EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

30 May 2013

Case Document No. 2

***Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy**
Complaint No.91/2013

SUBMISSIONS OF THE GOVERNMENT ON THE ADMISSIBLILITY AND THE MERITS

Registered at the Secretariat on 30 May 2013

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SUBMISSIONS BY THE ITALIAN GOVERNMENT ON THE ADMISSIBILITY AND THE MERITS

Rome, 29 May 2013

GOVERNMENT AGENT

1. Further to the complaint lodged against Italy by the Confederazione Generale Italiana del Lavoro (CGIL) and communicated to it by the Secretariat in its letters of 7 February and 25 March 2013, the Italian Government would like to make the following submissions on the admissibility and merits of the complaint.

ADMISSIBILITY

2. The Italian Government accepts that there is no reason to question the admissibility of the complaint in connection with the right of the CGIL to submit such complaints under Article 1 of the Additional Protocol of 1995.

3. It must point out, however, before making its submissions on the merits, that the questions raised regarding protection of the rights of public employees in national institutions do not fall within the scope of the Social Charter, as the CGIL claims in its submissions (p.52).

MERITS

General considerations

4. The complainant trade union, the Confederazione Generale Italiana del Lavoro (CGIL), alleges that Article 9 of Law No. 194/1978, which lays down the rules on conscientious objection by doctors with regard to voluntary termination of pregnancy:

> a) is in breach of Article 11 (right to health) of the European Social Charter, read alone or in conjunction with the non-discrimination clause contained in Article E, because it fails to provide sufficient protection for the rights of women with regard to access to pregnancy termination procedures;
> b) is in breach of Articles 1 (right to work), 2 (right to just conditions of work), 3 (right to safe and healthy working conditions), 26 (right to dignity at work) of the European Social Charter, read alone or in conjunction with the non-discrimination clause contained in Article E, because it fails to provide sufficient protection for the rights of workers covered by Law No. 194/1978.

In this connection, the Government would like to begin by pointing out that Article E must be read in its full version, 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";

and with reference to the Appendix to the revised European Social Charter, where the following clarification was added with regard to:

Part V - Article E

"A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory";

together with Article 11, which reads as follows:

Article 11 - The right to protection of health

"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, as well as accidents."

5. It must be inferred from these two articles that Italian law is not in breach of the European provisions cited when it strikes a proper and necessary balance between women's right to life and health and the freedom of conscience of medical or paramedical personnel vis-à-vis voluntary termination of pregnancy.

6. It should be added that Law No. 194/78 is also worded in accordance with Italian constitutional principles, as was asserted in Constitutional Court judgment No. 35 of 1997, which rejected an application for a referendum on the partial repeal of this law (including Article 9), because it considered that "a referendum cannot be held against an ordinary law comprising constitutionally compulsory content" such as the law in question, which relates to the principle of non-discrimination.

7. In this respect, the Government must also point out that the Italian law is based primarily on Part V of the Appendix to the Charter where it is specified in relation to Article E that "a differential treatment based on an objective and reasonable justification shall not be deemed discriminatory". The Government notes again that the Italian law, which sets out the arrangements and measures to secure women's right to health in the event of voluntary termination of pregnancy and to protect their lives was adopted in accordance with the margin of appreciation afforded to states, as provided for by Article G of the Charter, which 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."

A. Reply to the CGIL's first allegation that Law No. 194/1978 is in breach of Article 11 read alone or in conjunction with Article E on non-discrimination because it denies women access to pregnancy termination procedures

8. The CGIL's complaint is based on the erroneous assumption that pregnancy is an "illness", for which "abortion" is the treatment and that women are unjustly denied this treatment because of the increasing number of doctors who are conscientious objectors. It argues that the state has a duty to secure the effective enjoyment of the right of access to legal abortion, where necessary by taking measures to remove the obstacle formed by the large number of conscientious objectors.

9. The Government would like, firstly, to inform the ECSR and point out to the applicants that in Italy the National Health Service (SSN) alone is tasked with providing voluntary terminations of pregnancy and that the small number of authorised private health establishments operate under an agreement with the SSN.

10. In this connection, it can be pointed out that the use of private health facilities which have not signed an agreement with the SSN is expressly prohibited by Law No. 194/1978, under which operations to terminate pregnancies may only be carried out in public health facilities or private facilities covered by an agreement (Article 8). The legislation also prohibits any form of payment by the women concerned so as to prevent any profit-making activities, providing for criminal sanctions in such cases (Articles 8 and 19 of Law No. 194/1978). In this respect it can be stressed that if the CGIL is aware of any profit-making activities, it should report them to the relevant judicial authorities.

