countries recognize that there is no inherent right to abortion. In fact, out of 193 U.N. Members States, an overwhelming majority (112) of them have strict limits on abortion. This is because most countries understand that abortion entails the deliberate killing of an innocent human being, making it one of the gravest offenses against human life and justice. Even in the sixty-two countries that have varying gestational limits for on demand abortion, the majority of these (53) have a gestational limit of twelve weeks or less. As noted above, only eight countries with gestational limits allow abortion up to the 14<sup>th</sup> week.
- 17. In addition to France's laws being extreme outliers among other countries, France's law regarding abortion also contravenes international law. For example, the UDHR states that "recognition of the inherent dignity and of the equal and inalienable rights of *all* members of the human family is the foundation of freedom, justice and peace in the world,"<sup>33</sup> The ICCPR recognizes that, "[e]very human being has the inherent right of life. This right shall be protected by law."<sup>34</sup> And, the preamble of the United Nations Charter states that the purpose of the UN was "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person."<sup>35</sup> These documents acknowledge the precious gift of life, its dignity and worth, as the foundational human right in need of extreme protection. It is important to note that, while virtually all international treaties contain provisions for the protection and promotion of the right to life, not one contains a "right to abortion."

## Systematic Eugenic Abortion

- 18. As stated above, France permits therapeutic abortions up until birth.<sup>36</sup> This leads, in particular, to the elimination of most preborn babies diagnosed with Down syndrome. The use of systematic prenatal genetic testing with the aim of killing these babies violates their rights, which the Committee on the Rights of Persons with Disabilities reminded France.
- 19. The practice of eugenic abortion is extremely concerning, as it purposefully kills a preborn child simply because he or she may be born with a disability. Medical advances allow babies born with physical abnormalities to live long and healthy lives. For example, in 1983,

the average life expectancy of a person born with Down syndrome was 25 years old. Today, that life expectancy is 60 years and continues to increase. The decision of whether a baby is allowed to live or be killed should not be based on prenatal tests *that have been proven to be unreliable*.<sup>37</sup>

# The practice of neonatal infanticide

20. As shown in an article<sup>38</sup> and in a documentary by the ECLJ,<sup>39</sup> each year there are children born alive during an abortion procedure done after the 20th week of pregnancy. The delivered babies are, most often, abandoned to die without care, struggling to breathe, sometimes for several hours, or they are killed by lethal injection or suffocation, then thrown away with organic waste – so, live babies are horrifically murdered and discarded. What is worse is that France does not even try to outlaw these abhorrent crimes.

### The crime of obstruction of abortion

21. Determined to protect abortion, by making sure there is no competing alternative, a 2017 law created an extension of the crime of obstruction of abortion. It targets associations providing information on the possible consequences of abortion, especially on physical and mental health. It is now prohibited to attempt to dissuade women from getting an abortion "by any means, including electronically or online, in particular by the dissemination or transmission of allegations or indications likely to intentionally mislead, for the purpose of dissuasion, on the characteristics or the medical consequences of a voluntary termination of pregnancy."<sup>40</sup> This law is problematic because it can be used to shut down and criminalize speech that is pro-life. Under this law, publishing information online about the dangers of abortion and the harmful impact it has on women could be seen as an attempt to dissuade someone from getting an abortion based on the "medical consequences of a voluntary termination of pregnancy."

# Dangers of abortion

- 22. France must also protect women from the inherent dangers of abortion. It has been well documented that abortion can result in serious physical harm to the mother. Abortion has been reported to cause serious health complications such as the perforation of the uterus<sup>41</sup> or laceration of the cervix. Additionally, the mother is deprived of the health benefits that result from continuing the pregnancy. For example, the elimination of the protective effect a full-term pregnancy can have against breast cancer. Further it can mask other dangerous symptoms such as an undiagnosed infection or ectopic pregnancy because the woman may believe these are just symptoms of the abortion. This can lead to a woman delaying seeking medical help.
- 23. Abortion can also result in women suffering from drug abuse to suicidal thoughts. 46 All of these factors show the devastating effect abortion has on women and stresses the need to restrict abortion in order to protect women and preborn children. However, despite the dangers, and international commitments to reduce access to abortion, France just expanded access to abortion which will put more women and preborn children at risk.
- 24. For these reasons, we are concerned about France's law no longer requiring parental consent for abortions for minors in violation of its international commitments, including the parental rights guaranteed under the CRC. As we have just demonstrated, abortion, particularly

on young girls, can have a long lasting and devastating impact on their lives. Parents have an absolute right to be involved in approving medical procedures for their children, especially when it involves the termination of another life.

