European Social Charter | Charte sociale européenne

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON THE MERITS

Date of adoption: 10 September 2013

Date of delivery : 10 March 2014

International Planned Parenthood Federation – European Network (IPPF EN) v. Italy

Complaint No. 87/2012

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("The Committee"), during its 266th session attended by:

Luis JIMENA QUESADA, President
Monika SCHLACHTER, Vice-President
Petros STANGOS, Vice-President
Lauri LEPPIK
Birgitta NYSTRÖM
Rüçhan IŞIK
Alexandru ATHANASIU
Jarna PETMAN
Elena MACHULSKAYA
Giuseppe PALMISANO
Karin LUKAS
Jozsef HAJDU
Marcin WUJCZYK

Assisted by Régis BRILLAT, Executive Secretary

Having deliberated on 19 March, 14 May, 2 July and 10 September 2013,

On the basis of the report presented by Karin LUKAS,

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint lodged by IPPF EN was registered on 9 August 2012.

2. IPPF EN alleges that the formulation of paragraph 4 of Section 9 of Act No. 194 of 1978, which governs the conscientious objection of medical practitioners and other health personnelin relation to the termination of pregnancy, is in violation of Article 11 (the right to protection of health) of the Revised European Social Charter (“the Charter”), read alone or in conjunction with the non-discrimination clause in Article E, in that it does not protect the rights of women with respect to access to termination of pregnancy procedures.

3. The complaint was declared admissible by the Committee on 22 October 2012. In accordance with Rule 26 *in fine* of the Committee and in view of the seriousness of the allegations, the Committee decided to give precedence to this complaint and thus set non-extendable time limits for the proceedings.

4. In accordance with Article 7§§1 and 2 of the Protocol providing for a system of collective complaints (“the Protocol”) and with the Committee’s decision on the admissibility of the complaint, on 31 October 2012 the Executive Secretary communicated the text of the decision on the admissibility to the Italian Government (“the Government”) and to IPPF EN. On the same date, he communicated it to the States Party to the Protocol and the States that have made a declaration under Article D§2 and to the organisations referred to in Article 27§2 of the Charter.

5. The Committee set 6 December 2012 as a deadline for presentation of the Government's submissions on the merits and 17 January 2013 for IPPF EN’s response on the merits. The Government’s submissions on the merits were registered on 4 December 2012 and IPPF EN’s response to them was registered on 17 January 2013 and forwarded to the Government on 13 February 2013.

6. On 1st December 2012, the European Centre for Law and Justice (“ECLJ”) asked to submit observations in relation to the complaint. In accordance with Rule 32A, on 21 December 2012 the President of the Committee invited ECLJ to submit the afore-mentioned observations before 17 January 2013. ECLJ’s observations were registered on 17 January 2013and forwarded to the Government and IPPF EN on 13 February 2013.

7. During its 263th Session, the Committee decided to invite both parties to provide further information. On this basis, on 28 March 2013 the Executive Secretary sent a letter, including a list of questions, to the Government and IPPF EN asking for a reply by 22 April 2013.

8. The reply of the Government to the Committee's request was registered on 23 April 2013. At IPPF EN's request, the President of the Committee granted an extension of the deadline up to 6 May 2013. The reply of IPPF EN was registered on 6 May 2013.

9. On 24 May 2013, Mr Carlo Casini, President of the NGO *Movimento per la Vita italiano* ("MVI") asked to submit observations. In accordance with Rule 32A, on 29 May 2013 the President of the Committee invited Mr Casini to submit the afore-mentioned observations before 28 June 2013. The observations were registered on 26 June 2013 and forwarded to the Government and IPPF EN on 28 June 2013.

10. On 11 June 2013, the NGO *Associazione Luca Coscioni per la libertà di ricerca scientifica* ("ALCLRS") asked to submit observations. In accordance with Rule 32A, on 12 June 2013 the President of the Committee invited ALCLRS to submit the afore-mentioned observations before 28 June 2013. At the request of ALCLRS, the President of the Committee granted an extension of the deadline up to 20 August 2013. The observations were registered on 2 August 2013 and forwarded to the Government and IPPF EN on 5 August 2013.

11. On 20 June 2013, the NGO AIED – *Associazione italiana per l'educazione demografica* ("AIED") asked to submit observations. In accordance with Rule 32A, on 12 June 2013 the President of the Committee invited AIED to submit the afore-mentioned observations before 20 August 2013.The observations were registered on 18 August 2013 and forwarded to the Government and IPPF EN on 29 August 2013.

SUBMISSIONS OF THE PARTIES

1 – The complainant organisation

12. IPPF EN alleges that the high number of objecting medical practitioners and other health personnel electing to be conscientious objectors renders paragraph 4 of Section 9 of Act N° 194 of 22 May 1978 on "Norms on the social protection of motherhood and the voluntary termination of pregnancy" ("Act No. 194/1978") ineffective in guaranteeing the legal right of women to have access to procedures for the termination of pregnancy and that this amounts to a breach of the right to health guaranteed by Article 11 of the Charter. The complainant organisation also alleges that the right to health of women wishing to terminate their pregnancy is not secured without discrimination and that this constitutes a violation of Article E of the Charter read in conjunction with Article 11.

2 – The respondent Government

13. The Government invites the Committee to declare the complaint of IPPF EN unfounded:

"a) due to the interpretation formulated by [IPPF EN] which distorts Articles 11 and E of the Charter to the detriment of women's health and lives who [IPPF EN] wants to be assisted only by non-objecting medical personnel who promotes voluntary termination of pregnancy of the women, without checking their physical and psychological state but only their economic situation;

b) because the State cannot limit the number of medical personnel raising conscientious objection while respecting the freedom of conscience, as recognised in the case law of the European Court of Human Rights relating to Article 9 of the 1950 Convention".

OBSERVATIONS BY THE EUROPEAN CENTRE FOR LAW AND JUSTICE, *MOVIMENTO PER LA VITA ITALIANO*, *ASSOCIAZIONE LUCA COSCIONI PER LA LIBERTÀ DI RICERCA SCIENTIFICA* AND *AIED – ASSOCIAZIONE ITALIANA PER L'EDUCAZIONE DEMOGRAFICA*

1. The European Centre for Law and Justice

14. ECLJ is a non-governmental organisation accredited by the United Nations and specializing in defense of liberty of conscience and religion. With this title, ECLJ has intervened in a number of cases before the European Court of Human Rights and alongside other international bodies protecting human rights.

(Information published on the website of ECLJ: http://www.eclj.org)

15. In its observations regarding the complaint, ECLJ argues that the complainant organisation "(…) does not put forward the slightest concrete case where a patient has not been able to undergo an abortion necessitated by their state of health or even an abortion on request*".* It considers that *"*[n]o concrete evidence is put forward to demonstrate that Italy's medical structures are not capable of caring for pregnant patients throughout the country where those patients' lives or health are in danger". With this in mind, ECLJ acknowledges that *"*[t]his is the sole obligation (of means) binding upon the States parties to the Charter*"* and points out that IPPF EN *"*(…) fails to prove that women wishing to abort in order to protect their health cannot do so within the legal time-limit*".*

16. ECLJ also observes that *"*[t]he allegation of discrimination in Italy where access to abortion is concerned, (…) is not borne out by the facts and even rather bizarrely formulated in the claim in the IPPF memorial that there is discrimination depending on whether or not women are pregnant". In this context, ECLJ wonders whether "[i]s it to be understood that this 'discrimination" undermines equality between women in their 'right not to be pregnant'". In this regard, it considers that "[t]his takes theorising on notions of the right to abortion, non-discrimination and equality far into the realms of the absurd".

17. More generally, ECLJ observes that conscientious objection to voluntary abortion is a "personal", "fundamental" and "inalienable" right "which the individual naturally and directly possesses". It considers that on the contrary abortion is not a "fundamental right" and that one can see it as a "medical treatment only when it is carried out to save the mother's life". In this respect, ECLJ takes the view that "the right to conscientious objection exists as a matter of principle outside of any legislative permission; conversely, the abortion (…) is carried out by the physician and the medical institution, which need the authorisation of the law and the approval of the health authorities". Moreover, ECLJ considers that if the mother's life is in danger, implementation of Act No. 194 /1978, which allows physicians to carry out an abortion "is seldom directly related to any specific medical cause". ECLJ stresses that in these cases "the physician is fully entitled to exercise his freedom of conscientious objection as secured under Article 9 of the 1978 Law".

18. As regard the presentation of the complaint to the Committee, ECLJ refers to the opinion that "[i]nternational human rights protection bodies, particularly the quasi-court bodies producing soft law, are used to assert and build a court-constructed fundamental right to abortion" and, on this basis, states:

"That is the purpose of this application to [the] Committee, which seeks to secure social right status for access to abortion and to whittle down the scope of the right of conscientious objection".

2. *Movimento per la Vita italiano*

19. MVI is a national Italian federation of more than six hundred local groups, services centres for help in life (*Centri di servizi di aiuto alla vita*) and care homes (*Case di accoglienza*), active throughout the country. MVI's aim is to promote and defend the right to life and dignity for all, from conception to natural death – based on an ethic of hospitality for those who are weaker and more vulnerable - and, first of all, for the child that is conceived and not yet born.

(Information published on the association's website: http://www.mpv.org).

20. The observations have been presented by Mr Carlo Casini in his capacity as President of MVI, as well as in his personal capacity. The observations refer first of all to the reasons and legal basis of conscientious objection. In this framework, MVI states that "[t]he physician refuses to carry out an abortion because he does not want to kill a human being". Reference is made to the recognition of "the value of human life", which is "the reason for conscientious objection". It is observed that "[t]he abortion is an exception [to the general principle of recognising the value of human life]". With this in mind, MVI declares that "in order to defend conscientious objection, it is enough to prove that the decision of conscientious objectors is not unreasonable and unfounded" and that the above-mentioned decision is based on the principle that a child that is conceived, is already a "human being".

21. In relation to these considerations, a number of legal international documents are mentioned, i.e: the Recommendations 874 (1979), 1046 (1986), and 1100 (1989) of the Parliamentary Assembly of the Council of Europe; the Convention for the

Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine; the European Convention on Human Rights, including some references to the relevant judgments of the European Court of Human Rights; the judgment of the Court of Justice of the European Union in the case Brüstle v. Greenpeace of 18 October 2011; the American Convention on Human Rights; the Convention on the Rights of the Child; and some judgments of the German Constitutional Court. As regards Italy, the following documents are mentioned: the Act No. 40/2004 (Article 1); the Act No. 194/1978 (Articles 1 and 2); the judgment of the Constitutional Court No. 27 of 18 February 1975. Moreover, reference is made to the Opinions adopted by the Bioethics National Committee (*Comitato Nazionale per la Bioetica*), respectively, on 28.06.1986, 11.04.2003, 15.07.2005, 18.11.2005 and 16.12.2005.

22. MVI considers that "[i]f it is reasonable and well founded to recognise that the child carried by a pregnant woman is a human being, the conscientious objection represents a genuine, basic human right: nobody can be obliged to kill. The only possible exception to this right arises when it is necessary to save another life". MVI is also of the view that the idea that conscientious objection is "a human right" is confirmed by a number of international and domestic documents, i.e.: the Resolutions 1763 (2010) and 1518 (2001) of the Parliamentary Assembly of the Council of Europe; the Charter of Fundamental Rights of the European Union (Article 10§2); the judgment No. 27617/04 *Tyasiac* and RR v. Poland of the European Court of Human Rights of 26 May 2011; the Opinion of the Bioethics National Committee of 30.07.2012.

23. MVI argues that "[a]bortion is admitted only as an exception to the principle of respect of human life" and that "[i]n the Italian jurisprudence, its legitimacy is admitted on the basis of the concept of 'state of necessity' (…)". It points out that it is in this context that, in its judgment No. 27 of 18.02.1975, the Constitutional Court considered *inter alia* that not only the life of the women concerned must be taken into consideration, but also their state of health.

24. With respect to the allegations of the complainant organisation, in the last part of his text MVI argues that: a) it is not true and it is not proved that women are obliged to go abroad to terminate their pregnancy because of conscientious objection; b) if "some women" go abroad to terminate their pregnancy, this is not due to conscientious objection, but to the fact that in some foreign countries "the law is less restrictive"; c) all annual ministerial reports indicate that the diminution of abortions in Italy is due to the functioning of Act No. 194/1978 and not to conscientious objection; and d) "nobody" has never affirmed that the conscientious objection is the "cause" of the reduction of registered legal abortions.

3. *Associazione Luca Coscioni per la libertà per la ricerca scientifica*

25. ALCLRS is an Italian non-governmental organisation which promotes freedom of care and scientific research, self-managed personal assistance, civil and political human rights for sick and disabled people. In this context, ALCLRS pursues, also through appeals to courts, several aims including the protection of the rights and interests of persons in relation to public bodies, as well as the protection of people's health and, in this framework, the implementation of the rights of patients and those of their families.

(Information published on the association's website: http://www.associazionelucacoscioni.it)

26. In its observations regarding the complaint, after recalling the evolution of the national case-law and legislation concerning abortion in Italy, ALCLRC specifically refers to Article 9 of Act No. 194/1978, relating to the right of medical practitioners and other health personnel to raise conscientious objection in the framework of abortion procedures. In this respect, ALCLRS considers that in Italy, objection is becoming a "massive phenomenon" and that the high percentage of objecting doctors does not allow for the provision of adequate service to the women wishing to terminate their pregnancy as provided by law. ALCLRS expresses the view that the increasing rates of conscientious objection in Italy reveal the existence of an internal contradiction in the relevant legal framework, undermining the implementation of the above-mentioned service.

27. ALCLRS mentions the report of the Ministry of Health presented to the Parliament on 4 August 2011, showing that in 2009, at national level, 70,7% of gynaecologists raised conscientious objection and that the trend is not decreasing. ALCLRS considers that the risks for women's health linked to these high rates would require a regulatory approach in order to protect the interests at stake: those of the women wishing to terminate their pregnancy, but also those of medical practitioners who are not objectors and cannot cover all requests.

28. ALCLRS is of the view that in 1978, the right to objection "was justified by the context in which it was conceived", but that today, after 35 years, objection "has no longer logical and legal foundation, and "it represents the greatest obstacle to the full implementation of Law 194/1978". ALCLRS argues that the "massive use" of objection – even if according to Italian criminal law does not represent a crime in itself – it may cause the interruption of public service, which constitutes a crime under Italian law. In this respect, ALCLRS recalls that the law obliges hospitals to guarantee abortion health services, regardless of the choice made by the medical personnel concerned.

29. ALCLRS indicates that it is collecting information on experiences of women who suffer because of the inaccessibility of abortion services or bear serious difficulties in acceding these services. In this context, ALCLRS argues that very often women who decide to terminate their pregnancy are not assisted in a moment when time represents a determining factor: after 90 days of pregnancy abortion is only allowed where the pregnancy or childbirth entails serious risks for women's life or where pathological processes constituting a serious threat to a women's physical or mental health, such as those associated with malformations of the fetus. ALCLRS argues that in order to terminate the pregnancy before the third month women are often forced to "wander", looking for a health facility where non-objecting doctors are operating, thus aggravating the physical and mental sufferings inevitably connected to their decision to terminate the pregnancy.

30. As regards the issue of discrimination, ALCLRC considers that in terms of equality and access to care, the search of an available abortion service determines a "territorial and economic discrimination". ALCLRS is of the opinion that the requests of women to access abortion procedures are treated in different ways, "depending on the luck of the patient": if the woman concerned is lucky enough to live in an area close to a health facility providing abortion services, she will have no difficulty in terminating her pregnancy; on the contrary, should she live in an area with a high rate of objecting health personnel, she will be forced to move in search of an operational structure and this at her own expenses.

4. AIED –*Associazione italiana per l'educazione demografica*

31. AIED is an Italian non-governmental organisation whose objectives are, inter alia, as follows: "spread the concept of free and responsible procreation; stimulate cultural and social growth in matters of sexuality; promote and support initiatives aimed at improving the quality of life and safeguard the health of humanity, both at individual and collective levels; be committed to develop a new culture regarding maternity and birth, with particular attention paid to the various problems posed by assisted human procreation and bioethics; stimulate but also watch over governmental institutions, to ensure that laws are duly enforced in terms of contraception, abortion, sexual and andrological information, social-health prevention, and respect of minorities and diversity (in particular homosexuality). AIED is committed to avoiding racial, religious, social and political discrimination".

(Information published on the association's website: http://www.aied.it/english/)

32. In its observations regarding the complaint, AIED recalls a number of constitutional and statutory national provisions related to health, abortion and conscientious objection. In this context, reference is made to the Constitution (Articles 2, 31 and 32– see paragraph 35 below), Act No. 194/1978 on the social protection of motherhood and the voluntary termination of pregnancy(Articles 4, 6 and 9 – see paragraph 36 below), as well as Act No. 405/1975 relating to family advice centres. AIED also mentions the national benchmark case-law relating to abortion, i.e. judgment No. 27 of 1975 of the Italian Constitutional Court (see paragraph 46 below). As regards the international level, AIED notably refers to Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (see paragraph 40 below).