11. It must therefore be stated that Italian law prohibits any discrimination based on the differing financial resources of women making use of termination facilities in Italy, contrary to what the CGIL argues when it complains of a violation of Article E of the Social Charter in conjunction with Article 11 on the grounds that women suffer discrimination according to their place of residence and that their economic circumstances may deny them or restrict their right of access to termination procedures (see the third paragraph on page 36 of the CGIL's submissions).

12. On these matters, the CGIL has not provided enough documentation to back up its statements.

13. The Government would point out that the application of Law No. 194/1978 has resulted in a reduction in clandestine abortions by Italian and above all foreign women, who can now turn to public facilities operating throughout the country under agreements between the state and the regions.

In this respect, it should be reiterated that:

"*under Article 117, paragraph 2, sub-paragraph (m) of the Constitution, as amended in 2001, the state has the exclusive power to determine the basic standards of service relating to civil and social rights guaranteed throughout the national territory whereas the Regions are assigned concurrent powers over 'health care, protection and safety of labour, professions, …*'.

In particular, the National Health Plan is the main planning instrument at national level and establishes the 'broader health system', [which provides the framework in which institutionally approved measures are adopted, which in turn determine health policies applied at regional level].

One of the main aims of the National Health Plan for 2012-2013 was to promote the 'well-being and health of citizens and communities' bearing in mind that 'the true asset of a health system is the health of citizens'. It is based therefore on the principles of:

- *public responsibility for protection of the right of communities and individuals to health;*
- *equal and fair access to services;*
- *freedom of choice*;
- *public information and citizen participation;*
- *free care within the limits set by the law;*
- *comprehensive health care insurance as defined by essential assistance levels;*

  …
- *systematic supervision of situations in which entitlement to and provision of services and benefits are suspended"*

  (see 12th National Report by the Government of Italy, Cycle 2013 - RAP/RCha/IT/12(2013), page 43).

14. These principles confirm that the current legislation on voluntary termination of pregnancy discriminates neither directly or indirectly against women, whether they are rich or poor or Italian or foreign nationals, under Article E on non-discrimination, here in the health field, read in conjunction with Article 11 of the Charter, which requires states to ensure "the effective exercise of the right to protection of health … either directly or in cooperation with public or private organisations".

15. It should also be pointed out that access to abortion cannot be a social right. For instance the information document on Article 11 of the Social Charter produced by the Secretariat in March 2009 asserts that states are required to control infant and maternal mortality and that every step should be taken to achieve a result as close as possible to "zero risk". Italy's duties under Article 11 do not extend any further and do not entail an obligation to provide access for everyone to voluntary termination. Access to abortion is only mandatory in the event of a risk of maternal mortality and such cases are not affected by conscientious objection. It is worth pointing out that in none of its conclusions on national reports has the Committee ever addressed the issue of abortion. Several European countries have banned and continue to ban abortion in criminal law, such as

Poland, Malta and Monaco. When examining these countries' national reports, the Committee has never found that the prohibition or restriction of abortion is not in conformity with the Social Charter.

16. The European Court of Human Rights has also found that while women are not entitled to abortion under the ECHR, they do have the right, in states which authorise the practice, to respect for their choice to carry out an abortion under the conditions provided for by the national law, without unreasonable restrictions and while enjoying appropriate legal guarantees to protect their choice (decision of the European Commission of Human Rights, X. v. the United Kingdom, 13.5.1980).

17. The Italian Government considers therefore that Law No. 194/1978 was drawn up to protect the health both of women and of the unborn child, even though it has not yet been established whether such children have the right to life or whether their interests can be a factor which interferes with women's private lives (see *Bruggermann and Scheuten v. Germany*, no. 6959/75, with regard to Article 8§2).

B: Replies to the CGIL's second and third allegations, namely a violation of Article 1 (right to work) and Articles 2 (right to just conditions of work), 3 (right to safe and healthy working conditions) and 26 (right to dignity at work) of the European Social Charter, read alone or in conjunction with the non-discrimination clause contained in Article E, because of the failure to provide sufficient protection for the rights of workers covered by Law No. 194/1978.