*No freedom of conscience for pharmacists* 

25. Pharmacists have never been provided the right to refuse selling abortion pills. Since abortion pills were legalized, case law established that pharmacists do not have a right to conscientious objection.<sup>47</sup> The March 2022 law further codified this lack of protection for pharmacists.<sup>48</sup>

Attacks against the freedom of conscience for health professionals

- 26. The initial draft of the law of March 2022 contained language that would remove the conscience clause on abortion for doctors, midwives, nurses, and medical auxiliaries.<sup>49</sup> Fortunately, thanks to opposition of health professionals, the conscience clause was maintained.<sup>50</sup> However, the Greens and socialist politicians continue to regularly threaten to suppress conscientious objection to abortion.
- 27. France is also contemplating adding a "right to abortion" to the French Constitution, and once again threatening to remove the conscience clause protection regarding abortion. <sup>51</sup> Although the conscience clause has its basis in the fundamental right to freedom of conscience, it is too often described only as an obstacle to abortion. It is being addressed without legal basis as if it is some newly articulated right. <sup>52</sup>

#### **Assisted Suicide**

- 28. As stated above, France currently has not legalized euthanasia but instead allows for patients to be "sedated until death." In July 2019, we saw the horrible realities of this policy take effect. To its credit, the Committee on the Rights of Persons with Disabilities asked France three times to suspend its decision to stop Vincent Lambert's, a disabled person, hydration and nutrition, acknowledging Mr. Lambert's inherent right to life. Remarkably, France failed to comply with these interim measures and let Mr. Lambert die from thirst and starvation on July 11, 2019. France refused to provide food and liquids to Mr. Lambert on the basis of his disability, knowing that it would cause his death.
- 29. In September 2022, President Marcon announced plans to begin the process of legalizing assisted suicide in France.<sup>55</sup> According to a written statement by President Marcon, "a body composed of citizens will work on the issue in the coming months in coordination with health care workers, while local debates are to be organized in French regions."<sup>56</sup>
- 30. Assisted suicide is in itself a flagrant violation of Article 6 of the ICCPR, which requires the state to respect and protect the lives of all people, without exception, and establishes the principle that "[n]o one shall be arbitrarily deprived of his life." States have an obligation not to take part in an intentional killing of a human being by a third person, either by providing the means or by not preventing it when possible.

31. In January 2021, even some UN Special Rapporteurs noted that "[u]nder 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." 58

#### Freedom of education

- 32. As stated above, French law No. 2021-1109 to strengthen respect for the principles of the Republic is strongly restricting homeschooling.<sup>59</sup> The list of exceptions to this ban on parental instruction is as limited as it is disturbing. Only four justifications for homeschooling can be invoked by parents: the medical condition of the children, intensive sports practice, itinerant families, and, finally, "the existence of a situation specific to the child motivating the educational project." Depending on the localities, there have been various interpretations of this text, but the interpretations have never been flexible. For the year 2022-2023, 68% of requests for authorization for homeschooling were rejected, with this rate even reaching 100% in certain localities, such as Toulouse, Besançon, Dijon, and Orléans.
- 33. The law reverses the natural organization of functions between parents and the state; it is no longer the parents, but the state, that becomes the primary educator of children, with the parents having only a secondary "role." It stands in complete opposition to the UDHR and CRC.

#### Recommendations

- 34. France must take steps to protect the life of the preborn. To do this, France must reform its laws to restrict abortion, which would protect the most vulnerable among us. France must recognize the inherent dignity of the human person from conception to death. Moreover, France must also provide protections for conscientious objectors.
- 35. Further, we ask that France reform its laws to reflect a true respect and value for innocent life. It must fully respect the right to life and reject efforts to legalize assisted suicide in the country.
- 36. Additionally, France must revise its laws on homeschooling in order to provide parents with greater freedom when it comes to deciding how to educate their children. It is crucial that France allow parents to decide for themselves how best to educate their children.

<sup>&</sup>lt;sup>1</sup> France, THE WORLD FACTBOOK (Sep. 22, 2022), https://www.cia.gov/the-world-factbook/countries/france/.

 $<sup>^{2}</sup>$  Id.

<sup>&</sup>lt;sup>3</sup> *Universal Periodic Review – France*, OHCHR, https://www.ohchr.org/en/hr-bodies/upr/fr-index.