33. With respect to the implementation of Act No. 194/1978, AIED mentions the official figures provided by the Italian Ministry of Health regarding conscientious objection raised by medical practitioners and other health personnel in the period 2006 – 2010. Based on the available data, it indicates that, as for 2012, at national level there were seven objectors out of ten doctors. AIED also considers that the territorial distribution of conscientious objection is not homogenous in Italy; in this respect, it indicates that in some Southern regions the level of objection exceeds 80% of the gynaecologists concerned. Based on the information provided by "LAIGA - *Libera Associazione Italiana Ginecologi per l'Attuazione della legge 194"* (Free Italian Association of Gynaecologists for the Implementation of Act No. 194/1978), AIED argues that in the regions of Lazio and Lombardy the percentage of objectors is larger than that registered by the Italian Ministry of Health (see also paragraphs 84, 109, 120, 123 and 149 below).

34. AIED puts forward that illegal abortionsare increasing in Italy and that the latest figures released by the Ministry of Health in 2008–given the figure of 20.000 the number of clandestine abortions (…) - may be underestimated as they do not include foreign women. In addition, it notes the increase of "spontaneous abortions" which–still according to the above-mentioned figures -amount to some 73.000 cases per year, compared to some 50.000 in the '80s.AIED takes the view that these figures may also include the practice of women who, after having tried to terminate the pregnancy by themselves, go to the closest hospital where the responsible doctors complete the initiated abortion process and then record the termination of pregnancy as "spontaneous". A number of press articles regarding the implementation of Act No. 194/1978 are also provided by AIED.

RELEVANT LAW

DOMESTIC LAW

General rules

35. The Italian Constitution sets forth that:

Section 2

“The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled”.

Section 3

“All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.

It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country”.

Section 19

“All persons have the right to profess freely their own religious faith in any form, individually or in association, to disseminate it and to worship in private or public, provided that the religious rites are not contrary to public morality”.

Section 21

All persons have the right to express freely their ideas by word, in writing and by all other means of communication. (…)”.

Section 32
“The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent.
No one may be obliged to undergo any health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person”.

(English translation from the web site of the Italian senate :www.senato.it).

Specific rules

36. Act No. 194/1978 “Norms on the social protection of motherhood and the voluntary termination of pregnancy” (*Norme per la tutela sociale della maternità e sull’interruzione volontaria della gravidanza – Gazzetta ufficiale 22/05/1978, n. 140*) provides that:

Section 4

"In order to undergo termination of pregnancy during the first 90 days, women whose situation is such that continuation of pregnancy, childbirth or motherhood would seriously endanger their physical or mental health, in view of their state of health, their economic, social or family circumstances, the circumstances in which conception occurred or the probability that the child would be borne with abnormalities or malformations, shall apply to a public counselling centre [...] or to a fully authorised medical social agency in the region or to a physician of her choice."

Section 5

"In all cases, in addition to guaranteeing the necessary medical examinations, counselling centres and socio-medical agencies shall be required, especially when the request for termination of pregnancy is motivated by the impact of economic, social or family circumstances upon the pregnant woman's health, to examine possible solutions to the problems in consultation with the woman and, where the woman consents, with the father of the *conceptus*, with due respect for the dignity and personal feelings of the woman and the person named as the father of the *conceptus*, to help her to overcome the factors which would lead her to have her pregnancy terminated, to enable her to take advantage of her rights as a working woman and a mother, and to encourage any suitable measures designed to support the woman by providing her with all necessary assistance both during her pregnancy and after the delivery.

Where the woman applied to a physician of her choice, he shall: carry out the necessary medical examinations, with due respect for the woman's dignity and freedom; assess, in conjunction with the woman and, where the woman consents, with the father of the *conceptus*, with due respect for the dignity and personal feelings of the woman and of the person named as the father of the *conceptus*, if so desired taking account of the result of the examinations referred to above, the circumstances leading her to request that her pregnancy be terminated; and inform her of her rights and of the social welfare services available to her, as well as regarding the counselling centres and the socio-medical agencies. Where the physician at the counselling centre or socio-medical agency, or the physician of the woman's choice, finds that in view of the circumstances termination is urgently required, he shall immediately issue the woman a certificate attesting to the urgency of the case. Once she has been issued this certificate, the woman may report to one of the establishments authorised to perform pregnancy terminations.

If termination is not found to be urgently required, the physician at the counselling centre or the socio-medical agency, or the physician of the woman's choice, shall at the end of the consultation, if the woman requests that her pregnancy be terminated on account of circumstances referred to in Section 4, issue her a copy of a document signed by himself and the woman attesting that the woman is pregnant and that the request has been made, and shall request her to reflect for seven days. After seven days have elapsed, the woman may take the document issued to her under the terms of this paragraph and report to one of the authorised establishments in order for her pregnancy to be terminated."

Section 6

"The voluntary termination of pregnancy may be performed after the first 90 days:
a) where the pregnancy or childbirth entails a serious threat to the women's life;
b) where the pathological processes constituting a serious threat to a women's physical or mental health, such as those associated with serious abnormalities or malformations of the foetus, have been diagnosed."

Section 7

"The pathological process referred to in the preceding Section shall be diagnosed and certified by a physician on the staff of the department of obstetrics and gynaecology of the hospital establishment in which the termination is to be performed. The physician may call upon the assistance of specialists. The physician shall be required to forward the documentation on the case as well as his certificate to the medical director of the hospital in order for the termination to be performed immediately.

Where the termination of pregnancy is necessary in view of an imminent threat to the woman's life, it may be performed without observing the procedures referred to in the preceding paragraph and in a place other than those referred to in Section 8. In such cases, the physician shall be required to notify the provincial medical officer." (…).

Section 8

"Pregnancy terminations shall be performed by a physician on the staff of the obstetrics and gynaecology department of a general hospital as referred to in Section 20 of Law No. 132 of 12 February 1968; this physician must also confirm that there are no medical contraindications.

Pregnancy terminations may likewise be carried out in specialized public hospitals, the institutes and establishments referred to in the penultimate paragraph of Section 1 of Law No. 132 of 12 February 1968, and the institutions referred to in Law No. 817 of 26 November 1973 and Decree No. 754 of 18 June 1958 of the President of the Republic, wherever the competent administrative agencies so request.

During the first 90 days, pregnancy terminations may also be performed in nursing homes that are authorized by the regions and have the requisite medical equipment and adequate obstetric and gynaecological services.

The Minister of Health shall issue a decree restricting the capacity of authorized nursing homes to carry out terminations of pregnancy, by establishing:

1. the percentage of pregnancy terminations that may be performed relative to the total number of surgical operations performed during the preceding year at the particular nursing home;

2. the percentage of patient-days allowed for pregnancy-termination cases in relation to the total number of patient-days in the preceding year under conventions with the regions.

The percentages referred to in items 1 and 2 shall not be less than 20% and shall be the same for all nursing homes (cf. ministerial decree of 20/10/1978).

Nursing homes may select the criterion which they will observe from the two set out above.

During the first 90 days, pregnancy terminations may likewise be performed, following the establishment of local socio-medical units, at adequately equipped public outpatient clinics, operating under the hospitals and licensed by the regions.

The certificate issued under the third paragraph of Section 5 and, after seven days have elapsed, the document delivered to the woman under the fourth paragraph of the same Section shall entitle her to obtain, on an emergency basis, the termination and, where necessary, hospitalization".

Section 9

"Medical practitioners and other health personnel shall not be required to assist in the procedures referred to in Sections 5 and 7 or in pregnancy terminations if they raise a conscientious objection, declared in advance. Such declaration must be forwarded to the provincial medical officer and, in the case of personnel on the staff of the hospital or nursing home, to the medical director, not later than one month following the entry into force of this Law, or the date of qualification, or the date of commencement of employment at an establishment required to provide services for the termination of pregnancy, or the date of the drawing up of an agreement with insurance agencies entailing the provision of such services.

The objection may be withdrawn at any time, or may be submitted after the periods prescribed in the preceding paragraph, in which case the declaration shall take effect one month after it has been submitted to the provincial medical officer.

Conscientious objection shall exempt health personnel and other health personnel from carrying out procedures and activities specifically and necessarily designed to bring about the termination of pregnancy, and shall not exempt them from providing care prior to and following terminations.

In all cases, hospital establishments and authorised nursing homes shall be required to ensure that the procedures referred to in Section 7 are carried out and pregnancy terminations requested in accordance with the procedures referred to in Sections 5, 7 and 8 are performed. The region shall supervise and ensure implementation of this requirement, if necessary, also by the movement of personnel.

Conscientious objection may not be invoked by medical practitioners or other health personnel if, under the particular circumstances, their personal intervention is essential in order to save the life of a woman in imminent danger.

Conscientious objection shall be deemed to have been withdrawn with immediate effect if the objector assists in procedures or pregnancy terminations provided for under this Law, in cases other than those referred to in the preceding paragraph."

(English translation provided by the complainant organisation).

INTERNATIONAL LAW

International Covenant on Economic, Social and Cultural Rights of 16 December 1966

37. Article 12 of ICESCR provides that:

"1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

38. The General Comment No. 14 (2000) on "The right to the highest attainable standard of health (article 12)", adopted by the Committee on economic, social and cultural rights at its twenty-second session, Geneva, 25 April-12 May 2000 – provides that:

"12. The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:

(a) *Availability.* Functioning public health and health-care facilities, goods and services, as well as programmes), have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.

(b) *Accessibility.* Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

(ii) Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

(iii) Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

(iv) Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

"11. The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health."

"14. "The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child" (art. 12.2 (a))may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information."

“21. To eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women’s right to health throughout their life span. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services. A major goal should be reducing women’s health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence. The realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health (…)”.

“33. The right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect protect and fulfil. In turn, the obligation to fulfill contains obligations to facilitate, provide and promote (…)”. (…) [t]he obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health”.

“52. Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to health. Examples include the failure to adopt or implement a national health policy designed to ensure the right to health for everyone; insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to health by individuals or groups, particularly the vulnerable or marginalized; the failure to monitor the realization of the right to health at the national level, for example by identifying right to health indicators and benchmarks; the failure to take measures to reduce the inequitable distribution of health facilities, goods and services; the failure to adopt a gender-sensitive approach to health; and the failure to reduce infant and maternal mortality rates”.

International Covenant on Civil and Political Rights of 16 December 1966

39. Article 18 of ICCPR provides that:

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Convention on the Elimination of All Forms of Discrimination Against Women of 18 December 1979

40. Article 12 of CEDAW provides that:

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

41. The General Recommendation on Women and Health, No. 24, adopted in 1999by the Committee on the Elimination of Discrimination against Women, at its 20th Session, provides that:

"11. Measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers".

Convention for the protection of Human Rights and Fundamental Freedoms of 4 November 1950

42. Article 8 - Right to respect for private and family life, provides that:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

43. Article 9 - Freedom of thought, conscience and religion, provides that:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

Charter of Fundamental Rights of the European Union of 7 December 2000, which became legally binding with the entry into force of the Lisbon Treaty on 1 December 2009

44. Article 10 - Freedom of thought, conscience and religion, provides that:

"1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right".

45. Article 35 - *Health care*, provides that:

"Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities".

RELEVANT CASE-LAW

NATIONAL CASE-LAW

46. In its judgment No. 27 of 1975, the Italian Constitutional Court (*Corte costituzionale)* stated that:

"(…) No equivalence exists at this time between the right, not only to life but also to health, of the one who is already a person, as the mother, and safeguarding of the embryo who has yet to become a person".

47. In its judgment No. 35 of 1997, the Constitutional Court has defined Act No. 194/1978 as a law with "constitutionally guaranteed content". On this basis, the *Corte costituzionale* declared inadmissible a *referendum* aimed at removing the existing legislation concerning access to abortion procedures during the first 90 days of pregnancy. The court pointed out that the normative nucleus of laws with constitutionally guaranteed content cannot be altered or rendered ineffective on the ground that this would compromise the corresponding specific provisions of the Constitution or of other constitutional acts (cf. also judgment No. 16 of 1978).

48. In its judgment No. 467 of 1991, the Constitutional Court held that:

"(…) even if this occured following a delicate operation carried out by the Parliament, aimed at balancing [the sphere of legal potentialities of individual conscience] with conflicting duties or constitutionally protected assets and to guarantee its exercise in a gradual manner to ensure the good functionning of organisational structures et services of national interest, the [above-mentioned] sphere (…) represents, with respect to the specific expressive contents of its essential nucleous, a particularly high constitutional value which justifies a number of (privileged) exemptions as regards the fullfillment of public duties, [and this,] also when the latter are considered as inderogable by the Constitution".

49. In its judgment No. 43 of 1997, the Constitutional Court stated that the protection accorded to the freedom of conscience:

"[c]annot be considered unlimited and unconditional. It rests primarily with the legislature to establish a balance between individual conscience and ensuing rights, on the one hand, and the overall, mandatory duties of political, economic and social solidarity that the Constitution (Art. 2) requires, on the other, so that the public order is safeguarded and consequent burdens are shared by all, without privileges".

50. In its judgment No. 151 of 2009,the Constitutional Court declared unconstitutional the third paragraph of Article 14 of Law No. 40 of 2004 which provides that: "Where the transfer of embryos to the uterus is not possible due to serious and documented circumstances of the woman's state of health, which were not foreseeable at the time of fertilization, embryo cryopreservation is permitted up to the date of transfer, to be implemented as soon as possible." This decision is based on the principle that the above-mentioned provision does not provide that the transfer of embryos must be carried out without prejudice to the health of women.

51. In its judgment No. 3477 of 2010, the Regional Administrative Tribunal of Apulia *(Tribunale amministrativo regionale della Puglia)* stated that according to Article 9 of Act No. 194/1978, objecting doctors must in any case assist women wishing to terminate their pregnancy, and this, prior and after the abortion. In this respect, the above-mentioned tribunal pointed out that the responsible medical personnel must provide all the necessary information and advice services, as well as assist the women concerned both from the physical and psychological point of view. These indications were provided by the tribunal with regard to the allegations put forward by the Government of Apulia, that not all gynaecologists working in the advice centres pour families (*consultori*) provide the aforementioned services and assistance. The Regional Administrative Tribunal of Apulia said that the exclusion of objecting medical practitioners from the competitions aimed at fulfilling vacant posts within the *consultori* constitute a violation Article 3 of the Constitution. It observed that an alternative solution to compensate the limited number of non-objecting medical personnel working in the *consultori* could be the organisation of recruitment competitions aimed at drawing up reserve lists including 50% of objecting doctors and 50% of non-objecting doctors.

52. In its judgment No. 14979 of 2013, the Supreme Court (*Corte di Cassazione*) with regard to the actual care provided prior to and following an abortion, sentenced a doctor who was a conscientious objector to a year in jail after he refused to aid a woman who had already undergone an abortion and had developed a serious haemorrhage.

<u>INTERNATIONAL CASE-LAW</u>

Judgments of the European Court of Human Rights

53. In P. and S. v. Poland, Application No. 57375/08, judgment of 30 October 2012, the Court said that:

"99. (…) once the State, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations, it must not structure its legal framework in a way which would limit real possibilities to obtain an abortion. In particular, the State is under a positive obligation to create a procedural framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion (Tysiąc v. Poland, cited above, § 116-124, R.R. v. Poland, cited above, § 200). The legal framework devised for the purposes of the determination of the conditions for lawful abortion should be "shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention" (… A, B and C v. Ireland [GC], (…) § 249 [16 December 2010])".

“106. (…) For the Court, States are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation (…)” (see below R.R. v. Poland, No. 27617/04, § 206).

54. In R.R. v Poland, Application No. 27617/04, judgment of 28 November 2011, the Court said that:

“187. While a broad margin of appreciation is accorded to the State as regards the circumstances in which an abortion will be permitted in a State, once that decision is taken the legal framework devised for this purpose should be ‘shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention’ (A, B and C v. Ireland [GC], (…) § 249 [16 December 2010])”.

“200. (…) once the State, acting within the limits of the margin of appreciation (…) adopts statutory regulations allowing abortion in some situations, it must not structure its legal framework in a way which would limit real possibilities to obtain it. In particular, the State is under a positive obligation to create a procedural framework enabling a pregnant woman to exercise her right of access to lawful abortion (Tysiąc v. Poland, no. 5410/03, §§ 116 - 124, ECHR 2007‑IV) (…)”.

“206. (…) States are obliged to organise 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 to which they are entitled under the applicable legislation”.

55. In A, B, and C v. Ireland , Application no. 25579/05, judgment of 16 December 2010, the Court said that:

“212. (…) the notion of “private life” within the meaning of Article 8 of the Convention is a broad concept which encompasses, inter alia, the right to personal autonomy and personal development (…). It concerns subjects such as gender identification, sexual orientation and sexual life (…), a person’s physical and psychological integrity (Tysiąc v. Poland judgment, cited [below]) as well as decisions both to have and not to have a child or to become genetic parents (…)”.

“249 (…) the State enjoys a certain margin of appreciation (see, among other authorities, Keegan v. Ireland, judgment of 26 May 1994, Series A no. 290, § 49). While a broad margin of appreciation is accorded to the State as to the decision about the circumstances in which an abortion will be permitted in a State (…), once that decision is taken the legal framework devised for this purpose should be “shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention” (S.H. and Others v. Austria, no. 57813/00, § 74, 1 April 2010)”.

56. In Tysiac v. Poland, Application no. 5410/03, judgment 20 March 2007, the Court said that:

“118. (…) the very nature of the issues involved in decisions to terminate a pregnancy is such that the time factor is of critical importance. The procedures in place should therefore ensure that such decisions are timely so as to limit or prevent damage to a woman's health which might be occasioned by a late abortion (…)”.

