



European
Social
Charter

Charte
Sociale
Européenne



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

DECISION ON ADMISSIBILITY

22 October 2012

**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 260th session attended by:

Luis JIMENA QUESADA, President
Colm O'CONNOR, Vice-President
Monika SCHLACHTER, Vice-President
Jean-Michel BELORGEY, General Rapporteur
Csilla KOLLONAY LEHOCZKY
Lauri LEPPIK
Birgitta NYSTRÖM
Rüçhan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Jarna PETMAN
Giuseppe PALMISANO
Karin LUKAS

Assisted by Régis BRILLAT, Executive Secretary,

Having regard to the complaint dated 8 August 2012, registered on the 9 August 2012 as number 87/2012, lodged by the International Planned Parenthood Federation – European Network (IPPF EN) (“IPPF EN”) and signed by its Regional Director Ms Marie-Rose Claeys, requesting the Committee to find that the situation in Italy does not comply with Article 11 of the Revised European Social Charter (“the Charter”), as well as with Article E in conjunction with this provision;

Having regard to the documents appended to the complaint;

Having regard to the observations of the Italian Government (“the Government”) on admissibility registered on 15 October 2012;

Having regard to the Charter and, in particular, to Articles 11 and E, which read 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 co-operation 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, as well as accidents.”

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”.

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session, on 20 February 2009 at its 234th session and on 10 May 2011 at its 250th session (“the Rules”);

Having deliberated on 22 October 2012;

Delivers the following decision, adopted on the above-mentioned date:

1. The complainant organisation alleges that the difficulties experienced by women in the access to termination of pregnancy provided by the legislation amount to a breach of the right to health as guaranteed by the Charter.

In this respect, it indicates that Law no. 194 of 22 May 1978 on “Norms on the social protection of motherhood and the voluntary termination of pregnancy” establishes a balance between rights pertaining to women (and thus primarily their right to life and health, as well as self-determination in choices concerning reproduction and the termination of pregnancy) and those pertaining to medical personnel (and thus the right to raise conscientious objection in the means and times provided for by Article 9 of the said Law) providing that neither is sacrificed, except in cases of imminent danger to the life of the woman. However, the complainant organisation argues that in practice the high number of doctors being conscientious objectors entails that the above-mentioned legislative provision cannot guarantee the effective exercise of women’s right to have access to procedures for the termination of pregnancy.

THE LAW

As to the conditions laid down by the Protocol and the Committee’s Rules

2. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Italy on 3 November 1997 and entered into force for this State on 1 July 1998, the complaint has been submitted in writing and concerns Articles 11 and E of the Charter, provisions accepted by Italy when it ratified this treaty on 5 July 1999 and to which it is bound since the entry into force of this treaty in its respect on 1 September 1999.

3. Moreover, the grounds for the complaint are indicated.

4. The Committee notes that, in accordance with Articles 1 b) and 3 of the Protocol, IPPF EN is an international non-governmental organisation with participative status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints before the Committee.

5. As regards the particular competence of IPPF EN in the matter of the complaint, which is not contested by the Government, the Committee has examined the organisation’s Statute and notes that, under Title I, Article 3 of this Statute, IPPF EN works in the following areas relating to sexual and reproductive health and rights (SRHR). IPPF EN has defined its areas of activity as “The Five As”: Abortion, Access, Adolescents, Advocacy and Aids. The Committee consequently considers that the organisation has submitted a complaint which falls within its field of competence and has particular competence within the meaning of Article 3 of the Protocol.

6. The complaint is signed by Ms Marie-Rose Claeys, Regional Director of IPPF EN who, in accordance with Title III, Article 28 of its Statute, is entitled to represent the complainant organisation. The Committee, therefore, considers that the condition provided for in Rule 23 of the Rules is fulfilled.

As to the objections of inadmissibility raised by the Government

7. The Government invites the Committee to declare the complaint of IPP EN inadmissible:

- “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”.

8. The Committee considers that the information submitted in this respect by the Government relates to the merits of the complaint and should not be considered at the stage of admissibility.

9. Therefore, the Committee considers that the objections to the admissibility of the complaint raised by the Italian Government cannot be sustained.

10. For these reasons, the Committee, on the basis of the report presented by Colm O’CINNEIDE, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In accordance with Rule 26 *in fine* and in view of the seriousness of the allegations, decides to give precedence to this complaint and thus sets time limits for the proceedings which will not be extended.

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 6 December 2012.

Invites the IPPFEN to submit a response to the Government’s submissions by 17 January 2013;

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Charter to make comments by 6 December 2012, should they so wish;

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 6 December 2012.



Colm O'CONNOR
Rapporteur



Luis JIMENA QUESADA
President



Régis BRILLAT
Executive Secretary