18. The main purpose of the CGIL's complaint was to allege a violation of Articles 1 (right to work), 2 (right to just conditions of work), 3 (right to safe and healthy working conditions), 26 (right to dignity at work) of the European Social Charter, read alone or in conjunction with the non-discrimination clause contained in Article E, on the ground that the rights of workers involved in pregnancy termination procedures were not sufficiently protected. The CGIL also asks the Committee to acknowledge the relevance vis-à-vis the subject of the complaint of Articles 21 (right to information and consultation) and 22 (right to take part in the determination and improvement of the working conditions and working environment) of the revised Charter.

19. Yet, one question needs to be addressed straight away and that is how the state might reduce the proportion of conscientious objectors within a profession without violating the right to conscientious objection itself and without, ultimately, permanently barring access to the medical professions to persons who, for moral reasons, do not wish to carry out abortions.

20. In this connection, it has to be pointed out that on 12 July 2012 the Italian National Bioethics Committee adopted a document in which it stated as follows: "In recognising the protection of conscientious objection in the cases considered in bioethics, the law must provide appropriate measures to ensure the delivery of services, by possibly identifying a person responsible for the same services. Conscientious objection in bioethics must be regulated in such a way that there is no discrimination of objectors or non-objectors and

therefore no burdening of either, on an exclusive basis, with services that are particularly heavy or deskilled. For this purpose, we recommend the setting up of an organisation of tasks and recruitment in the fields of bioethics in which conscientious objection is applied, which may include forms of personnel mobility and differentiated recruitment so as to balance, on the basis of available data, the number of objectors and non-objectors. Checks usually *a posteriori* should also ensure that the objector does not carry out activities that are incompatible with the one to which objections were raised".

21. Under Law No. 194/1978 public hospitals where voluntary termination of pregnancy is carried out are obliged to complete the various procedures involved and the Italian Regions must supervise and guarantee the performance of termination even if this has to be achieved through staff mobility measures. The law therefore provides, on the one hand, for health professionals to be able to express their conscientious objection and, on the other, that the bodies whose task it is to manage the organisational aspects (the Regions and public hospitals) have a duty to take the necessary measures. It should also be stressed that conscientious objection is provided for by Law No. 194/1978, which is to date the law which secures access for women to voluntary termination. In point of fact the Regions and public hospitals have always been able to ensure, not just through the mobility of incumbent staff but also through ad hoc agreements with specialist doctors, that the procedures provided for by the law can actually be carried out.

22. At all events, in recent years, there has been an overall stabilisation in the phenomenon of conscientious objection. Reference is made to the following significant data: repeated recourse to voluntary termination of pregnancy amounted to 27.2% in 2010 compared to a forecast level (calculated using mathematical models) of 50%, taking the characteristics of the women concerned to be constant. The number of women who underwent a voluntary termination in 2010 and 2011 was 76 948, which is 67.2% less than the figure of 234 801 in 1982. The pregnancy termination rate, which is the most accurate indicator in this field (reflecting the number of terminations among women aged 15 to 45) fell by 54.7% from 17.2% to 8.3%.

23. The reduction in the number and the rate of voluntary terminations and the low level of repeated abortions compared to the predicted figure show the quality of the work being done by the health services to prevent abortions, a positive attitude among women towards birth control and the implementation of measures aimed at making women more aware and responsible, such as special abortion prevention projects reserved for foreign women or activities with specific aims such as cultural mediation, facilitation of access to services and staff training.

24. Women seeking abortions had recourse to emergency procedures (procedures begun without waiting for seven days after certification) in 9.7% of cases in 2010. In 92.1% of cases, women were in hospital for less than one day and the surgical operation was carried out in day-hospital units. In recent years there has been a reduction in the waiting period between certification and surgery and the proportion of cases in which there have been complications has remained stable, between 3 and 4%.

25. The levelling out of recourse to emergency procedures and the reduced periods between certification and surgery show an outstanding improvement in the services' efficiency. The increase in the number of hospitalisations lasting less than one day also reflects the excellent organisational capacities of these services, the simple procedures for women to access them and the improvements in the management of their human resources. The high number of women who undergo a termination at a gestation age of 10 weeks or less, the low rate of complications and, above all, the fact that there have been no recorded maternal deaths or serious complications following any terminations carried out in accordance with Law No. 194 shows that until now voluntary termination of pregnancy has not posed any threat to women's health.

26. Lastly, the level of conscientious objection in Italy, which is partially offset by staff mobility and agreements with specialist obstetricians and gynaecologists, has no practical, direct impact on recourse to voluntary termination of pregnancy and does not therefore affect women's rights. Since its introduction, the reduction in the number of women resorting to voluntary termination has been considerably more significant than the increase in the number of conscientious objectors. In recent years, services have become more efficient in terms both of prevention and of access, and operations are carried out under safe conditions for women's health.