OTHER SOURCES

NATIONAL LEVEL

57. In June 2013, both the Senate and the Chamber of Deputies of the Italian Parliament adopted policy directives in the form of parliamentary motions (*mozioni*) addressed to the Government concerning *inter alia* the implementation of Act No. 194/1978. In particular, on 6 June 2013, at 37th its Session, the Senate approved the Motion No. 1-00059; on 11 June 2013, at its 31th Session, the Chamber of Deputies approved the following motions: Nos. 1-00045, 1-00074, 1-00078, 1-00079, 1-00080, 1-00081, 1-00082, 1-00087 and 1-00089. These motions specifically refer to the the implementation of Section 9§4 of the above-mentioned Act and some of the allegations put forward by the complainant organisation, i.e.:

- "At national level the main consequence of such a high number of conscientious objectors is that the very application of Law No. 194 is becoming increasingly difficult, with serious negative implications for the functioning of the various hospitals (and accordingly for the national health system), which have an impact on women obliged to seek an abortion (often resulting in tragically late abortions on account of the long waiting times)";

- "Given this state of "emergency" women are often obliged to travel to another region or even abroad, while there is a re-emergence of clandestine abortions (above all among immigrant women) and of the related criminal activities, a plague that had been wiped out only by the due application of Law No. 194";

(cf. Senate, Motion No. 1-00059 of 6 June 2013)

- "(…) The high proportion of medical practitioners who are objectors would also seem to be affecting the operability and effectiveness of prevention and support services for women at the pre-termination stage. The (…) report by the Minister of Health shows that, in many cases, the effectiveness and the role of those providing such advisory services is undermined by a shortage of suitably qualified persons available to sign the documents and the approvals necessary for the performance of an abortion, above all in southern Italy. This is a factor that distances women from these structures and from the essential information, prevention and support services they provide (…)";

- "(…) At present there are no effective monitoring, reward or sanction systems, with a view to verifying, encouraging and supporting the effective functioning of the structures required to implement Law No. 194, and also no means of conducting a proper analysis of the manner in which conscientious objection affects their functioning (…)".

(cf. Chamber of Deputies, Motion No. 1-00082 of 11 June 2013)

- (…) There are also cases in which conscientious objection by individuals becomes conscientious objection by an entire hospital, where the staff is solely composed of objectors; this creates yet further difficulties for women wishing to assert their right to a termination, who already find themselves in a hard situation; such hospital-wide objection is unacceptable, in particular in entities affiliated with the national health system; in such cases it would be appropriate to intervene at the level of the "objecting" hospitals themselves, requiring them to ensure the presence also of non-objecting staff, and, if the situation continues, such hospitals must be excluded from the award of any kind of public licence (…)";

- "(…) The growth in the number of medical practitioners objectors in recent years has led to the closure of services, leaving some hospitals devoid of any department performing abortions because virtually all the gynaecologists, anaesthetists and paramedical staff have chosen conscientious objection, (…)".

(cf. Chamber of Deputies, Motion No. 1-00078 of 11 June 2013)

- "At national level the main consequence of such a high number of conscientious objectors is to make it increasingly difficult to apply Law No. 194 of 1978, with a negative impact both on the functioning of the various hospitals, and therefore of the national health system, and on women seeking abortions;

- The dramatic situation regarding application of the law involves an extension of waiting times with greater risks for women's health and more professional risk for the few non-objectors who are forced against their will to adopt poor clinical practice.

- Given this state of "emergency" women are frequently obliged to travel to other regions or even abroad and clandestine abortions are becoming a necessity, above all among immigrant women (…)".

(cf. Chamber of Deputies, Motion No. 1-00045 of 11 June 2013)

58. The Committee notes that with respect to the difficulties encountered in the implementation of Act No. 194/1978, some motions ask the Government to:

- "Implement in full Law No. 194 of 1978, while respecting the individual right of conscientious objection";

- "Take all the necessary measures, within the limits of its competence, to guarantee the implementation, as regards the organisation of the regional health systems, of the fourth paragraph of Article 9 of Law No. 194 of 1978, in so far as it institutes an obligation to supervise and guarantee the application of women's right to informed freedom of choice, also through a change of management methods and staff mobility, guaranteeing the presence of a sufficient network of services in every region across the country" (…).

(cf. Chamber of Deputies, Motion No. 1-00074 of 11 June 2013)

- "Take action, within its sphere of competence, soas to ensure, while respecting the right of conscientious objection, the full and effective implementation by hospitals of the procedures necessary to respond to any request for an abortion";

- "(…) Ensure the timelyadoption of regulatory measures, as also called for by the European Union, so as to allow proper planning of health care activities, embracing not only the legitimacy of conscientious objection but also access to treatment and health protection, in such a way as to avoid a potential conflict detrimental to the right to health" (…).

(cf. Chamber of Deputies, Motion No. 1-00087 of 11 June 2013)

"Verify that, while respecting the freedom of conscientious objectors, public health structures continue to guarantee the application of Law No. 194 of 1978, thereby safeguarding women who choose to terminate a pregnancy against illegal practices that endanger their health and their lives (...) ".

(cf. Chamber of Deputies, Motion No. 1-00089 of 11 June 2013)

- "Conduct an in-depth analysis of the impact of conscientious objection on the implementation of Law No. 194 through a study carried out at the level of each hospital and based on sufficiently detailed data and indicators to deal with the problem of the link between the presence of staff who are non-objectors and the length of waiting lists";

- "Take all the necessary measures, within its sphere of competence, so as to guarantee compliance with and the full application of Law No. 194 of 1978 in all hospitals throughout Italy, by implementing, where necessary, a revised organisation of tasks and recruitment drawing on the tools of staff mobility provided for in the law, which institutes forms of differentiated recruitment with a view to balancing, according to the available data, the number of objectors and the number of non-objectors, as recommended by the National Bioethics Committee";

(cf. Chamber of Deputies, Motion No. 1-00082 of 11 June 2013)

- "Guarantee respect for and the full application of Law No. 194 of 1978 throughout national territory in recognition of freedom of choice and of women's right to health";

- "Guarantee a rebalancing of medical and nursing staff, as moreover provided for in Article 9 of Law No. 194, through staff mobility, aimed at ensuring minimum numbers and regional programming, with the aim of having at least 50% of staff who are non-objectors" (…).

(cf. Senate, Motion No. 1-00059 of 6 June 2013)

59. The Committee also notes that on 11 June 2013, during the debate at the Chamber of Deputies relating to the above-mentioned motions, the Minister of Health declared that:

"We have seen that, fortunately, during these years the number of voluntary terminations of pregnancy decreased due to the prevention activities and the greater conscience of the persons [involved]. This was one of the objectives of the legislation which – we should remind it – provides a free of charge service for all users. We have also seen that often, where there has been an increase or a decrease of the objectors, this has not always led to a problems-free situation in the access to local services. Here we come, unfortunately, to what is the theme of governance of territories and therefore more connected to the theme of regions, but surely cannot avoid dealing with [this theme] as Minister of Health, because we find ourselves in the wider complex of issues that affect the protection of the right to health in the national territory".

60. More particularly, in the framework of the same debate, in reply to the requests addressed to the Government within the aforesaid motions, the Minister of Health has made the following statements:

- "(…) I believe that the intention of all is to verify, in the territories and the individual health facilities, whether the principles of the law are effectively applied (…)";

- "(…) this issue of conscientious objection, which has been raised by some of the groups that submitted the motions, is an issue that we feel we must take in, especially in so far as it calls upon the Government and myself to monitor carefully – as required in different motions - the enforcement of the law in this area as well (…)".

(NB: The full text of the intervention of the Minister of Health, Mrs Beatrice Lorenzin, in the occasion of the debate is available at the following website of the Chamber of Deputies: http://documenti.camera.it/leg17/resoconti/assemblea/html/sed0031/pdfel.htm)

INTERNATIONAL LEVEL

World Health Organization ("WHO") - Department of Reproductive Health and Research Safe abortion

61. The technical and policy guidance for health systems second edition, 2012 indicates that:

"Health-care professionals sometimes exempt themselves from abortion care on the basis of conscientious objection to the procedure, while not referring the woman to an abortion provider. Individual health-care providers have a right to conscientious objection to providing abortion, but that right does not entitle them to impede or deny access to lawful abortion services because it delays care for women, putting their health and life at risk. In such cases, health-care providers must refer the woman to a willing and trained provider in the same, or another easily accessible health-care facility, in accordance with national law. Where referral is not possible, the health-care professional who objects, must provide safe abortion to save the woman's life and to prevent serious injury to her health. Women who present with complications from an unsafe or illegal abortion must be treated urgently and respectfully, as any other emergency patient, without punitive, prejudiced or biased behaviours (see also Chapter 4)".

(cf. Chapter 3.3.6 - Conscientious objection by health-care providers)

Mandatory waiting periods are often required by laws or regulations and/or administrative procedures imposed by facilities or individual providers. Mandatory waiting periods can have the effect of delaying care, which can jeopardize women's ability to access safe, legal abortion services and demeans women as competent decision-makers. States and other providers of health services should ensure that abortion care is delivered in a manner that respects women as decision-makers. Waiting periods should not jeopardize women's access to safe, legal abortion services. States should consider eliminating waiting periods that are not medically required, and expanding services to serve all eligible women promptly.

(cf. Chapter 4.2.2.6 - Waiting periods)

The respect, protection and fulfilment of human rights require that governments ensure abortion services that are allowable by law are accessible in practice. Institutional and administrative mechanisms should be in place and should protect against unduly restrictive interpretations of legal grounds. These mechanisms should allow service provider and facility administrator decisions to be reviewed by an independent body, should take into consideration the views of the pregnant woman, and should provide timely resolution of review processes.

(cf. Chapter 4.2.2.9 - Restrictive interpretation of laws on abortion)

International Federation of Gynaecology and Obstetrics ("FIGO")

62. In the document Ethical Framework for Gynecologic and Obstetric Care (2007), it is stated that:

"7. If a physician is either unable or unwilling to provide a desired medical service for non-medical reasons, he or she should make every effort to achieve appropriate referral."

Parliamentary Assembly of the Council of Europe ("PACE")

63. PACE Resolution 1763 (2010) "The right to conscientious objection in lawful medical care", PACE contains the following statements:

"2. The Parliamentary Assembly emphasises the need to affirm the right of conscientious objection together with the responsibility of the state to ensure that patients are able to access lawful medical care in a timely manner. The Assembly is concerned that the unregulated use of conscientious objection may disproportionately affect women, notably those with low incomes or living in rural areas. (…).

4. In view of member states' obligation to ensure access to lawful medical care and to protect the right to
health, as well as the obligation to ensure respect for the right of freedom of thought, conscience and religion of health-care providers, the Assembly invites Council of Europe member states to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, and which:

4.1. guarantee the right to conscientious objection in relation to participation in the medical procedure in question;

4.2. ensure that patients are informed of any conscientious objection in a timely manner and referred to another health-care provider;

4.3. ensure that patients receive appropriate treatment, in particular in cases of emergency".

64. The resolution mentioned in paragraph above was adopted by PACE having regard to the report of its Committee on Social, Health and Family Affairs on "Women's access to lawful medical care: the problem of unregulated use of conscientious objection" (Document 12347 of 20 July 2010). The report contains the following statements:

"16 (…) Some countries inadequately implement the regulatory framework in respect of conscientious objection. Relevant evidence is known for (…) Italy, for example".

"17. Health-care providers who invoke conscientious objection have certain legal and ethical duties that aim to protect the patient. States should ensure that regulations on conscientious objection clearly specify these duties. The absence of effective legal and policy frameworks in some member states means that individuals are unable to access the health-care services that they are entitled to receive, undermining, inter alia, their rights to health-care services and to privacy, and potentially constituting a breach of the duty of care and abandonment of patients".

"32. Conscientious objectors also have a duty to inform the patient in a timely manner of their conscientious objections to a specific procedure, and similarly, to refer such patient, in a timely manner, to a health-care provider who is willing and able to perform the health-care procedure or treatment and who is conveniently accessible. This requirement for timely notice and referral should apply from the moment the patient first requests medical intervention from a health-care provider".

"44. In practice, various factors can lead to situations where women's access to lawful medical care is affected. The most widely observed reasons are the lack of oversight mechanisms ensuring the implementation of existing legal provisions and policies, the non-respect of legal duties with regard to the information of patients, the absence of regulations requiring or facilitating timely action (notification of conscientious objection, appeals processes, etc.) as well as the lack of regulation regarding the scope of conscientious objection provisions".

"55. Member states should enact comprehensive and clear regulations that balance the right of the healthcare provider to conscientiously object to the performance of a procedure, and ensure that

patients can exercise their right to access lawful health services. In situations in which such regulations exist, many member states lack oversight and monitoring mechanisms to ensure that health-care providers act in accordance with them. Such regulations should establish mechanisms to ensure the accessibility and availability of health-care providers when other health-care providers may conscientiously object, and mandate the creation of a registry of conscientious objectors".

"57. National policies should define the scope of the right to conscientious objection in respect of the type of services and health-care professionals to whom it applies, and carve out appropriate exceptions for emergency situations".

"58 Lastly, all national regulations should establish effective complaint mechanisms that can address abuses of the right to conscientious objection and provide women with an effective and timely remedy".

65. PACE Resolution 1607 (2008) "Access to safe and legal abortion in Europe", contains the following statements:

"2. In most of the Council of Europe member states the law permits abortion in order to save the expectant mother's life. Abortion is permitted in the majority of European countries for a number of reasons, mainly to preserve the mother's physical and mental health, but also in cases of rape or incest, of foetal impairment or for economic and social reasons and, in some countries, on request. The Assembly is nonetheless concerned that, in many of these states, numerous conditions are imposed and restrict the effective access to safe, affordable, acceptable and appropriate abortion services. These restrictions have discriminatory effects, since women who are well informed and possess adequate financial means can often obtain legal and safe abortions more easily".

"3. The Assembly also notes that, in member states where abortion is permitted for a number of reasons, conditions are not always such as to guarantee women effective access to this right: the lack of local health care facilities, the lack of doctors willing to carry out abortions, the repeated medical consultations required, the time allowed for changing one's mind and the waiting time for the abortion all have the potential to make access to safe, affordable, acceptable and appropriate abortion services more difficult, or even impossible in practice".

"4. The Assembly takes the view that abortion should not be banned within reasonable gestational limits. A ban on abortions does not result in fewer abortions but mainly leads to clandestine abortions, which are more traumatic and increase maternal mortality and/or lead to abortion "tourism" which is costly, and delays the timing of an abortion and results in social inequities. The lawfulness of abortion does not have an effect on a woman's need for an abortion, but only on her access to a safe abortion".

"6. The Assembly affirms the right of all human beings, in particular women, to respect for their physical integrity and to freedom to control their own bodies. In this context, the ultimate decision on whether or not to have an abortion should be a matter for the woman concerned, who should have the means of exercising this right in an effective way".

“7. The Assembly invites the member states of the Council of Europe to: (…)

7.4. lift restrictions which hinder, de jure or de facto, access to safe abortion, and, in particular, take the necessary steps to create the appropriate conditions for health, medical and psychological care and offer suitable financial cover ...”.

THE LAW

PRELIMINARY OBSERVATIONS

The right to protection of health

66. The Committee recalls that in its decision of 8 September 2004 on the merits of FIDH v. France, Complaint No. 14/2003, §31, it stated that "human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and [that] health care is a prerequisite for the preservation of human dignity (…)”. The right to protection of health guaranteed in Article 11 of the Charter thus complements the protection afforded to the principle of human dignity by Articles 2 and 3 of the European Convention on Human Rights as interpreted by the European Court of Human Rights. As part of the positive obligations that arise by virtue of this fundamental right, States must provide appropriate and timely health care on a non-discriminatory basis, including services relating to sexual and reproductive health. As a result, a health care system which does not provide for the specific health needs of women will not be in conformity with Article 11, or with Article E of the Charter taken together with Article 11.

Responsibility for implementing the Charter

67. The Committee considers that the allegations concerning the violation of the Charter due to actions / omissions by local and regional authorities come within the scope of responsibility of the State: as a State Party to the Charter, the Italian State bears the responsibility in international law of ensuring that obligations arising from the Charter are implemented in full throughout its territory (see European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 29).

Scope of the complaint

68. The Committee is called to rule on how the manner in which sexual and reproductive health care services are organised in Italy impacts upon the enjoyment of the right to protection of health provided for under Article 11 of the Charter. It is not called to determine whether individuals enjoy a right to obtain an abortion or whether individuals should benefit from a right to conscientious objection.

69. The Committee considers that once States introduce statutory provisions allowing abortion in some situations, they are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are legally entitled under the applicable legislation(see, *mutatis mutandis* reference to the European Court of Human Rights in P. and S. v. Poland and R.R. v. Poland, paragraphs 53 and 54 above).

70. Having regard to the specific argument put forward by the complainant organisation to the effect that the conclusion of agreements between public hospitals and private health providers to deliver abortion services is contrary to the public nature of Act No. 194/1978, the Committee considers that issues relating to the public/private character of such agreements and their relationship to the above-mentioned Act fall outside the scope of its competency, except insofar as such issues relate to and have an impact upon the protection of the right to health.

ALLEGED VIOLATION OF ARTICLE 11 OF THE CHARTER

71. Article 11 of the Charter reads as follows:

> **Article 11 – The right to protection of health**
>
> Part I: “Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."
>
> Part II: “With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia:*
>
> 1. to remove as far as possible the causes of ill-health;
>
> 2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
>
> 3. to prevent as far as possible epidemic, endemic and other diseases."