 $<sup>^4 \</sup> Infographic-France, OHCHR, https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session29/FR/FRANCE_Infographic_29th.pdf.$ 

<sup>&</sup>lt;sup>5</sup> France Modifies its Abortion Law, Extends Gestational Age Limits and Allows Midwives to Perform Surgical Abortion, EUROPE ABORTION ACCESS (Mar. 15, 2022), https://europeabortionaccessproject.org/france-modifies-its-abortion-law-extends-gestational-age-limits-and-allows-midwives-to-perform-surgical-abortions/.

<sup>6</sup> Id.

<sup>&</sup>lt;sup>7</sup> Emmanuelle Lucas, *The Government Makes Medical Abortions Permanent Abortions by Teleconsultation*, LA CROIX (Feb. 21, 2022), https://www.la-croix.com/Sciences-et-ethique/Le-gouvernement-perennise-IVG-medicamenteuses-teleconsultation-2022-02-21-1201201370.

<sup>&</sup>lt;sup>9</sup> Article L. 2213-1 of the Public Health Code.

- <sup>10</sup> L'IVG pour mineures: comment ça se passe?, MINISTERE DE LA SANTE ET DE LA PREVENTION (Feb. 08, 2022), https://ivg.gouv.fr/l-ivg-pour-mineures-comment-ca-se-passe.html.
- <sup>11</sup> Natalie Huet, *France to Sanction "Misleading" Anti-Abortion Websites*, POLITICO (Feb. 16, 2017), https://www.politico.eu/article/france-to-sanction-misleading-anti-abortion-websites/.
- <sup>12</sup> Status of Ratification France, OHCHR,

 $https://tbinternet.ohchr.org/\_layouts/15/TreatyBodyExternal/Treaty.aspx? CountryID=62\&Lang=EN~(last~visited~Sep.~12,~2022).$ 

- <sup>13</sup> Convention on the Rights of the Child art. 6, 1577 U.N.T.S. 3, Nov. 20, 1989.
- <sup>14</sup> Status of Ratification France, OHCHR,

https://tbinternet.ohchr.org/\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=62&Lang=EN (last visited Sep. 12, 2022).

- <sup>15</sup> International Covenant on Civil and Political Rights art. 6, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR], https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.
- $^{16}$   $L'instruction\ dans\ a\ Famille$ , MINISTERE DE L'EDUCATION NATIONALE ET DE LA JEUNESSE (Mar. 2022), https://www.education.gouv.fr/l-instruction-dans-la-famille-340514.
- <sup>17</sup> Grégor Puppinck, *Liberté éducative et Driots de l'homme*, EUROPEAN CENTER FOR LAW & JUSTICE (Dec. 2020), http://media.aclj.org/pdf/Liberte-educative-et-droits-de-l'homme-ECLJ-Puppinck-2020.pdf.
- <sup>18</sup> Convention on the Rights of the Child art. 18, *supra* note 13.
- <sup>19</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 26 (Dec. 10, 1948).
- <sup>20</sup> France Adopts Sedated Dying Law as Compromise on Euthanasia, GUARDIAN (Jan. 27, 2016), https://www.theguardian.com/society/2016/jan/28/france-adopts-sedated-dying-law-as-compromise-on-euthanasia.
- <sup>21</sup> *Id*.
- <sup>22</sup> *Id*.
- <sup>23</sup> ICCPR, *supra* note 15, art. 6.
- <sup>24</sup> Status of Ratification France, supra note 12.
- <sup>25</sup> Convention on the Rights of Persons with Disabilities art. 10,

https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html.

- <sup>26</sup> *Id.* art 17.
- $^{27}$  U.N., Report of the International Conference on Population and Development,  $\P$  8.25, U.N. Doc. A/CONF/F.171/13/Rev.1 at 58 (Sept. 5-13, 1994),

https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/icpd\_en.pdf.

- <sup>28</sup> *Id.*, at ¶ 7.24 (emphasis added).
- <sup>29</sup> Loi du 2 mars 2022 visant à renforcer le droit à l'avortement, MINISTÈRE DE L'ÉDUCATION NATIONALE ET DE LA JEUNESSE (Mar. 3, 2022), https://www.vie-publique.fr/loi/276586-loi-2-mars-2022-renforcer-droit-avortement-delai-porte-14-semaines.
- <sup>30</sup> The World's Abortion Laws, CTR. FOR REPROD. RTS. (Feb. 23, 2021),

https://reproductiverights.org/sites/default/files/WALM\_2021update\_V1.pdf.