27. However, the applicants' main concern is the persistent nature of conscientious objection to abortions. The moral conscience of medical staff is the ultimate obstacle to the assertion of a right to abortion. While it is easy for parliament and the courts to establish such a right, it is much more difficult and costly for doctors and nurses to put it into effect. And, as much as it is easy to disregard the situation of unborn children (they weigh only a few grams), it is far less easy to ignore the objections of doctors and nurses.

28. It should be pointed out that conscientious objection is an "objective and reasonable justification", which is provided for in Article 9 of the relevant law and does not result in any discrimination, as medical staff may withdraw a declaration of conscientious objection to respect women's right to health in accordance with well-defined rules in Article 9.

29. It is against the persistence of conscientious objection that various organisations campaign ceaselessly, in both the European Court of Human Rights and the Parliamentary Assembly of the Council of Europe. These two bodies have rejected these demands and have upheld the right to conscientious objection, while stating that the rights to objection and to abortion should not be pitted against one another (with one prevailing over the other) but must be reconciled by the state, which must secure both when abortion is legally authorised.

30. In its resolution on the right to conscientious objection in lawful medical care, the Parliamentary Assembly of the Council of Europe stated as follows:

"No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the

performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason" (PACE, Resolution 1763 (2010) of 7 October 2010 on "The right to conscientious objection in lawful medical care").

31. The Parliamentary Assembly had already stated prior to this, in relation to other areas in which the right to conscientious objection is applied, that "the right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights" (PACE, Recommendation 1518 (2001) of 1 March 2002 on the " Exercise of the right of conscientious objection to military service in Council of Europe member states", §8).

32. The right to conscientious objection, including with regard to abortion, is also guaranteed by Article 10.2 of the Charter of Fundamental Rights of the European Union on freedom of thought, conscience and religion, which provides that "*the right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right*". It is also guaranteed by Article 18 of the International Covenant on Civil and Political Rights and in practically all the legislation of countries where abortion has been legalised.

33. On this matter it is worth citing the Italian National Bioethics Committee again: "conscientious objection in bioethics is constitutionally founded (with reference to inviolable human rights) and must be exercised in a sustainable way; it is an individual's right and a democratic institution necessary to keep alive the sense of problematicity concerning the limits of the protection of inviolable rights; when conscientious objection is inherent to a professional activity, it contributes to preventing an authoritarian definition ex lege of the purpose of the same professional activity".

34. The European Court of Human Rights has recognised, particularly in the case of RR v. Poland (26 May 2011, no. 27617/04), that under the European Convention, healthcare staff have an effective right to freedom of conscience in a professional context. One of the main conclusions of this judgment was that it is for the state and not for doctors who are faced personally with a request for abortion to organise the health system so that both the effective exercise of freedom of conscience and the possibility of obtaining an abortion are secured. On this matter, it should be emphasised that "conscientious objection" and "access to abortion" should not be weighed against one another, as conscientious objection belongs to the private sphere guaranteed by Article 9 and no exception can be made to it. Forcing a doctor to practice abortions only in certain cases does not reduce the infringement of his or her freedom of conscience commensurately; it is still a complete violation.

35. It should also be stressed that the Court can only weigh up rights guaranteed by the Convention. Between "access to abortion" and "conscientious objection" only the latter is a right guaranteed by the Convention and it cannot be subordinated to an unguaranteed possibility (abortion). According to the Court, when abortion is legal, the state must not therefore weigh conscientious objection against access to abortion but secure their co-existence within the legal limits and conditions of access to abortion.

36. The aim of the CGIL's complaint is to diminish the right to conscientious objection by making it more difficult to exercise it. The intention is no more or less than to give the "right" to abortion precedence over the "possibility" of conscientious objection, whereas it is in fact abortion which is a possibility that has been opened up by the legislation subject to certain conditions, and conscientious objection which is a fundamental right guaranteed both by domestic and by international law. The logic of the complaint is based on a shift in perspective, asserting, in substance, that a "right" to abortion exists, whereas it is only a possibility, while, on the other hand, reducing medical professionals' right to freedom of conscience to a mere possibility to object.