A – Arguments of the parties

1. The complainant organization

72. The complainant organisation considers in general that the aim of Act No. 194/1978 is to establish “standards for the social protection of maternity and for the voluntary termination of pregnancy”. IPPF EN points out that Section 9 of the above-mentioned act recognises the right to conscientious objection of medical practitioners and other health personnel as an aspect of its wider objective of making provision for women to enjoy a right of access to procedures for the termination of pregnancy and, more particularly in paragraph 4 of Section 9, imposing an obligation on public and private hospitals to ensure the effective exercise of this right.

73. In reply to the statements contained the Government's submissions (see paragraph 13 above) - IPPF EN makes clear that the complaint "does not contain any request for limiting the number of objecting health personnel or impeding the exercise of the right to raise conscientious objection".

74. The reasoning of the complainant organisation is based on the assumption that the right of access to procedures for termination of pregnancy established by Sections 4 and 6 of Act No. 194/1978 is closely connected to, inter alia, securing the effective enjoyment of the right to the protection of health. In this respect, the complainant organisation notes that Article 11 of the Charter requires that States not only take appropriate measures to remove the causes of ill-health and prevent diseases but also provide advisory and educational facilities to promote health and well-being. The complainant organisation considers that such services should be made available to particularly vulnerable categories of persons, such as pregnant women.

75. IPPF EN recalls that paragraph 4 of Section 9 of Act No. 194/1978 ("Section 9§4") was designed to ensure that women would enjoy access to abortion procedures irrespective of whether individual medical practitioners and other health personnel invoked their right of conscientious objection. The complainant organisation stresses that, in accordance with the said paragraph, hospitals and authorised nursing homes must in all cases guarantee access to abortion procedures and that regional authorities must take action to ensure effective enjoyment of this right, if necessary by making arrangements to transfer personnel between different medical facilities.

76. The complainant organisation goes on to argue that the high number of medical practitioners and other health personnel exercising the right to conscientious objection in Italy renders the right to access abortion procedures in all cases guaranteed by Section 9§4 ineffective in many parts of the country, by limiting the circumstances in which such procedures can be carried out.

77. In this respect, IPPF EN also argues that the provisions of Section 9§4are inadequate to guarantee the exercise of a woman's statutory right to access abortion procedures, on the basis that they do not specify the concrete measures to be taken by hospitals and nursing homes, as well as by the competent supervisory regional authorities, to ensure that women can effectively obtain access to such procedures.

78. IPPF EN considers that the law should :

"[d]etermine more precisely the concrete and specific ways in which to ensure the adequate presence of non-objecting doctors, providing for example as already established by the Constitutional Court in relation to assisted procreation (judgment No. 151 of 2009) that all hospital establishments must be equipped with the 'strictly essential number' to meet the demands for the voluntary termination of pregnancy, requiring that the Regions specifically monitor the means of defining this number".

79. Given the inadequacy of the statutory framework, the complainant organisation also considers that the measures currently adopted by hospitals and nursing homes to provide access to abortion procedures, as well as the initiatives taken by regional authorities, are not sufficient or suitable for fulfilling the objectives of Act No. 194/1978 in relation to the termination of pregnancy.

80. IPPF EN furthermore contends that, given the difficulties encountered in the access to relevant services, the physical and/or psychological stress faced women who decide to terminate their pregnancy may put their health or life at serious risk. In this respect, IPPF EN alleges that in some cases women:"[a]re forced to avail of the establishments and persons, or even to travel abroad, which do not guarantee the full protection of health and hygiene that is required by the termination procedure".

81. In the complaint, IPPF EN indicates that the inadequacy of Act No. 194/1978

"[e]merges from the data collected at both national and regional levels, which show an insufficient number of non-objecting medical personnel in the public hospital system able to properly provide for the termination of pregnancy, the access to which is guaranteed by the same [act]".

82. The complainant organisation points out that these data can be found in the official reports on the implementation of Act No. 194/1978, submitted every year by the Ministry of Health to the Parliament. In this framework, the complainant organisation quotes the information relating to conscientious objection contained in the report submitted by the said ministry in 2011 (cf. Chapter 3.10 of the report):

"(…) in 2009, there was a stabilisation of conscientious objection among gynaecologists and anaesthetists, after a considerable increase in previous years. At the national level, the percentage of objecting gynaecologists increased from 58.7% in 2005 to 69.2% in 2006, to 70.5% in 2007, to 71.5% in 2008 and to 70.7% in 2009; the percentage of anaesthetists in these years increased from 45.7% to 51.7%; the percentage of non-medical staff saw a further increase, from 38.6% in 2005 to 44.4% in 2009. In Southern Italy, there is a rate of more than 80% registered gynaecologists: 85.2% in Basilicata, 83.9% in Campania, 82.8% in Molise, 81.7% in Sicily and 81.3% in Bolzano; the highest percentages of [anaesthetists] are registered in Molise and Campania at more than 77% and in Sicily at 75.6%, and the lowest percentage is in Tuscany at 27.7% and Trento at 31.8%; for non-medical personnel the numbers are lower, with a maximum of 87% in Sicily and 82% in Molise. (…)".

83. More particularly, based on the above-mentioned report, IPPF EN provides the official data relating to the total number / percentages of gynaecologists, anaesthetists and non-medical personnel who exercised the right to conscientious objection in 2009, per region and per macro-area: Northern, Central, Southern, Insular Italy (see table 1 below).

Table 1

REGION / MACRO-AREA	**Gynaecologists**	**Aanaesthetists**	**Non-medical personnel**
NORTHERN ITALY	**1652 / 65,2 %**	**1684 / 43,1%**	**3498 / 31,5%**
Piedont	284 / 63,8%	227 / 40,9 %	367 / 20,8 %
Valle d'Aosta	2 / 18,2%	5 / 26,3 %	0 / 0,0 %
Lombardy	560 / 66,9%	607 / 47,1 %	1000 / 40,3 %
Bolzano	26 / 81,3%	26 / 38,8 %	166 / 68,9 %
Trento	19 / 55,9%	21 / 31,8 %	367 / 22,4 %
Veneto	391 / 78,0%	430 / 49,0 %	1011 / 59,8 %
Friuli Venetia Giulia	67 / 60,4%	39 / 36,1 %	174 / 30,5 %
Liguria (2008)	98 / 57,3 %	128 / 38,1 %	98 / 6,8 %
Emilia Romagna	205 / 52,4 %	201 / 33,9 %	315 / 25,3 %
CENTRAL ITALY	**681 / 69,5 %**	**700 / 52,3 %**	**2813 / 48,6 %**
Tuscany	219 / 62,2%	122 / 27,7 %	347 / 30,8 %
Umbria	62 / 63,3%	95 / 63,3 %	1038 / 62,5 %
Marche	85 / 62,0%	97 / 50,3 %	774 / 43,3 %
Lazio	315 / 80,2%	386 / 69,5 %	654 / 53,6 %
SOUTHERN ITALY	**972 / 80,4 %**	**808 / 66,2 %**	**2415 / 56,5 %**
Abruzzo (data 2008)	84 / 78,5 %	94 / 57,3 %	189 / 66,3 %
Molise (data 2007)	24 / 82,8 %	28 / 77,8 %	73 / 82,0 %
Campania (data 2007)	329 / 83,9 %	262 / 77,1 %	515 / 72,4 %
Apulia	340 / 79,4 %	274 / 61,3 %	953 / 73,5 %
Basilicata	69 / 85,2%	59 / 63,4 %	421 / 27,1%
Calabria	126 / 73,3%	91 / 64,5 %	264 / 78,1%
INSULAR ITALY	**680 / 74,1 %**	**607 / 68,7 %**	**1747 / 72,5 %**
Sicily	541 / 81,7%	526 / 75,7 %	1426 / 87,0%
Sardinia	139 / 54,3%	81 / 42,9 %	321 / 41,8%

84. With respect to Lombardy Region, in the complaint IPPF EN points out that “[t]here has been an increase in the obstacles preventing the proper implementation of the legislation (…) due to the significant increase of objecting medical and non-medical personnel, which in some areas is above 85%” (cf. table provided by the complainant organisation in appendix 13).

85. A comparative table on the percentages relating to medical practitioners and other health personnel who exercised the right to conscientious objection in the period 2003 – 2009 is also provided in the complaint. Also in this case, the information is based on the data provided by the Ministry of Health (see table 2 below).

Table 2

	GYNAECOLOGISTS	ANAESTHETISTS	NON-MEDICAL PERSONNEL
Ministerial Report 2011(data 2009)	**70,7%**	**51,7%**	**44,4%**
Ministerial Report 2010(data 2008)	71,5%	52,6%	43,3%
Ministerial Report 2009 (data 2007)	70,5%	52,3%	40,9%
Ministerial Report 2008 (data 2006)	69,2%	50,4%	42,6%
Ministerial Report 2007 (data 2005)	58,7%	45,7%	38,6%
Ministerial Report 2006 (data 2004)	59,5%	46,3%	39,1%
Ministerial Report 2005 (data 2003)	**57,8%**	**45,7%**	**38,1%**

86. In light of this data, IPPF EN takes the view that the measures which have been adopted by the competent authorities in response to the high number of objecting medical practitioners and other health personnel are clearly insufficient to guarantee adequate implementation of Act No. 194/1978 and in particular the right of women seeking access to procedures for the termination of pregnancy.

87. In particular, the complainant organisation considers that, on the one hand, recourse to external non-objecting health personnel cannot ensure the necessary continuity in the provision of the care service; on the other hand, that the establishment of agreements between hospitals and private establishments compromises the public nature of the act. In this regard, IPPF EN concludes that, “in response to the shortage of staff, a solution to the problem is not identified, but a mechanism which bypasses it is introduced”.

88. As regards the possibility for women to lodge administrative or judicial appeals when the access to procedures for termination of pregnancy is not guaranteed, the complainant organisation considers that the time necessary for the delivery of a decision by an administrative or judicial authority may have a seriously negative effect on the position of complainant organisation who - within the strict time limits established by Act No. 194/1978 - intend to terminate their pregnancy. Moreover,

IPPF EN notes that the outcome of any such administrative or judicial appeal process would relate only to the specific case at issue, and would not represent a solution for other cases.

89. As regards the Charter's implementation, IPPF EN considers that State parties should not merely take legal action but also practical measures to secure the enjoyment of the rights protected by the Charter, including the provision of resources and the adoption of operational procedures. The complainant organisation also considers that the violation of the Charter due to actions or omissions by regional authorities must necessarily come within the scope of responsibility of the State. In this respect, IPPF EN quotes a number of provisions of the Protocol and its explanatory report, as well as some past decisions of the Committee.

90. As far as the obligation of the State to provide a regulatory framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion is concerned, the complainant organisation also refers to a number of judgments of the European Court of Human Rights (see paragraphs 53 to 56 above).

91. The complainant organisation concludes that the inadequate wording of Section 9§4 of Act No. 194/1978 and the subsequent problems concerning its implementation compromise the rights to life, health and self-determination of women seeking to terminate a pregnancy and therefore places the above-mentioned article in contravention of Article 11 of the Charter.

1. The respondent Government

92. The Government invites the Committee to declare the complaint of IPPF EN unfounded:

"a) due to the interpretation formulated by [IPPF EN] which distorts Articles 11 and E of the Charter to the detriment of women's health and lives who [IPPF EN] wants to be assisted only by non-objecting medical personnel who promotes voluntary termination of pregnancy of the women, without checking their physical and psychological state but only their economic situation ;

b) because the State cannot limit the number of medical personnel raising conscientious objection while respecting the freedom of conscience, as recognised in the case law of the European Court of Human Rights relating to Article 9 of the 1950 Convention".

93. From a general point of view, in both its submissions on the admissibility and the merits, the Government expresses the view that Act No. 194/1978 "achieves a fair and necessary balance between the rights to life and health of the woman and the freedom of conscience of medical practitioners and other health personnel with respect to voluntary termination of pregnancy". As a result, the Government is of the view that the apparent impediment to access to abortion procedures caused by the high number of objecting health personnel should not be interpreted as a violation of Article 11 of the Charter.

94. The Government also contends that Act No. 194/1978 – "which provides modalities and measures aimed at guaranteeing the right to life and the right to health of women in case of voluntary termination of pregnancy" –should be viewed as coming within the framework of "the margin of appreciation" related to Article G of the Charter.

95. Article G of the Charter reads as follows:

Article G – Restrictions

"1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed".

96. With respect to paragraph 1 of this provision, the Government places particular emphasis on the expressions "protection of the rights and freedoms of others" and "protection of public health".

97. In the document appended to the submissions on the admissibility of the complaint (cf. document established by Mr Giuseppe RUOCCO, Director General of Prevention, Ministry of Health, dated 28 September 2012), the Government states that "(…) under Act No.194/78, authorised hospitals and private health-care facilities are always obliged to conduct the procedures as envisaged under art. 7 and to perform abortions as provided for under Articles 5, 7 and 8 of this law and the Regions must control and guarantee these procedures also through staff mobility".

98. In this framework, the following general considerations are made:

- "The aim of the law is to establish a principle, clearly specified under Article 9 of Act 194: the possibility for health-care professionals and staff to become conscientious objectors and the obligation for the Regions and the health care organizations to organize accordingly".

- "In this connection, there is no need to change the law but only to ensure that the Regions implement the procedures envisaged under Act 194/78, respecting their full organizational autonomy as provided for in the last changes to Title V of the Constitution in 2001.

- "If this service is not guaranteed, stakeholders, representative organizations and health authorities etc. can appeal to the central or regional governments and even to the court to enforce the legislation".

- “There has always been a high number of conscientious objectors among health care professionals and staff since the inception of the abortion legislation. However, this has not undermined the right of women to benefit from this law and from this procedure”.

- “(…) the Regions and the Health Authorities ensure the services as provided for under Act 194 not only through staff mobility, but also through ad hoc agreements with specialists”.

99. In order to support these considerations, some data is provided, i.e.:

- “in 2009 (the last report of Parliament), 118.579 abortions were conducted with a 50.9% reduction vs. 1982, when there was a peak number of procedures: 234.801”.

- “The abortion rate – the most accurate indicator of abortions in women between 15-49 years – dropped by 52.3%, from 17.2‰ to 8.2‰”. (…) “Considering only the number of Italian women who aborted in 2009 (79.535 cases), the abortion rate has gone down by 66.1% with respect to 1982, when the presence of foreign women in Italy was negligible”.

- “The emergency procedures (without waiting for 7 days after the certification date) in 2009 amounted to 9.2%, the same value reported in the 1997 Report (…)”.

- “85% of the procedures is conducted through Karman hysterosuction”.

- “In 93.6% of cases, the hospital stay is less than 1 day and all abortions are performed as outpatients procedures”.

- “In the last few years, the time between the certification and the procedure has become shorter and more than 80% of women has undergone this procedure at a gestational age of ≤ 10 week”.

- “The complication rate has always ranged between 3 and 4 %.

- “Since 2010, the national health service has organized a pharmacological abortion services. This method is increasingly used by women and is provided by an increasing number of facilities. All this, together with the organizational actions prepared by the Regions and by the health authorities contribute to reducing the impact of the high value given to conscientious objection”.

100. On this basis, in the above-mentioned document the Government states that:

- “The reduction in the number of abortions, in the abortion rate and in the number of repeated abortions shows that abortion prevention services have worked very well, that women have a good attitude vis-a’-vis fertility control measures and that the tools for responsible and conscious parenthood are successful. Ad hoc projects have been developed to prevent abortion regarding foreign women with specific initiatives such as cultural mediation, the facilitation of the access to services and the training of professionals”.

- "The stable number of emergency procedures and the shorter time between the certification and the procedure show that services are efficient; the percentage increase in the number of day-hospital and 1 day hospital procedures indicate that women can more easily and smoothly access these procedures and that human resources are better organized; the high percentage of women who have an abortion at a gestational age of ≤ 10 weeks, combined to a very low rate of complications, especially to the fact that no death or serious complication has ever occurred following an abortion in line with Act 194 is the best evidence that today abortion is not hazardous for women's health".

101. For these reasons, the Government concludes that: "conscientious objection level present in Italy – partly balanced by staff mobility and agreements with specialized obstetrics and gynaecology services - and the recent introduction of pharmacological abortion in Italy do not seem to have a direct impact on the recourse to abortion and so on the violation of women' s rights; moreover, the reduction in the number of women who undergo an abortion is far greater than the increase in the number of conscientious objectors among health care professionals and staff; in the last few years, services have become more efficient, both in terms of prevention and in terms of access and the abortion procedures are not dangerous for women considering the Karman-hysterosuction technique used, the gestational age when the procedure is performed (≤10 weeks) and the very low complication rate (3 - 4‰).

B – Further information submitted by the parties at the Committee's request

102. During consideration of the complaint, the Committee asked both parties to provide further information relating, *inter alia,* to the following issues: a) any difficulties encountered by pregnant women as well as - at an organisational level - by hospitals and nursing homes in relation to the provision of abortion procedures caused by the exercise of the right of conscientious objection by health personnel; and b) any measures implemented by the competent authorities in order to address any such difficulties that have arisen.

1. The complainant organisation

103. The complainant organisation points out that much of the information presented in its response "was unavailable when the complaint was initially presented and emerged due to the publicity from the complaint itself". However, it also indicates that difficulties exist in obtaining the information requested by the Committee for various reasons which are set out in detail in its response.