- $^{31}$  Id.
- <sup>32</sup> *Id*.
- <sup>33</sup> Universal Declaration of Human Rights, preamble (emphasis added).
- <sup>34</sup> ICCPR, *supra* note 15.
- <sup>35</sup> U.N. Charter preamble.
- <sup>36</sup> Article L. 2213-1 of the Public Health Code.
- <sup>37</sup> Dashiell Young-Saver, *The Misleading Math of Prenatal Tests*, N.Y. TIMES (Feb. 10, 2022),

https://www.nytimes.com/2022/02/10/learning/lesson-plans/the-misleading-math-of-prenatal-tests.html.

- <sup>38</sup> Grégor Puppinck & Claire de La Hougue, *Enfants survivant à l'avortement et infanticides néonatals en Europe*, REVUE GENERALE DE DROIT MEDICAL (RGDM) n°57, décembre 2015.
- <sup>39</sup> Zoom Enquête sur un phénomène : l'infanticide néonatal (17/01/2018), EUROPEAN CENTRE FOR LAW & JUSTICE, https://eclj.org/euthanasia/eu/reportage-choc-de-leclj--linfanticide-nonatal-.
- <sup>40</sup> Délit D'entrave IVG: Le Conseil Constitutionnel Défend La Liberté D'expression, ALLIANCE VITA (Nov. 04, 2017), https://www.alliancevita.org/2017/04/delit-dentrave-ivg-le-conseil-constitutionnel-defend-la-liberte-dexpression/.
- <sup>41</sup> Brian R. Pridmore & Dennis G. Chambers, *Uterine Perforation During Surgical Abortion: A Review of Diagnosis, Management and Prevention*, 39 AUSTL. & N.Z. J. OBSTETS. & GYNAECOL. 349, 349 (1999).
- <sup>42</sup> Abortion & Pregnancy Risks, LA. DEP'T OF HEALTH, https://ldh.la.gov/page/915 (last visited July 21, 2022).
- <sup>43</sup> See Justin D. Heminger, *Big Abortion: What the Antiabortion Movement Can Learn from Big Tobacco*, 54 CATH. U.L. REV. 1273, 1290 nn.119 & 121 (2005).

<sup>44</sup> See generally Physical Effects of Abortion: Fact Sheets, News, Articles, Links to Published Studies and More, UNCHOICE, www.theunchoice.com/physical.htm (last visited July 21, 2022) (noting that abortion can lead to infection and future ectopic pregnancies).

- <sup>46</sup> Priscilla K. Coleman, et al., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their Experiences*, 22 J. AM. PHYSICIANS & SURGEONS 113, 116-17 (2017), https://www.jpands.org/vol22no4/coleman.pdf.
- <sup>47</sup> Cass Crim, June 16, 1981, no. 80-93.379.
- <sup>48</sup> Article L1110-3 of the *Code de la Santé Publique*.
- <sup>49</sup> Grégor Puppinck, Conscientious Objection is a Right, EUROPEAN CENTRE FOR LAW & JUSTICE (Jan. 2022), https://eclj.org/conscientious-objection/french-institutions/supprimer-la-clause-de-conscience-a-lavortement-est-illiberal?lng=en.
- <sup>50</sup> *Id*.
- <sup>51</sup> Romain Imbach & Assma Maad, *Accès à l'IVG en France: des obstacles perdurent en dépit de récentes avancées*, LE MONDE, https://www.lemonde.fr/les-decodeurs/article/2022/07/07/acces-a-l-ivg-en-france-des-obstacles-perdurent-en-depit-de-recentes-avancees\_6133817\_4355770.html (last modified July 07, 2022). <sup>52</sup> *Id.*
- <sup>53</sup> France Adopts Sedated Dying Law as Compromise on Euthanasia, supra note 20.
- <sup>54</sup> Contribution Ecrite Soumise Par Le, EUROPEAN CENTRE FOR LAW & JUSTICE, https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/FRA/INT\_CRPD\_CSS\_FRA\_42538\_F.doc.
- <sup>55</sup> France to Open Debate on Legalizing Assisted Suicide, US NEWS (Sep. 13, 2022), https://www.usnews.com/news/health-news/articles/2022-09-13/france-to-open-debate-meant-to-broaden-end-of-life-options.
- <sup>56</sup> *Id*.
- <sup>57</sup> ICCPR art. 6, *supra* note 15.
- <sup>58</sup> Disability is not a Reason to Sanction Medically Assisted Dying UN Experts, OHCHR (Jan. 25, 2021), https://www.ohchr.org/en/press-releases/2021/01/disability-not-reason-sanction-medically-assisted-dying-unexperts.
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<sup>&</sup>lt;sup>45</sup> Id