37. The key objective of the CGIL's complaint lies in the theoretical and paradigmatic sphere as it relates to the moral attributes of abortion and the exercise of conscience. In the CGIL's eyes, the "right to abortion" is the rule, and conscientious objection the exception. Reducing the fundamental right of moral objection to a mere exception amounts to inverting the moral relationship between abortion and conscientious objection. Through this approach, it is conscientious objection which becomes unjust and immoral in some manner because it runs counter to the "right to abortion". Objections are considered to be based not on the objective injustice of intentionally bringing an end to human life but only on the individual subjectivity of health practitioners, in other words, their opinion, religion or personal beliefs. Abortion is seen as a "public duty" whereas "freedom of conscience" is only a private right, which is liable to restriction. This approach is intended to reduce conscientious objection to a mere matter of personal and subjective opinion. Yet, rather than being a "right", conscientious objection seems to us to be more like a "duty" – a moral duty requiring people to refuse to carry out an order they consider unjust. Conscientious objection in the strictest sense cannot therefore be a "positive right" because, by its nature, it exists outside the law; its origin and its legitimacy lie in the moral standards which lie above the law and are perceived and imposed by people's consciences. Since conscientious objection is exercised in relation to "positive law" in accordance with "moral law", positive law cannot by nature be the legal source of the power to exercise conscientious objection. We must therefore take the expression "right to conscientious objection" to mean the recognition by positive law of the legitimacy of refusing to carry out an act considered contrary to the perception of justice deriving from one's conscience.

38. By establishing a right to conscientious objection, legislators may decide in advance, on a case-by-case basis, not to punish those who refuse to obey orders or take part in activities because they are "unjust". The "right to conscientious objection" does not therefore relate strictly to the exercise of conscientious objection itself but to its punishment. The right to conscientious objection protects objectors from potential pressures and sanctions which may force them to act in a legal but unjust manner. As is provided by Article 9 of Law No. 194/1978 and has been confirmed recently by the Italian Court of Cassation (judgment no.

14979 of 2 April 2013), if there is a real and imminent threat to the mother's life, conscientious objection cannot be exercised and hence conscientious objection cannot endanger the lives of pregnant women. Pregnant women may choose, however, to give precedence to their child's life over theirs where possible - and this does happen.

39. According to a general principle of medical ethics, "a doctor has the right to withhold care for professional or personal reasons" and this rule applies to all care "apart from emergency cases or cases in which to do so would be to fail in his or her duties of humanity" (Article 47 of the French medical ethics code; Articles 43, 44 and 50 of the Italian medical ethics code). In some cases, doctors have the right to withhold care, particularly in the name of the "principle of proportionate reason". To be lawful, medical acts must pursue a therapeutic need or purpose and strike a balance between benefits and risks; doctors therefore have the right to withhold any treatment which has no therapeutic purpose or any act whose potential risks they consider to outweigh the expected benefits. The way in which the balance between benefits and risks is assessed varies according to the practitioner (particularly according to their skills). On this issue, the Court has recognised the fact that the Convention does not guarantee a right of access to one type of medical practice or another (Tysiac v. Poland, No. 5410/03, judgment of 24 September 2007, § 107). Health is not a service like any other and patients are not consumers who have the "right" to techniques, medicines or procedures of their choice, especially on legal and deontological grounds because the treatment being envisaged falls outside their competence. According to these principles, the only situation which can be considered to respect these criteria is emergency care needed to save the mother's life, which can have the effect (but not the aim) of terminating the pregnancy and must be carried out by a qualified doctor.

40. Abortion is a proportionate treatment when the mother's life is in danger because two lives hang in the balance in such situations, the child's and the mother's. If the mother's life is not in danger, it is no longer clear that abortion is a proportionate response. And, if a doctor considers that a medical intervention is disproportionate (cost/benefit ratio), he or she is entitled, duty-bound even, not to complete it. Therefore, where an abortion is requested when the mother's life is not in danger, Law No. 194/1978 authorises doctors to carry out a voluntary termination of pregnancy at the mother's request before the end of the twelfth week, where continuing the pregnancy, childbirth or motherhood might endanger her physical or mental health in view of her state of health, economic, social or family circumstances, the circumstances in which conception occurred or forecasts of foetal abnormalities or malformations (Article 4). These are very broad requirements, whose application most often has very little direct connection with a real medical reason. In this case, contrary to what the CGIL claims in its submissions, doctors are fully entitled to exercise their right to conscientious objection, as guaranteed in Article 9 of Law No. 194/1978.

41. The ECSR has interpreted Article 1§1 of the Charter "as imposing an obligation as to means rather than an obligation as to results. It recognised that in order to decide whether a country is really fulfilling this obligation, it is necessary to adopt a dynamic standpoint, to assess the situation existing at a given moment, having regard to the continuous action pursued" (Conclusions 1, p.13).