104. IPPF EN stresses the particular situation of both “women who decide to interrupt their pregnancy on the one hand and the healthcare professionals on the other, who by playing a supportive role decide not to raise any conscientious objections”. It notes “how difficult if not outright impossible it is to be able to ask women first and foremost - but also non-objecting doctors - to reveal themselves publicly in a complaint against individual conscientious objector doctors or facilities where services for voluntary termination of pregnancy are not guaranteed”. In order to prove this assertion, a number of direct testimonies are provided. In this context, IPPF EN furthermore provides evidence that the Italian National Institute of Statistics (ISTAT) “even though requested by the LAIGA to submit a list of the facilities where abortions are performed in order to understand the actual state of implementation of Law No. 194 of 1978, refused to provide this”. Some evidence is also provided demonstrating that as “a matter of course that cases of women who are forced to go to other facilities slip through this type of investigation, as no traces remain of their requests in those facilities where they do not find adequate assistance”.

105. IPPF EN provides further information on the social context in which the issue of voluntary termination of pregnancy and conscientious objection is publicly discussed in Italy at the moment. In this respect, reference is made to some online publications and to the demonstrations held in several Italian cities during 2012 and 2013 “against the application of Act No. 194/1978”.

106. In this respect, IPPF EN states that:

“[T]hese types of stands and initiatives completely deny the legitimacy of Law No. 194 of 1978 (which instead, we reiterate, was defined by the Italian Constitutional Court and is constitutionally protected; its essential legal core cannot be broken apart without violating constitutional principles of which it is their direct expression), fostering a climate that makes it very difficult, if not outright impossible, for women and doctors to report failures in implementing the law (…)”.

107. As regards the state of enforcement of Section 9§4 of Act No. 194/1978, the complainant organisation refers *inter alia* to the data provided by the President of the LAIGA –*Libera Associazione Italiana Ginecologi per l’Attuazione della legge 194* (Free Italian Association of Gynaecologists for the Implementation of Act No. 194/1978):

“(…) [T]he law [194/1978] is widely disregarded and (…) in many hospitals it is impossible to have an abortion. (…) There are no reliable, easily available, official sources providing up-to-date list of hospitals where legally authorised abortions can be performed nor a list of gynecology units where they are provided. In short, it is impossible to check where abortions are available. (…)[LAIGA] consequently began to enquire (…), hospital by hospital, using information found on certain non-official websites (…), in order to find an answer to our question: is Article 9 of Law 194 being applied in practice? (…) The results of our investigation are summarised in the table below. Given the enormous difficulty in obtaining official data, it should be noted that this information is not exhaustive but gives some idea of the problem”.

REGION	Number of hospitals with gynaecology unit	Number of hospitals providing abortions within 90 days of pregnancy	Number of hospitals providing abortions after 90 days of pregnancy
PIEDMONT	36	29	3
LOMBARDY	64	27	6
TRENTINO ALTO ADIGE	15	7	1
VENETIA	42	13	3
FRIULI VENETIA GIULIA	11	8	?
LIGURIA	12	7	2
EMILIA ROMAGNA	29	15	2
TUSCANY	26	24	3
UMBRIA	16	12	2
LAZIO	31	21	7
ABRUZZO	20	9	2
MOLISE	6	3	1
BASILICATA	6	5	?
APULIA	33	22	5
CALABRIA	33	23	5
SICILY	37	26	2
SARDINIA	24	12	10

108. With this in mind, the President of LAIGA concludes: "(…) not all hospitals provide terminations of pregnancy, thereby breaching Article 9 of Law 194 (…)". A list of 45 hospitals where, even if a gynecology unit exists, terminations of pregnancy cannot be performed, is provided by the President of LAIGA (regions concerned: Lazio, Piedmont, Venetia, Friuli Venetia Giulia, Marche, Lombardy, Emilia Romagna, Tuscany, Sicily, Sardinia, Apulia), i.e.:

Azienda Ospedaliera Universitaria S.Andrea, *Policlinico Universitario Tor Vergata* (Rome)*,Ospedale Acquapendente* (*Viterbo*),*Ospedale Andosilla* (*Civitacastellana*), *Ospedale Belcolle* (*Viterbo*),*Ospedale S.Camillo De Lellis* (*Rieti*), *Ospedale Umberto 1°* (*Frosinone*), *Ospedale S.Benedetto* (*Alatri*), *Ospedale di Velletri, Ospedale Maggiore della Carità* (*Novara*),*Ospedali Riuniti S.LorenzoVarmagnola*,*Ospedale di Camposampiero* (Turin),*Ospedale Castelli* (*Verbania*),*Ospedale Portogruaro* (*Verona*),*Ospedale di Belluno, Ospedale di Bassano, Ospedale di Gorizia, Ospedale di Jesi, Ospedale di Fano, Ospedale di Fermo, OspedaliCivili di Brescia, Ospedale S.Maria delle Stelle Melzo, Ospedale di Cernusco, Ospedale di Carate, Ospedale di Gallarate, Ospedale di Gorgonzola, Ospedale di Angera, Ospedale di Treviglio e Caravaggio, Ospedale di Como, Ospedale di Cantu', Ospedale di Monza, Ospedale di Melzo S. Maria delle Stella, Ospedale di Sassuolo,*

OspedaleFranchini-Montecchio Reggio Emilia, Ospedale di Ponte Annicari, Ospedale di Lipari, Ospedale Muscatello (*Augusta*), *Ospedale di Bosa, Ospedale di Ozieri, Regione, Ospedale San Paolo (Bari), Ospedale Perrino* (*Brindisi*),*Ospedale di Venere, Ospedale di Bitonto, Ospedale di Bisceglie, Ospedale di Fasano*.

109. As regards the situation of medical personnel carrying out abortions procedures, the President of LAIGA provides "complete data" only with respect to the Region of Lazio. In this respect, she states that: "In this region, out of a total of 391 gynaecologists attached to hospital units, only 33 are non-objectors and perform abortions; thus 91.3% of gynaecologists in Lazio are conscientious objectors". As regards other regions (Piedmont, Lombardy, Trentino Alto Adige, Abruzzo, Campania, Basilicata, Apulia, Calabria, Sicily, Sardinia), the President of LAIGA provides data indicating that in "at least" 38 hospitals there are no non-objecting gynaecologists, or there is just one. According to the information provided, the hospitals in this situation are as follows:

Ospedali Riuniti (*Borgomanero*), *Ospedale Broni* (*Stradella*), *Ospedale Civile* (*Sondrio*), *Ospedale Civile* (*Cavalese*),*Ospedale Civile*(*Bassano*),*Ospedale S. Spirito, Policlinico Umberto I, A.O.S. Andrea* (Rome), *Ospedale San Paolo* (*Civitavecchia), Ospedale Paro di Delfino* (*Colleferro*),*Ospdale Gonfalone* (*Monterotondo*),*Ospedale Coniugi Bernardini* (*Palestrina*), *Ospedale Paolo Colombo* (*Velletri*),*Ospedale S. Maria Goretti* (*Latina*), *Ospedale Civile* (*Formia*),*Ospedale Civile* (*Frosinone*), *Ospedale SS Trinità* (*Sora*),*Ospedale S.Benedetto* (*Alatri*), *Ospedale S. Scolastica* (*Cassino*), *Ospedale Belcolle*(*Viterbo*),*Ospedale Civile* (*Tarquinia*), *Ospedale Civile S.Anna* (*Ronciglione*),*Ospedale Civile* (*Rieti*), *ASL 2 Chieti* (*Ortona*), *ASL 3 Chieti* (*Chieti*), *ASL SA* (*Eboli*),*Ospedale Potenza* (*Chiaromonte*), *Ospedale CivileLocri, ASP Catanzaro, Ospedale Civile Cosenza, ASPS* (*Locri*)*, Ospedale Civile* (*Cetraro*), *ASP 9* (*Trapani*),*Ospedale Microcitemico* (*Cagliari*),*Ospedale Civile*(*Bosa*), *Ospedale Civile* (*Ozieri*),*Ospedale Civile* (*Businco*).

110. On this basis, the President of LAIGA draws the following conclusion:

"In the majority of hospitals there is an imbalance between the total number of gynaecologists and the total number of non-objectors doctors, since there is a very high percentage of objectors. Many facilities do not provide the service because they have no staff. But even when there is just one non-objector there are huge problems, entailing:

- longer waiting times, with greater risks attaching to the procedure. There are numerous cases of terminations performed at the legal time-limit, that is at around 12 weeks;
- greater occupational risks for non-objecting gynaecologists: extended waiting times (in many cases over 3-4 weeks from issue of the certificate to actual performance of the abortion) force doctors to adopt poor clinical practice;
- reduction of the time available for each patient during the abortion procedure, at the expense of patient protection, information and social care;

- travel by patients to other provinces or regions, or even other countries (many terminations of pregnancy beyond the ninetieth day on account of foetal disease are absorbed by hospitals in neighbouring countries, in France, Spain and the UK);
- if non-objecting staff are on holiday, the abortion service is suspended (for example, in Bari when the only non-objecting gynecologist goes on holiday, prescription of the RU-486 abortion drug is interrupted, and the free telephone number for information and appointments ceases to operate);
- if non-objecting doctors are sick, the service is suspended. For example, in Monterotondo, the only non-objecting gynecologist had a car accident: he is still on sick leave, and ever since his accident (in November 2012) the service has been suspended. In Frosinone, when the gynecologist is on sick leave, the service is similarly interrupted;
- if the only non-objector takes retirement, the unit closes – as happened, for example, in Jesi;
- if non-objectors doctors die, the service is suspended: in Naples the only non-objecting gynecologist died, but the subsequent suspension of the service led to popular protest which made it necessary to recruit a gynecologist for that purpose."

111. Concerning the specific questions put forward by the Committee, the complainant organisation also provides further information based on different sources, i.e. first hand testimonies, press articles, books, blogs, *fora*, etc. This information refers to the state of enforcement of Section 9§4 of Act No. 194/1978 with respect to different Italian hospitals, nursing homes and advice centres.

112. In this context, IPPF EN mentions that:

- "Conscientious objection has denied [the city of] Bari and its Province of the last hospital where voluntary termination of pregnancy was performed. In fact, at St. Paul hospital, the only public facility, all the doctors declared themselves to be conscientious objectors (…).In particular, it turns out that women, due to the impossibility of accessing services for voluntary termination of pregnancy at public hospitals, need to come to the Polyclinic, which is not part of the ASL (local healthcare [public] network) and where there are significant organizational difficulties due to the scarcity of non-objecting doctors, or at the facilities *Monopoli*, *Putignano* and *Corato*, if not another Region outright. Also in the Department of Gynaecology and Obstetrics of the Perrino Hospital of Brindisi all doctors are conscientious objectors (…)".

- "(…) [T]he Polyclinic of Naples (…) shut down its public service for voluntary termination of pregnancy after the death of the only non-objecting doctor (…)".

- "Given the lack of non-objecting personnel service for voluntary termination of pregnancy is no longer available in *Fano* and *Jesi*".

113. As regards the Region of *Lazio*, it is reported that:

"[I]n 31 public facilities 9 do not offer termination of pregnancy services and in three provinces no therapeutic abortions are performed" (reference is made to the provinces of *Frosinone*, *Rieti* and *Viterbo*)". "St. Andrea Hospital, in Rome, a public university hospital, is not performing abortions and is not training new gynaecologists (…)". "[M]any of the non-objecting doctors are on the verge of retirement and will not be replaced due to a lack in professional training (...)".

114. IPPF EN indicates that according to the local branch of the trade union CGIL, as regard the Region of Sicily, province of *Palermo*:

"[I]n some hospitals there isnot a single non-objecting doctor (or there is only one, who is external); in [the province of] Messina there are hospitals without a single non-objecting doctor ([towns of] Barcellona, Patti, Lipari, Mistretta) (…)".

115. Documentation is provided to show that in Sicily the responsible operational unit relating to the advice centers of the Ionian area ASL 5 (*Unità Operativa Consultori Area Ionica Asl 5*) "(…) was obliged to direct women seeking access to abortion to other cities because in Messina (…) it was impossible to guarantee the treatment".

116. Other documents make reference to the fact that in the Region of *Abruzzo*:
"[T]here are hospitals where there are no non-objecting doctors (in [city of] Pescara, out of three hospitals only in one is the service guaranteed and with only one doctor; in [the city of] Teramo, out of four hospitals the service is guaranteed only in two; in [the city of] Chieti, out of five hospitals only three guarantee it, and in one facility with only one external non-objecting doctor; in the three facilities of [the city of] L'Aquila there is only one non-objecting doctor".

117. Concerning the Region of *Liguria*, it is stated that:

"The wide recourse to conscientious objection compromises the access to the voluntary termination of pregnancy".

118. According to IPPF EN, in the Region of Tuscany, with particular reference to [the hospital] *Azienda Ospedaliera Universitaria Senese U. O. C. Ostetricia e Ginecologia – Policlinico 'Le scotte' Iale Bracci* (Siena):

"[T]he suspension of service is expressly motivated by the presence of objecting doctors".

119. Documentation concerning the numerous cases in which the service for termination of pregnancy was suspended in the hospital of *Gavardo*, Province of *Brescia* (Region of Lombardy), is also provided.

120. Regarding the problems of access to the termination of pregnancy procedures of some hospitals in the Milan province, based on the information provided in the report of the President of LAIGA and other relevant documents, it is pointed out that:

"Each hospital takes a set number of women; for example, 'the first 15 women to arrive', 'not more than 20 individuals', 'the first twelve', 'not more than 10-12', etc. This means that more women are coming to the hospitals than can actually be accepted: the Buzzi Hospital in Milan takes the first 15 women to arrive on Wednesdays and Fridays; the San Carlo Hospital takes no more than 20 women on Fridays; the San Paolo Hospital accepts the first 12 patients on Fridays; at the Mangiagalli Clinic in Milan not more than 10-12 women are accepted from Monday to Friday; Luigi Sacco Hospital accepts the first ten women on Wednesdays, while Rho Hospital takes six women a week; Garbagnate Hospital in Milan accepts up to six women a week; Cernusco Hospital takes up to nine women a week".

121. As regards possible cases of non-replacement of non-objecting personnel who are not available (due to holiday, illness, retirement, etc.), the complainant organisation recalls the case of the hospital in [the town of] *Gavardo*" where after the retirement of [a] doctor (…) there were no efforts undertaken to take on an additional physician who would work alongside the only remaining non-objecting doctor."; as well as the case of Polyclinic of Naples "where after the death of the only non-objecting doctor, the service was discontinued".

122. In addition, documents are provided regarding the fact that at the Hospital *San Camillo* in Rome:

"[A] therapeutic abortion was delayed for four days due to a lack of non-objecting anesthetists as they were all on vacation. The delay risked overstepping the time limits stipulated by Law No. 194 of 1978".

123. With respect to the Region of Lombardy, the complainant organisation provides information on an inquiry which,

"[o]ther than underscoring the fact that the real data on conscientious objection is higher than the official data (…), also highlights the problem of needing to tackle non-objecting personnel shortages by depending on external doctors who have already retired, or 'on-call personnel' or freelance doctors paid on a fee-for-service basis".

(reference is made in this case to the cities / provinces of Treviglio, Como, Cremona, Lecco, Lodi, Milano, Monza and Brianza, Mantova, Sondrio and Gallarate).

124. In this respect, it is pointed out that "things are going to get worse, as many non-objecting physicians are elderly and near retirement […] while the younger ones are almost all objectors" and that these problems "might be applicable to the whole of Italy".

125. With respect to the Region of *Marche*, reference is made to the case of the city of Ascoli Piceno:

"[w]here it would not be possible to perform voluntary terminations of pregnancy if it weren't for a doctor who comes from Milan every week to guarantee these procedures".

126. As regards cases of refusal of objecting medical practitioners and other health personnel to provide the necessary care prior to and following abortion, reference is made to the decision of the Supreme Court (*Corte di Cassazione*) of 2 April 2013 "which sentenced a doctor who was a conscientious objector to a year in jail after he refused to aid a woman who had already undergone an abortion and had developed a serious hemorrhage as a result".

127. In this context, IPPF EN recalls the decision of 9 October 1979 of the *Pretura of Ancona*, which established that "the exemption as per Art. 9 of Law No. 194/1978 for objectors applies exclusively to procedures and activities specifically and necessarily intended to terminate a pregnancy, and not care provided prior to and following the procedure" and that "only activities immediately preceding anesthetization of the patient, anesthesia itself, and the abortion are subject to conscientious objection".

128. As regards cases in which pregnant women, due to the limited number of available non-objecting health personnel, tried in vain to access the procedures for termination of pregnancy, IPPF EN reports that in Padova:

"[A] woman was denied a therapeutic abortion and she was forced to go to Napoli. The case led to a parliamentary hearing by the Radical group in the Chamber of Deputies".

129. Having regard to the data provided by CGIL with respect to the Region of Marche, it is stated that:

"[A]lready in 2010, of the 2,409 voluntary terminations of pregnancy that women residing in the Marche had undergone, 5.5% of the procedures were performed outside of their respective Provinces and 24.5% outside of Regione Marche".

130. Having regard to the data gathered in the document provided by LAIGA (see paragraphs107 to 110 above), IPPF EN refers to cases of foreign medical centres in France, Switzerland, United-Kingdom and Slovenia, which, in the period 2010 – 2012, agreed to provide abortion-related services to women who could not access abortion procedures in Italy, and also notes the phenomenon of women 'migrating' from one hospital to another as well as between regions in Italy in order to obtain an abortion.

131. Concerning the situation in the province of Milan, information by a doctor working at the hospitals *Clinica Mangiagalli, Fondazione IRCCS Ca' Granda Ospedale Maggiore Policlinico* in Milan is provided. This information refers to "cases of women which try in vain to access the procedures for the termination of pregnancy in the hospitals of Gallarate, Busto Arsizio, Melegnano and Foggia" and who "are forced to go to the hospital where [the above-mentioned doctor] works (…)".

132. As regards cases in which pregnant women, due to the limited number of available non-objecting health personnel, had abortions in unhealthy conditions and/or at their own expense, the complainant organisation refers to "the problem of clandestine or do-it-yourself abortions". In this respect, it alleges that "there are 15,000 of the former every year, even with Law No. 194 of 1978 in effect".

133. IPPF EN maintains that:

"This phenomenon, which inevitably leads women to expose themselves to significant health and life-threatening risks, in addition to forcing them to pay for a service normally guaranteed in Law No. 194 of 1978, is directly related to the problem that links the decrease in abortions to the alleged lack of problems associated with the number of doctors who are conscientious objectors".

134. Based on different sources, it is reported that:

"(…) [A]mong other variables that have a bearing on the effects of the high number of doctors who are conscientious objectors, there is also the economic factor, i.e. the economic resources women may have, determining whether they will seek treatment abroad or access methods that could place their health or even lives at risk (…)".

135. In respect to potential health risks, a reference is made by the complainant organisation to the use, by certain women of *Cytotec*:

" (…) [a] drug intended to treat ulcers but the collateral effects of which include miscarriage (misoprostol, the active ingredient of Cytotec, is used to terminate pregnancies, but using it as a do-it-yourself medication bears certain risks, depending on where you take it and if you have taken the wrong dosage)".

136. More specifically, the complainant organisation reports "the case of a woman, who tried to access to abortion in the hospital Bassini of Cinisello Balsamo (*RegioneLombardia*), where there are only two externally recruited doctors":

"This woman reports her experience of unhealthy conditions, in which she was forced to interrupt her pregnancy. The [self-managed advice center] *Consultoria autogestita di Milano* argues, from the latest official data on the application of Law No. 194 of 1978, that in the Regions where there is a low percentage of conscientious objectors the post-operative complications are approximately null and in the Regions where there is an increase of conscientious objectors there is a relevant growth of these complications".

137. As regards cases in which pregnant women, due to the limited number of available non-objecting health personnel were forced by the circumstances to continue the pregnancy, IPPF EN refers to "all the cases (…) in which difficulty accessing the service has forced women to continue their pregnancy while hoping to find other available facilities or alternative solutions".

138. More specifically, the complainant organisation provides documentation about a therapeutic abortion in hospital *San Camillo*, Rome:

"[An abortion] was delayed for four days due to the absence of non-objecting anesthetists, who were all on vacation, and the woman had stated previously that 'I'm at the mercy of this case and the vacation of the clinicians (…). They did not give me specific times and the cutoff date to proceed with the abortion is Thursday, after which I'll be forced to keep the baby until the ninth month, who in any case will be stillborn'".

139. Based on examples and figures, the document provided by the President of LAIGA (see paragraphs 107 to 110 above) refers to the difficulties experienced by pregnant women in the access to termination of pregnancy procedures, due to conscientious objection of medical personnel, in the following regions: *Marche*, *Lazio*, *Campania*, Lombardy, Apulia and Venetia.

140. In particular, the President of LAIGA points out that in application of Article 6 and 7 of Act No. 194/1978 in case of therapeutic abortions, abortions are to be performed immediately and where the termination of pregnancy is necessary in view of an imminent threat to the woman's life, it may be performed without observing the applicable procedures. It is also specified that "external or fee-based doctors are not authorized to perform so-called therapeutic abortions".

141. In relation to the above-mentioned statements, the complainant organisation indicates that: "The externally recruited non-objecting doctors cannot carry out therapeutic abortions, taking into account the time required for this kind of intervention. Women are forced to move to other hospitals". In this same context, the President of LAIGA argues that when fetal malformations are identified "(…) the woman is left to her own devices, since there is no continuity of care, and she must take it upon herself to find a hospital where she can have an abortion (…)". A number of direct testimonies concerning concrete situations experienced by pregnant women are provided.

142. In the same document, the President of LAIGA mentions the difficulties connected with the voluntary termination of pregnancy after the first three months (therapeutic abortions). In this framework, reference is made to the testimony of a woman about "the painful events that led to a so-called therapeutic abortion and which were due to the presence of only one non-objecting doctor (…) at the hospital". Concerning the presence of only one non-objecting doctor within a hospital, IPPF EN refers to the opinion expressed by doctor A. Uglietti, in relation to the fact that "where there is only one non objecting doctor it is possible to carry out only one voluntary termination of pregnancy per week".

143. Further to the arguments put forward in its response to the Government's submission, IPPF EN confirms that "there are no data or news on the use of legal appeals against the offending hospital". In this context, after referring to a decision recently taken by the Supreme Court (*Corte di Cassazione* - see paragraph 52 above), IPPF EN recalls the experience of the woman described in the paragraph above, which generated a judicial procedure, and was concluded by a letter of "excuses" of the responsible (objecting) doctor, referring to the "series of unlucky events" caused by the presence in the hospital, at the moment of the above-mentioned events, of just one (non-objecting) doctor.

144. The complainant organisation refers to the lack of measures taken by hospitals, nursing homes and regional authorities to implement Section 9§4 of Act 194/1978. In particular, it references the case of Polyclinic of Bari, for which a non-objecting doctor reported the inadequate organization of the hospital, in particular the lack of a serious outpatient clinic and staff training. Even with regard to Bari and "while specifically citing the hospitals' lack of organization", IPPF EN shares the following comment published on the blog of the national newspaper *La Repubblica*:

"No one in fact needs to deny the existence of sabotage of all non-objecting medical practitioners enacted by department and hospital directors, general administration, and not in the least by the Regional Government, which has shown itself in recent years to be incapable of reminding the local healthcare facility directors of their responsibilities".

145. IPPF EN also refers to the information indicating that:

"(…) women requesting access to voluntary termination of pregnancy services have been 'rerouted' to other hospitals after the death of the only non-objecting doctor at Polyclinic of Napoli and after they were barred from the waiting lists".

146. Still regarding Naples, the complainant organisation refers to the declarations of a former Director of a hospital department responsible for terminations of pregnancy procedures about:

"[t]he difficulties met in the application of Law No. 194 of 1978 and the lack of any improvement measures, like the mobility of doctors or different ways of recruitment".

147. As regards Rome, IPPF EN reports that, according to the Director of the Day Hospital of *San Camillo* hospital, the latter "turns out to be the only hospital in Lazio where the RU 486 pill is administered, while in Umbria there is not a single structure that offers drug-based abortions. There is great economic discrimination inherent in this, as rich women go to Marseille".

148. It is also reported that during her hearing at the Chamber of Deputies, the above-mentioned Director explained that:

"[w]e are 30 gynaecologists at St. Camillus, including the Chief Physician, of whom only three are non-objectors. Over the last four years we have been under continuous attack. We are the clinicians who have decided to defend a law of the state. Thus, in my opinion, conscientious objection constitutes the most serious aspect of the problem. We should talk about it, since those who terminate pregnancies are steadily decreasing and constantly have to justify their work".

149. In relation with the situation in Region of Lombardy, IPPF EN reports that regional councilors posed written questions to the regional government in 2012 and 2013 on the subject of conscientious objection and on the implementation of law No. 194 of 1978. The complainant organisation indicates that according to the above-mentioned questions "(…) there had been an increase in the obstacles preventing the proper implementation of the legislation in the region due to the significant increase of objecting doctors, which in some areas is above 85%".

150. Bearing in mind the Government's submission, the complainant organisation considers that:

"[t]he decrease in the abortion rate is not indicative of the idea that there are no problems in implementing Art. 9 of Law No. 194 of 1978". Instead, this piece of information might indicate that the decrease in abortions is due to the very fact that women have not been able to access this service, having to find other solutions, such as going abroad or undergoing clandestine abortions".

151. With respect to clandestine abortions, IPPF EN refers to:

"[t]he number of clandestine abortions carried out by Italian women (for foreign women there are no reliable estimates), which reaches 15,000 despite Law No. 194 of 1978 being in effect, while prior thereto there were more than 250,000 clandestine abortions every year. We highlight an additional phenomenon, that of the so-called 'do-it-yourself' abortions, done via online purchases of pills or turning to illegal markets".

2. The respondent Government

152. In its response, the Government states: "[t]he Ministry of Health [MoH] collect[s] data on objecting personnel among gynaecologists, anaesthesiologists and other health personnel through Regions: the MoH has no data on specific problems due to objecting health personnel encountered at local level".

153. It indicates that the information on possible cases in which pregnant women, due to the limited number of available non-objecting personnel, tried in vain to access the procedures for termination of pregnancy, carried out abortions in unhealthy conditions and/or at their own expense or were forced by the circumstances to continue the pregnancy is "not available".

154. It states that externally recruited doctors are entitled to carry out terminations of pregnancy. No specific information is provided with respect to therapeutic abortions.

155. The expression "N/A" appears in the Government's reply with respect to the question asked by the Committee in respect of the number of appeals lodged with administrative and/or judicial authorities over the last five years with respect to ineffective procedures for termination of pregnancy.

156. The Government's reply to the specific request to provide detailed information on the measures adopted by hospitals, nursing homes and regional authorities as an implementation of Section 9§4 of Act 194/1978, is as follows:

"In Italy, the practical implementation of Act 194/1978 has registered a stabilisation over time (at least after 2010) of conscientious objection among medical practitioners and other health personnel, compared to the constant increase occurred before. As a consequence, there has been a re-balancing between objecting and non-objecting doctors, in the light of the recent orientations indicated by the National Bioethics Committee".

157. In this framework, the Government provides information on the position of the National Bioethics Committee (*Comitato Nazionale per la Bioetica*) with respect to the right to conscientious objection, safeguarded by Article 2 of the Constitution. More specifically, it is indicated that the above-mentioned Committee:

"[i]s in favour of a sustainability of the possibility to exert conscientious objection, in a way that would not discriminate neither objecting, nor non-objecting personnel, by promoting a revision of the organisation of duties and recruiting through adequate forms of personnel mobility and differentiated selection of human resources".

158. As regards the detailed information measures adopted by hospitals, nursing homes and regional authorities as an implementation of Section 9§4 of Act N° 194/1978, the Government states that:

"Italian Regions, Local Health Units and Hospitals, in order to compensate conscientious objection, have often recourse to external personnel by means of specific, temporary contracts, or stipulate agreements with private healthcare structures. In other cases, hospitals establishment have had recourse to agreements with nursing homes".

159. In response to the Committee' s question as to whether – and if yes, then why – it considers that the reduction in the number of abortions indicate that pregnant women do not encounter problems in accessing procedures for termination of pregnancy, the reply of the Government is as follows:

"Data show a constant reduction in Italy of voluntary termination of pregnancy according to the procedures foreseen by Act 194/78. This is particularly true among better educated women. Furthermore, the percentage of repeated abortions amounted to 27% in 2010 with respect to an expected value of 45% (calculated with mathematical models) without changes in the women's recourse to termination of pregnancy. Moreover in the last few years, the time between the certification and the procedure has become shorter and more than 80% of women has undergone this procedure at a gestional age of ≤ 10 week. Also the emergency procedures (without waiting for 7 days after the certification date) in 2009 amounted to 9,2% the same value reported in the 1997 Ministry of Health Report. Experts' hypothesis is that the promotion of a higher and more efficacious recourse to conscious procreation, especially thanks to the activity of territorial services like family consultations centers, has favored prevention of unwanted pregnancies and, as a consequence, of voluntary terminations of pregnancy".

C – Assessment of the Committee

160. The Committee notes that the essence of IPPF EN's allegations in this complaint is that the inadequacy of Section 9§4 of Act No. 194/1978 is demonstrated by the high number of medical practitioners and other health personnel exercising the right to conscientious objection in Italy. IPPF EN maintains that, in practice, this high number impedes the right of women to access procedures for termination of pregnancy. In particular, the complainant organisation maintains that the high number of medical practitioners and other health personnel exercising the right to conscientious objection prevents the full implementation of Act 194/1978 due to the lack, in Section 9, of specific provisions to ensure that women enjoy effective access to abortion procedures throughout the country.

161. As regards the rights which have allegedly been violated, the Committee considers that, as indicated in paragraph 68 above, the key legal issue at stake in this complaint concerns the protection of the right to health. The Committee therefore has focused its analysis on the adequacy of the steps taken by competent authorities to guarantee effective access to abortion services, which national legislation has classified as a form of medical treatment that relates to the protection of health and individual well-being, and which therefore can be considered to come within the scope of Article 11 of the Charter.

162. The Committee recalls that"[i]n connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, (…) the implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein" (International Movement ATD Fourth world v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 61). Furthermore, the Committee recalls that "arrangements for access to care must not lead to unnecessary delays in its provision. The management of waiting lists and waiting times in health care are considered in the light of the Committee of Ministers Recommendation (99)21 on criteria for such management. Access to treatment must be based on transparent criteria, agreed at national level, taking into account the risk of deterioration in either clinical condition or quality of life" (cf. Conclusions XV-2, 2011, United Kingdom).

163. In light of the above, the Committee considers that the provision of abortion services must be organised so as to ensure that the needs of patients wishing to access these services are met. This means that adequate measures must be taken to ensure the availability of non-objecting medical practitioners and other health personnel when and where they are required to provide abortion services, taking into account the fact that the number and timing of requests for abortion cannot be predicted in advance.

164. The Committee also considers that it would not be in conformity with the Charter if the resolution of any possible problems encountered by women with respect to gaining access to abortion procedures is left in the hands of administrative or judicial authorities to be determined after the fact. As with other health services provided under Italian law, adequate measures must be put into place to ensure that women are able to access abortion services as and when they are required: the provision of retrospective remedies after the point of demand only supplements the primary obligation under Article 11 to make health care available as it is needed, which applies with particular force to time-sensitive procedures such as abortion. In this particular context, the Committee furthermore notes that appeals represent a stressful and time-consuming measure which can be detrimental to the health of the women concerned.

165. In relation to the relationship between the right to protection of health set out in Article 11 and the exercise of conscientious objection rights guaranteed under national law, the Committee considers that, as stated by the National Committee of bioethics (*Comitato Nazionale per la Bioetica*, “(…) [t]he statutory protection of conscientious objection should neither limit or hamper the exercise of the rights guaranteed by law (…)” (cf. Conscientious objection and bioethics - *Obiezione di coscienza e bioetica*) - p. 18). The Committee also refers to the motions presented in June 2013 within the Chamber of Deputies (see paragraphs 57 and 58 above), the wording of which can be regarded as reflecting the requirements of Article 11 of the Charter in this respect:

- “(…) [Act No. 194/1978]distinguishes between the individual right to object and women's right to freedom of choice in matters of procreation and between the individual's right to object to a law of the State and the States' obligation to provide the required service (…)” (Motion No. 1-00074);

- “(…) Health personnel are guaranteed that they will be able to raise an objection of conscience. But this is an individual right, not a right of the health care structure as a whole, which is obliged to guarantee the provision of health care services” (Motion No. 1-00045).

166. In this context, the Committee notes the Government’s declaration that “[t]he aim of the law is to establish a principle, clearly specified under Article 9 of Act 194: the possibility for health-care professionals and staff to become conscientious objectors and the obligation for the Regions and the health care organizations to organize accordingly” and acknowledges that “there is no need to change the law but only to ensure that the Regions implement the procedures envisaged under Act 194/78”. In this context, the Committee also notes the opinion expressed within the Parliament pointing out that “(…) it is not the number of objectors in itself to determine the state of access to abortion procedures, but the way in which health facilities organise the implementation of Act No.194/1978” (cf. Motion 1/00079, Chamber of Deputies – see paragraph 57 above).

167. The Committee furthermore does not find that the arguments put forward by the Government with respect to a) the objectives of the complainant organisation and b) the implementation of Article G of the Charter (see paragraph 94 above) relate to the issues at stake. The complaint does not contain any reference or request aimed at impeding the exercise of the right to raise conscientious objection or at limiting the number of objecting medical practitioners and other health personnel.

168. Turning to the substance of the complaint, the Committee considers that the provisions of Section 9§4 establish a balanced statutory framework for the fulfillment of the goals of Act No. 194/1978. As far as the Charter is concerned, the Committee considers that: a) the obligation for hospitals and nursing homes to take steps to ensure that abortion procedures are carried out “in all cases” as laid down in Sections 5, 7 and

8 of the said act, and b) the regions' responsibility to ensure that this requirement is met, represent a suitable legal basis to ensure a satisfactory application of Article 11. Furthermore, the Committee also considers that the high number of objecting health personnel in Italy does not *per se* constitute evidence that the domestic legal provisions at stake are being implemented in an ineffective manner.

169. However, the information provided by the complainant organisation, as well as other relevant elements regarding the issues at stake which is contained in the documents recently published by the Italian Senate and Chamber of Deputies - including the declaration of the Minister of Health made on 11 June 2013 (see paragraphs 57 to 60 above) – establish the existence of serious problems in relation to the following situations:

a) decrease in the number of hospitals or nursing homes where terminations of pregnancy are carried out nation-wide (see paragraphs 57 and 108 above);
b) significant number of hospitals where, even if a gynecology unit exists, there are no non-objecting gynaecologists, or there is just one (see paragraphs 57, 108, 110, 112, 114 and 116 above);
c) disproportionate relationship between the requests to terminate pregnancy and the number of available non-objecting competent health personnel within single health facilities (see paragraphs 115, 117, 120, 125, 128, 129, 131, 136, 137, 139 and 145 above) - which risk the creation of extensive geographical zones where abortion services are not available notwithstanding the legal right to access such services established under Italian law;
d) excessive waiting times to access abortion services (see paragraphs 57, 110 and 120 above);
e) cases of non-replacement of medical practitioners who are not available due to holiday, illness, retirement, etc. (see paragraphs 57, 110, 118, 119, 121, 122 and 124 above) - which pose the risk of substantial disruption to the provision of abortion services;
f) cases of deferral of abortion procedures due to an absence of non-objecting medical practitioners willing to perform such procedures (see paragraphs 57, 122 and 138 above);
g) cases of objecting health personnel refusing to provide the necessary care prior to or following abortion (see paragraphs 52, 126 and 127 above).

170. As outlined in paragraph 171 below, the Government did not provide any detailed information in respect of the above-mentioned situations which served to refute the allegations presented by the complainant organisation.

171. Regarding the arguments put forward by the Government as set out in paragraphs 98 to 101 above, the Committee considers that the evidence presented relating to the good functioning of the "abortion prevention services", namely the "the reduction in the number of abortions, in the abortion rate and in the number of repeated abortions", and in relation to the "stable number of emergency procedures" and "the

shorter time between the certification and the procedure" does not rebut the arguments made by the complainant organisation that pregnant women encounter problems in accessing abortion procedures in many regions of Italy. Moreover, the Committee considers that it has not been demonstrated by the Government that the measures that have been taken in response to these problems, namely the encouragement of "staff mobility" and "the conclusion of agreements with specialized obstetrics and gynaecology service providers" on the one hand; and the "increase in the number of one-day hospital procedures" and the "recent introduction of pharmacological abortion" on the other hand, guarantee in practice effective access to abortion procedures throughout the country.

172. The Committee acknowledges the validity of the Government's contention that "the high percentage of women who have an abortion at a gestational age of ≤ 10 weeks, combined to a very low rate of complications, especially to the fact that no death or serious complication has ever occurred following an abortion" proves that abortion procedures are generally safe. However, it considers that it has not been demonstrated that mechanisms have been put into place to ensure that the access to and the safety of abortion procedures, as well as the provision of ante- and post-operative care is ensured in all cases, including when the number of objecting personnel in a hospital or nursing home is particularly high. Some difficulties are illustrated by the increasing number of clandestine abortions, which have the potential to lead to serious negative health consequences for the women concerned.

173. The Committee further notes that in its reply to the supplementary questions asked by the Committee that related to the evidential basis of this complaint, the Government indicates that: "the Ministry of Health has no data on specific problems due to objecting health personnel encountered at local level". Furthermore, the information on concrete cases in which pregnant women experienced difficulties in the termination of pregnancy procedure (because of the limited number of available non-objecting personnel) was stated to be "not available", while information on possible appeals lodged by women with respect to the difficulties encountered in the termination of pregnancy procedures is stated to be "N/A". Moreover, the Committee notes that the Government: did not answer the question on whether therapeutic abortions can be and are actually carried out by externally recruited doctors; did not provide detailed information on the measures adopted by hospitals, nursing homes and regional authorities in application of Section 9§4; and did not provide a reply to the specific question on whether – and if yes why – the reduction in the number of abortions over the years indicates that women do not encounter problems in the access to abortion procedures.

174. The Committee therefore finds on the balance of the evidence before it that shortcomings exist in the provision of abortion services in Italy as a result of the problems described in paragraph 169 above, and that women seeking access to abortion services can face substantial difficulties in obtaining access to such services in practice, notwithstanding the provisions of the relevant legislation. These shortcomings appear to be the result of an ineffective implementation of Section 9§4 of Act No. 194/1978, given that a number of health facilities providing maternity services in Italy do not ensure that, "in all cases": a) "the procedures referred to in Section 7 [of the above-mentioned act] are satisfactorily carried out" and, b) "pregnancy terminations, requested in accordance with the procedures referred to in Sections 5, 7 and 8 [of the same act], are adequately performed". As a consequence, the Committee considers that the aforesaid health facilities do not adopt the necessary measures in order to compensate for the deficiencies in service provision caused by health personnel who decide to invoke their right of conscientious objection. It also considers that, in such cases, the competent regional supervisory authorities do not ensure a satisfactory implementation of Section 9§4 within the territory under their jurisdiction.

175. Furthermore, it appears that in some cases, given the urgent character of the procedures needed, women wishing to terminate their pregnancy may be forced to move to other health facilities, in Italy or abroad (see paragraphs 57, 110, 130,141 and 147 above), or to terminate their pregnancy without the support or control of the competent health authorities (see paragraphs 57, 132, 133, 135, 136, 142 and 151 above), or may be deterred from accessing abortion services which they have a legal entitlement to receive in line with the provisions of Act No. 194/1978. The Committee considers that these situations may involve considerable risks for the health and well-being of the women concerned.

176. The Committee therefore considers that with respect to the women who decide to terminate their pregnancy, the competent authorities did not take the necessary measures in order to remove the causes of ill-health, in particular by ensuring that, as provided by Section 9§4 of Act No. 194/1978, abortions requested in accordance with the applicable rules are performed in all cases, even when the number of objecting medical practitioners and other health personnel is high.

177. The Committee holds that this situation constitutes a violation of Article 11§1 of the Charter.

ALLEGED VIOLATION OF ARTICLE E READ IN CONJUNCTION WITH ARTICLE 11 OF THE CHARTER

178. Article E of the Charter reads as follows:

Article E – Non-discrimination

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."
Appendix to the European Social Charter (Revised):
"A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory".

A – Arguments of the parties

1. The complainant organization

179. IPPF EN considers that the shortcomings indicated with respect to the alleged violation of Article 11 of the Charter also constitute a breach of the principle of non-discrimination guaranteed by Article E.

180. In this respect, the complainant organisation considers that the discrimination is twofold. The first type of discrimination, which allegedly is not based on any objective and reasonable justification, has a territorial and economic nature. IPPF EN is of the view that this type of discrimination is based on the fact that:

"[d]ue to the lack of a guaranteed presence of non-objecting medical personnel in all public hospitals, women are forced to move from one institution to the next in order to find one that can guarantee access to termination procedures".

181. In this regard, IPPF EN considers that:

"The need for moving around qualifies as differentiated treatment in the case of an equal situation, that is, the request to exercise the right of access to termination procedures according to the conditions and measures stipulated by Law no. 194 of 1978".

182. Moreover, the complainant organisation maintains that:

"The lack of non-objecting medical personnel, which forces women to find alternative solutions and thus travel to find a hospital that provides the required procedure, also leads to an economic discrimination among women".

183. In particular, it is pointed out that:

"[w]ealthier women are inclined to avail of private clinics in Italy or in public hospitals or private clinics abroad, as they are able to afford the ensuing costs of their choice. On the other hand, it is easy to imagine that women who are not in a position to afford such costs – bearing in mind the "categories" of women who are less well off – are forced to avail of the establishments and persons, or even to travel abroad, which do not guarantee the full protection of health and hygiene that is required by the termination procedure".

184. According to the complaint, the second type of discrimination is that:

"[b]etween women seeking access to termination procedures and women not seeking such access, whether they are pregnant or not".

185. In this respect, IPPF EN is of the view that:

"[t]he state of health, both physical and mental, of women seeking an abortion becomes a criterion (…) for discrimination and, therefore, renders them a target for unfavourable treatment in relation to the protection and guaranteeing of their right to access termination procedures and consequently, in relation to the protection and guaranteeing of their right to life, health and self-determination".

186. The complainant organisation concludes that the inadequate wording of Section 9 of Act No. 194/1978 and the problems concerning its implementation compromise the rights to life, health and self-determination of women seeking to terminate a pregnancy and therefore places the above-mentioned article in contravention of Article E read in conjunction with Article 11 of the Charter.

2. The respondent Government

187. Concerning the issue of discrimination, the Government states that:

a) "[t]he Italian law [194 of 1978] is notably based on Part V of the Appendix to the Charter (…)";

b) "[c]onscientious objection is an objective and reasonable justification which, as set forth by Article 9 [of the above-mentioned law] does not lead to a discriminatory treatment insofar it can be revoked by objecting medical personnel, in order to respect the right to health of women, in application of the provisions of (…) the above-mentioned article",

188. More specifically, the document of the Ministry of Health (see paragraph 97 above) indicates that "in Italy, abortion is fully paid by the National Health Service (SSN) and that the few authorised private facilities have an agreement with the SSN. So economic discrimination has been erroneously invoked. The same holds true for the discrimination against foreign women. In fact 1 woman out of 3 who undergoes an abortion is of foreign origin and the services provided to them, in particular community services such family planning centers have adopted adequate organizational measures to consider their cultural differences, through cultural mediation, adequate working hours trained staff etc."

B – Assessment of the Committee

189. The Committee recalls that Article E prohibits both direct and indirect discrimination. In this respect, it recalls that direct discrimination may arise when individuals and/or groups are hampered or prevented from enjoying the rights set forth in the Charter on the grounds of their status. As set forth in the Charter's appendix, a differential treatment based on an objective and reasonable justification shall not be deemed discriminatory (cf. Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52). The Committee also recalls that in respect of complaints alleging discrimination, the burden of proof should not rest entirely on the complainant organisation, but should be shifted appropriately (Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §52).

190. Two primary forms of discriminatory treatment are alleged to exist in this complaint: (i) discrimination on the grounds of territorial and/or socio-economic status between women who have relatively unimpeded access to lawful abortion facilities and those who do not; (ii) discrimination on the grounds of gender and/or health status between women seeking access to lawful termination procedures and men and women seeking access to other lawful forms of medical procedures which are not provided on a similar restricted basis. The Committee considers that these different alleged grounds of discrimination are closely linked together and constitute a claim of 'overlapping', 'intersectional' or 'multiple' discrimination, whereby certain categories of women in Italy are allegedly subject to less favorable treatment in the form of impeded access to lawful abortion facilities as a result of the combined effect of their gender, health status, territorial location and socio-economic status: the complainant organisation in essence alleges that since women who fall into these vulnerable categories are denied effective access to abortion services as a consequence of the failure of the competent authorities to adopt the necessary measures which are required to compensate for the deficiencies in service provision caused by health personnel choosing to exercise their right of conscientious objection, this constitutes a discrimination.

191. Based on the information provided by the complainant organisation and not contradicted by the government, the Committee notes that, as a result of the lack of non-objecting medical practitioners and other health personnel in a number of health facilities in Italy, women are forced in some cases to move from one hospital to another within the country or to travel abroad (see paragraphs 110, 130, 141 and 147 above); in some cases, this is detrimental to the health of the women concerned. Therefore, the Committee holds that the women concerned are treated differently than other persons in the same situation with respect to access to health care, without justification.

192. In this regard, the Committee also notes that the motions approved by the Italian Senate and Chamber of Deputies in June 2013 confirm that some pregnant women are obliged to travel to other regions of Italy and even abroad to seek abortion treatment as a result of the high level of objecting health personnel in the hospitals situated close to their usual place of residence, while there seems to be a re-emergence of clandestine abortions, in particular among immigrant women (see paragraph 57 above).

193. The Government does not provide specific information that contradicts the claims set out in the two previous paragraphs, or which in the alternative demonstrates that its alleged failure to make measures to ameliorate the less favorable treatment suffered by the women falling into the vulnerable categories described above can be objectively justified. The Committee considers that the Government's argument that abortion is a service whose cost is fully covered by the "National Health Service" does not refute the complainant organisation's reasoning that women have to move to other regions or abroad to have access to abortion services. If a service is not available in practice, it is irrelevant whether it is for free or has to be paid for. Furthermore, women denied access to abortion facilities may have to incur substantial economic costs if they are forced to travel to another region or abroad to seek treatment. In this regard, the time factor is also crucial: women who are denied access to abortion facilities in their local region may in effect be deprived of any effective opportunity to avail of their legal entitlement to such services, as the tight time-scale at issue may prevent them from making alternative arrangements.

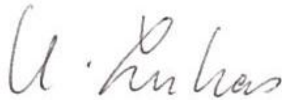
194. The Committee thus holds that this situation constitutes a violation of Article E of the Charter read in conjunction with Article 11.

CONCLUSION

For these reasons, the Committee concludes:

- by 13 votes to 1 that there is a violation of Article 11§1 of the Charter;

- by 13 votes to 1 that there is a violation of Article E read in conjunction with Article 11 of the Charter.



Karin LUKAS	Luis JIMENA QUESADA	Régis BRILLAT
Rapporteur	President	ExecutiveSecretary

In accordance with Rule 35§1 of the Rules of the Committee:

- a separate dissenting opinion of Luis JIMENA QUESADA is appended to this decision;

- a separate concurring opinion of Petros STANGOS is appended to this decision.

DISSENTING OPINION OF LUIS JIMENA QUESADA

1. I am unable to subscribe to the majority conclusion of the Committee that there is a violation of Article 11§1 of the Charter, and of Article E of the Charter read in conjunction with this provision in the decision on the merits of 10 September 2013 concerning Complaint No. 87/2012 (*IPPF EN v. Italy*). The reasons for my dissent, which basically focus on paragraph 169 and related paragraphs of the decision on the merits, concern the following aspects: A. *The object of the complaint as explicitly delimitated by the complainant organisation*. B. *The lack of solid evidence supporting the conclusion of a violation of Article 11§1 of the Charter*. C. *The lack of consistency in reaching the conclusion of a violation of Article 11 in conjunction with Article E*.

A. *The object of the complaint as explicitly delimitated by the complainant organization*

2. The *petitum* of the complaint says: "For these reasons, IPPF EN asks the European Committee of Social Rights to declare that Italy is in violation of Art. 11 of the European Social Charter, read alone or in conjunction with Art. E, due to the *inadequate formulation* of Art. 9 of Law no. 194 of 1978 and thus, the protection of the right to access procedures for the termination of pregnancy". Indeed, with such a petition, the object of the complaint appears ambiguous under the tasks of the European Committee of Social Rights, insofar as while apparently contesting the implementation of the Law, the complainant organisation explicitly asks for the "re-formulation" of the contested legislation. In the same line, the Committee notes that "IPPF EN alleges that the *formulation* of paragraph 4 of Section 9 of Act No. 194 of 1978" is in violation of the Charter (par. 2); that "IPPF EN also argues that the *provisions* of Section 9§4 *are inadequate*" (par. 77); that "IPPF EN considers that the *law* should..." (par. 78); that "given the *inadequacy of the statutory framework*" (par. 79); that "IPPF EN indicates that the *inadequacy of Act* No. 194/1978…" (par. 81); or that "the complainant organization concludes that the *inadequate wording* of Section 9§4...therefore places the above-mentioned article in contravention of Article 11 of the Charter" (par. 91).

3. In parallel, the Committee "notes that the essence of IPPF EN's allegations in this complaint is that the *inadequacy of Section 9§4 of Act No. 194/1978* is demonstrated by the high number of medical practitioners and other health personnel exercising the right to conscientious objection in Italy. IPPF EN maintains that, in practice, this high number impedes the right of women to access procedures for termination of pregnancy. In particular, the complainant organisation maintains that the high number of medical practitioners and other health personnel exercising the right to conscientious objection prevents the full implementation of Act 194/1978 *due to the lack, in Section 9, of specific provisions* to ensure that women enjoy effective access to abortion procedures throughout the country" (par. 160). The Committee also considers "that the high number of objecting health personnel in Italy does not *per se* constitute evidence that these legal provisions are being implemented in an ineffective manner" (par. 168).

4. However, in my view, while stating that "*per se*" the high number of objecting health personnel and allied health personnel does not represent evidence of an ineffective implementation of Section 9§4 of Act No. 194/1978, the fact is that this is precisely the equation established by IPPF EN in its complaint and, finally, the solution supported by the majority conclusion of violation of Article 11§1 of the Charter, without solid evidences to reach such a conclusion (section B, *infra*).

5. Of course, the task of the Committee consists of the supervision of both law and practice under the Social Charter and, from this point of view, its conclusions of non-conformity and decisions of violation may lead to the adoption of new legislation, rules, practices or jurisprudences at the domestic level. Nevertheless, while not indicating any concrete contradiction of the national law itself with the Charter, I consider that the complainant organisation has failed to demonstrate that the legal provisions aiming at reconciliating the access by women to abortion and the exercise of conscience objection by doctors and other health personnel (in particular, the recourse to external non-objecting health personnel through mobility and the establishment of agreements between hospitals and private establishments) constitute a violation of Article 11§1.

6. From this perspective, in the absence of a clear consensus at European level, Italy (like the other States Parties to the Charter) may exercise its margin of appreciation in order to adopt further legislative measures aiming at improving the positive obligations imposed by Article 11 in the field of the controversial issue of abortion: the judgments of the European Court of Human Rights which are mentioned in paragraphs 53-56 of the decision on the merits confirm this approach. Nonetheless, apart from this possible new legislation concerning abortion (in relation to which not only academicians, scientific and ethic committees, mass media or politicians, but also civil society - through NOGs or through mechanisms of direct democratic participation of the whole citizenship - have an important role to play), what the Committee had in front of it was the assessment of the compatibility and implementation of the current legislation with the Charter. And, under this angle, there is no solid evidence demonstrating that women in Italy are impeded in having access to procedures of termination of pregnancy in healthy conditions implying risks for their life and physical or moral integrity because of the high number of personnel refusing to carry out these procedures on conscientious grounds.

B*. The lack of solid evidence supporting the conclusion of a violation of Article 11§1 of the Charter*.

7. In paragraph 169 of the decision on the merits, the Committee grants decisive weight to the list of elements it mentions [a) to g)] in relation to some governmental statements and parliamentary motions. By contrast, I consider that even the conjunction of these elements provides a weak basis on which to reach the conclusion of a violation of Article 11§1.

8. Under these conditions, when reading the content of the motions adopted in June 2013 within the Senate and the Chamber of Deputies (par. 57-58), if the apparent conclusion for the Committee is that there is a political consensus within the Italian Parliament "with respect to the difficulties encountered in the implementation of Act No. 194/1978", it seems more logical to ask the "re-formulation" of this Act to those who are entitled to exercise this legislative power, that is to say, to the same national parliamentarians. The importance of these governmental statements and parliamentarian motions for the political and social debate in Italy do not provide a solid support for the legal and judicial reasoning of the Committee.

9. In my opinion, the existing differences between Italian regions in the provision of health care services allowing for the practice of abortions as a result of the diverse number of conscience objectors in this field cannot lead the Committee to conclude that the measures foreseen by the law (mobility of external non-objecting health personnel and agreements between hospitals and private establishments) are not appropriated under Article 11§1 of the Charter. In this regard, the statements of the Minister of Health selected in the decision of the merits referring to the number of objectors (par. 59) do not neither allow to reach a conclusion of violation of Article 11§1 of the Charter. In putting the accent on "the theme of governance of territories and therefore more connected to the theme of regions", the Minister is locating the issue at stake in the broader problematic of asymmetries between regions within a politically decentralized state. Indeed, when matters like health care and others are under the jurisdiction of regions, the diversity on the level and quality of the protection provided by regional authorities is inherent in the exercise of such self-government.

10. In particular, terms of violation of one fundamental right if they prevent from the enjoyment of the basic level of protection of such fundamental right as required by the Social Charter. Consequently, if the difference in one or several parts of the territory implied a lack of respect of the basic standards set forth in the Charter, the Contracting Party would of course be responsible for one violation of the right at stake. However, when reading the situations a) to f) which are mentioned in paragraph 169 of the decision of the merits, it is obvious that the possible regional differences and deficiencies could be verified, not only in relation to abortion services, but also to other health care services. In this sense, the weight granted to these alleged situations a) to f) seems paradoxical when reading at the same time paragraph 172, in which the Committee "acknowledges the validity of the Government's contention" and "proves that abortion procedures are generally safe".

11. With this in mind, a new paradox arises in this paragraph 172 when:

11.1. Firstly, the Committee considers that "it has not been demonstrated that mechanisms have been put into place to ensure that the access to and the safety of abortion procedures, as well as the provision of ante- and post-operative care is ensured in all cases, including when the number of objecting personnel in a hospital or nursing home is particularly high". Certainly, as recalled by the Committee in paragraph 168, Sections 5, 7 and 8 of Act No. 194/1978 logically establish *in law* the obligation for hospitals and nursing homes to ensure that abortion procedures are carried out in "all cases", but the majority of the Committee seems to require the "perfection" in the issue at stake: would the existence *in practice* of one case of failure or infringement lead to a conclusion of violation of Article 11 in the framework of the present collective complaint procedure?; should *mutatis mutandis* be applied this zero-tolerance to the assessment of other issues such as infant and maternal mortality rate under Article 11? It is obvious that, which such an approach, no conclusion of conformity could be obtained.

11.2. Secondly, the Committee seems to seek to reinforce its line of reasoning by adding that "some difficulties are illustrated by the increasing number of clandestine abortions, which have the potential to lead to serious negative health consequences for the women concerned". This element paradoxically and clearly weakens the legal reasoning of the Committee, insofar as no relationship between "the increasing number of clandestine abortions" and the number of objectors is explained or demonstrated at all. As well known, the causes of clandestine abortions (cultural, sociological, etc.) are complex and, in any case, no illustration supports this new equation between clandestine abortions and medical conscience objection. Otherwise said, this automatic equation leads to a kind of stigmatisation of objectors in spite of the apparent approach of the Committee when considering "that the provisions of Section 9§4 establish a balanced statutory framework for the fulfillment of the goals of Act No. 194/1978" and "that the high number of objecting health personnel in Italy does not *per se* constitute evidence that the domestic legal provisions at stake are being implemented in an ineffective manner" (par. 168).

I feel that the Committee has lost a good occasion to reconciliate and find a balanced approach as suggested in different Council of Europe instruments [e.g. the PACE Resolution 1763 (2010) "The right to conscientious objection in lawful medical care", cited in paragraph 63 of the decision on the merits] and, at the same time, it has also lost a new opportunity to correctly develop the gender perspective in the field of sexual and reproductive health (e.g. in the light of the interpretation principles announced in the framework of the decision on the merits of 30 March 2009 concerning Complaint No. 45/2007,

INTERIGHTS v. Croatia, which is not cited by the Committee in the decision on the merits of the present complaint, even in the context of the "alleged violation of Article E read in conjunction with Article 11 of the Charter", *infra*). In this context, the position of the National Bioethics Committee (*Comitato Nazionale per la Bioetica*) concerning "the possibility to exert conscientious objection, in a way that would not discriminate neither objecting, nor non-objecting personnel, by promoting a revision of the organization of duties and recruiting through adequate forms of personnel mobility and differentiated selection of human resources" (paragraph 157) does not exactly constitute the object of the present Complaint No. 87/2012, but it is rather connected with the pending Complaint No. 91/2013.

12. Furthermore, the final situation or element g) which is mentioned in paragraph 169 ("cases of objecting health personnel refusing to provide the necessary care prior to or following abortion") has no real support. And this illustrates one of the strongest elements of my dissent when I criticise "the lack of solid evidence in reaching the conclusion of a violation of Article 11§1 of the Charter". In particular, the Committee refers to "paragraphs 52, 126 and 127, above", but paragraphs 52 and 126 mention judgment No. 14979 of the Italian Supreme Court (*Corte di Cassazione*) that sentenced a conscientious objector doctor who refused to aid a woman "following an abortion" (*ex post facto*), and not "prior to" (*ex ante*) which is the object of the present Complaint No. 87/2012 (moreover, the decision of 1979 of the *Pretura of Ancona* mentioned in paragraph 127 did not deal with a specific case of termination of pregnancy). With regard to these domestic judicial illustrations (which, I insist, do not strictly relate to the object of the complaint, "access to procedures for the termination of pregnancy", that is, prior to an abortion), I would like to add:

12.1. Firstly, on the balance of the evidence (e.g. paragraphs 169-175), with due respect to the weight granted by the Committee to some elements (presented or not by the complaint organisation, including the data provided by the President of LAIGA or the governmental statements and parliamentarian motions) as well as to the approach of the Committee concerning the burden of proof, it appears strange to me from a judicial assessment perspective that in more than three decades since the entry into force of Act No. 194/1978, not even one example of domestic judicial case of damage liability (before administrative or criminal courts) dealing with objecting health personnel prior to an abortion has been provided. From this point of view, it is evident that I am not suggesting in the framework of the present Complaint "to ask women first and foremost - but also non-objecting doctors - to reveal themselves publicly in a complaint against individual conscientious objector doctors or facilities where services for voluntary termination of pregnancy are not guaranteed" (paragraph 104 of the decision on the merits), but just to provide one example of national judicial case without logically citing the names of the parties and, therefore, with due respect to the right to private life recognised in Article 8 of the European Convention on Human Rights.

12.2. Secondly, this lack of judicial evidence cannot be justified by the consideration that "it would not be in conformity with the Charter if the resolution of any possible problems encountered by women with respect to gaining access to abortion procedures is left in the hands of administrative or judicial authorities to be determined after the fact" (paragraph 164). Of course, one cannot disagree with this preventive approach, which plays an essential role for the effectiveness of the right to health, as explicitly recognized by Article 11(§§2 and 3) of the Social Charter. But this is not the issue at stake. In this regard, the Committee has not found any violation of these two paragraphs (2 and 3) of Article 11 and in Conclusions 2009 Italy (last assessment of the Committee in the framework of the reporting system) was found in conformity with both paragraphs (2 and 3).

C. *The lack of consistency in reaching the conclusion of violation of Article 11 in conjunction with Article E.*

13. Lastly, it is obvious that, by not sharing the conclusion of a violation of Article 11§1 of the Charter, I do not share the parallel conclusion of a violation of Article E in conjunction with Article 11§1 of the Charter.

14. From this perspective, apart from the inherent asymmetries in the reality of a regional state (see above), I do not perceive the consistency of the legal assessment of the Committee in terms of non-discrimination (in particular, paragraphs 190-191). On the one hand, in relation to the territorial and/or socio-economic status, the assessment of the majority of the Committee is not convincing, because the same legal reasoning could be applied to other issues directly related to health care and abortion, that is to say, an important number of abortions are related to the social-economic situation of "potential" mothers (including the difficult situation of migrant women) due to the differences (and deficiencies) in the field of the social protection of maternity among regions. It is interesting to mention, in this last direction: a) the decision on admissibility of 10 September 2013 (the same date as the decision on the merits on Complaint No. 87/2012) concerning Complaint No. 99/2013 (*FAFCE v. Sweden*), in which the Committee has considered that "family policies and rights of the family cover motherhood, procreation and the development of human life" (paragraph 8); b) the Resolution 1946 (2013) on "Equal access to health care" adopted by the Parliamentary Assembly of the Council of Europe on 26 June 2013, which calls on the Council of Europe member States "to ensure that pregnant women and children, as a particularly vulnerable group, have full access to health care and social protection, irrespective of their status".

15. On the other hand, in relation to discrimination on the grounds of gender and/or health status, the Committee establishes the comparison “between women seeking access to lawful termination procedures and men and women seeking access to other lawful forms of medical procedures which are not provided on a similar restricted basis” (paragraph 190). I think that the terms of comparison used by the Committee are not at all relevant and, therefore, the first element of the standard of non-discrimination (apart from a reasonable and objective grounds or justification to make the distinction as well as the proportionality) is not fulfilled. For this reason, I feel that the last sentence of paragraph 191, in which the Committee concludes “that the women concerned are treated differently than other persons in the same situation with respect to access to health care, without justification” is somehow laconic. Finally, once again, I confirm my idea that: a) the gender perspective and the scope of sexual and reproductive health have not been correctly focused on; b) the equation between medical conscience objection and “a re-emergence of clandestine abortions, in particular among immigrant women” (paragraph 192) is incorrectly articulated.

These are the reasons for my dissent.

CONCURRING OPINION OF PETROS STANGOS

I voted in favour of the decision, both as regards violation of Article 11 of the Charter and as regards violation of Article E in conjunction with Article 11. However, from the first time I studied IPPF EN's complaint, I came to the view that if the two provisions of the Charter had been violated, this was the result not only of Act No. 194/78 being implemented ineffectively in the case brought by the complainant but also in principle because of the fundamental structure of the 1978 act and, more particularly, Sections 4 and 5, which regulate women's right to abortion in a manner incompatible with the requirements of Article 11 of the Charter.

The Committee's assessment that the ineffective implementation of the law is the sole source of the violation of the Charter is summed up in paragraph 176 of the decision, according to which Article 11 of the Charter has been violated because the competent authorities did not take the necessary measures in order that, "as provided by (…) Act No. 194/1978, abortions requested in accordance with the applicable rules are performed (…)", even when the number of objecting medical practitioners and other health personnel is high. I also believe that the decision gives too much weight to the same approach adopted by the Italian parliament in an opinion, whereby it is not the (high) number of objecting medical practitioners which in itself determines access to abortion but the arrangements made by health care institutions for implementing the 1978 legislation (see paragraph 175 of the decision). In addition, the exclusive approach taken by the decision ignores the fact that the complainant had alleged that the real source of the violation of Article 11 of the Charter in the present case is the fact that the 1978 act does not in itself enable women effectively to exercise their right to terminate their pregnancy (see paragraph 12 of the decision).

In my opinion, the exclusive approach adopted by the Committee is not fully in tune with the real issues raised by this complaint. Through the 1978 act, Italy took a clear stance in the several decades-old worldwide legal debate about abortion, which ranges those who oppose women's right to abortion with arguments of an ethical, moral or religious nature, supported by legal reasoning (the foetus is a human being that is simply in the initial stages of its biological growth, which involves assimilating abortion with an act of manslaughter) against the supporters of women's right to abortion as a right stemming from, and forming part of, every human being's right to self-determination, including physical and bodily self-determination. R Dworkin (in *Life's Dominion: an Argument about Abortion, Euthanasia, and Individual Freedom*, 1994) describes the former as "pro-life" and the latter as "pro-choice". Medical practitioners who are conscientious objectors to abortion naturally fall into the former category.

Carrying on from the facts complained of in the present case, I believe that Italy clearly comes out in favour of the opponents of women's right to abortion through Sections 4 and 5 of Act No 194/1978, given the manner in which they regulate the right to abortion. Under these two provisions, in particular Section 5, paragraph 1, a whole set of institutional and operational machinery is put in place (counselling centres and socio-medical agencies) for the purpose of neutralising the supposed, but plausible, reasons of an economic nature for the decision by a pregnant woman who visits these institutions during the first three months of pregnancy to have an abortion. The Italian legislator was so keen to encourage pregnant women who visit the relevant centres during the first three months of pregnancy to remain pregnant and not have abortions that the last sentence of Section 5, paragraph 1, of the 1978 act foreshadows the women ultimately "choosing" to give birth rather than have abortions!

It may be said that this approach by the Italian legislator was in line with the prevailing values in society at the time when it was adopted. However, that is not sufficient to justify its continued application 35 years later, when a consensus now seems to be emerging among European states that women should have an unconditional right to abortion during the first three to five months of pregnancy (see here the judgment of the European Court of Human Rights in the case of *R.R. v. Poland*, paragraph 186, which provides "that there is indeed a consensus amongst a substantial majority of the Contracting States of the Council of Europe towards allowing abortion and that most Contracting Parties have in their legislation resolved the conflicting rights of the foetus and the mother in favour of greater access to abortion"). Through the above-mentioned provisions of the 1978 legislation, Italy operates a sophisticated and official system of pressure on women so that they choose not to terminate their pregnancies.

Moreover, the arrangements established by the 1978 act, which are based on public counselling centres and socio-medical agencies, had a direct impact on the way in which the Italian government defended the case before the Committee. On several occasions, the Italian government highlighted the effective operation of these institutions and the contribution they have made to reducing the number of abortions in recent years, which is not entirely without a hidden agenda on its part; this could have been worded as follows: "as the system with the centres works well, the number of abortions is low and it therefore does not matter that most hospitals only have gynaecologists who raise conscientious objections and that the central and regional authorities are unable to make up for this by employing 'ordinary' physicians". I would even say that this hidden agenda seems to emerge in the arguments put forward by the government in its defence, when its representative tells the Committee that: "(…) the reduction in the number of women who undergo an abortion is far greater than the increase in the number of conscientious objectors among health care professionals and staff; in the last few years, services have become more efficient (…) in terms of prevention (…)" (see paragraph 101 of the decision).

In my view, while solemnly claiming to help pregnant women who visit the public counselling centres during their first months of pregnancy to cope with the economic and social problems alleged to make them seek abortions, the defendant state is caving in to the ethical, moral or religious calls to oblige women not to terminate. The pressure exerted on pregnant women under the conditions set out in the above-mentioned provisions of the 1978 act is likely to cause serious harm both to the dignity and personal integrity of the women concerned and to their psychological health. Women's freedom and independence and their control over their bodies and personalities are at risk of being seriously undermined. Moreover, the system employed by the Italian state leads me to refer both to the circumstances, and to the judgment of the United States Supreme Court, in the highly publicised case of *Planned Parenthood of Southeastern Pennsylvania v. Casey* (No. 112 S. Ct. 2791, 1992) concerning restrictions on the right to abortion in one of the states of the union (like many others); a passage in the *Casey* judgment, whose astuteness is confirmed in a concurring opinion by three judges (Kennedy, O'Connor and Souter), seems very relevant to the complaint examined by the Committee: regulations on abortion may be declared unconstitutional (or, in the instant case, in violation of a treaty protecting fundamental rights) when, even though they do not prohibit abortion, their purpose and consequences entail excessive interference in the personal choice of a woman who has decided to undergo a treatment such as abortion by posing substantial obstacles to the exercise of her decision.

For all these reasons, the above-mentioned legislative provisions, which open the way for pressure to be exerted on women seeking abortions, should in my opinion have been examined by the Committee with a view to determining their conformity with Article 11 of the Charter or, at least, with a view to their being taken into consideration as an aggravating factor in the violation of Article 11 of the Charter caused by ineffective implementation of the domestic legislation in circumstances resulting from the high number of hospital medical practitioners and other health care staff who are conscientious objectors to abortion.