CONCLUSIONS

42. The Government would refer to a statement made by the ECSR on the interpretation and application of the Articles of the Social Charter which the CGIL claims to have been infringed by Law No.194/1978.

43. In the Digest of the Case Law of the European Committee of Social Rights of 1 September 2008, the following statement is made on page 19 concerning Article 1:

"Legislation should prohibit both direct and indirect discrimination. Discrimination is defined as a difference in treatment between persons in comparable situations where it does not pursue a legitimate aim, is not based on objective and reasonable grounds or is not proportionate to the aim pursued (*Syndicat national des professions du tourisme* v. France, Complaint No. 6/1999, Decision on the merits of 10 October 2000, §§24-25). Whether a difference in treatment pursues a legitimate aim and is proportionate is assessed taking into account Article G of the Charter (Conclusions XVI-1, Greece, p. 279).

44. Indirect discrimination arises when a measure or practice identical for everyone, without a legitimate aim disproportionately affects persons having a particular religion or belief, a particular disability, a particular age, a particular sexual orientation, particular political opinion, particular ethnic origin etc.
Discrimination may also result from the failing to take positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.
The discriminatory acts and provisions prohibited by this provision are ones that may occur in connection with recruitment or with employment conditions in general (in particular, remuneration, training, promotion, transfer and dismissal or other detrimental action).

45. In order to make the prohibition of discrimination effective, domestic law must at least provide for:
– the power to set aside, rescind, abrogate or amend any provision contrary to the principle of equal treatment which appears in collective labour agreements, in employment contracts or in firms' own regulations;
– protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action;
– appropriate and effective remedies in the event of an allegation of discrimination; remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore the imposition of predefined upper limits to compensation that may be awarded are not in conformity with Article 1§2 as in certain cases these may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive.
Domestic law should provide for an alleviation of the burden of proof in favour of the plaintiff in discrimination cases".

46. On Article 2§1 (p.188), the ECSR states the following in the Statement of Interpretation on Article 2§1 on p.169 of Conclusions I: “a Contracting Party [cannot] be considered as complying with the … obligation [resulting from Article 2, paragraph 1] unless reasonable daily and weekly working hours [are] established in that country either by law or regulations or by collective agreement, or by some other process imposing an obligation whose performance is subject to the supervision of an appropriate authority”.

Conclusions XIV-2, Statement of Interpretation on Article 2§1, p. 33: “… working hours are assessed by taking into account not only normal working hours but also overtime, which should therefore also be regulated in the sense that it should not be left to the discretion of the employer or the worker; the utilisation and/or the length of overtime should be limited in order to avoid exposing the worker to the risks of accidents at the end of a working day”.

47. The Italian Government would like to point out that according to the ECSR’s interpretation of the Charter, Law No. 194/1978 discriminates neither against women nor against doctors.

48. For women who have the possibility of opting for a voluntary termination of pregnancy, Italian law establishes criteria and procedures which are compatible with women’s and unborn children’s health and are not directly or indirectly discriminatory.

49. For both objecting and non-objecting doctors, Italian law on the protection of worker’s rights is compatible with Articles 2, 3 and 26 of the Charter because all doctors form part of a single national system of organisation and welfare, and their rights in this respect are protected by the law in question.

50. In response to the allegations of violations and discrimination, the Government would point out that workers’ rights should be well protected by trade unions, of which the CGIL is a very sound example, whose role in Italian society is to defend such workers’ rights.

51. As the best national instrument with the task of seeking redress for violations of workers’ rights where necessary, the CGIL has a duty to defend them within the national system first, before turning to the European authorities.

52. Consequently, the Italian Government considers that the complaint filed by the CGIL is inadmissible and ill-founded for the following reasons:

a) because the CGIL’s misinterpretation of Articles 11 and E of the Charter, which distorts their meaning, threatens women’s health and lives because it wants them to be assisted solely by non-objecting medical staff, who facilitate voluntary terminations of pregnancy without verifying women’s physical and psychological state;

b) because the state has introduced every practical and legislative measure to apply Law No. 194/1978 for the benefit of women and in support of their rights to voluntary termination;

c) because it cannot restrict the number of medical staff who declare that they are conscientious objectors while respecting freedom of conscience and opinion, as is also recognised by the European Court of Human Rights in Article 9 of the 1950 Convention and other international instruments (see §§ 30,31 and 32 of these submissions);

d) because Italian law reconciles the rights of women and doctors by giving them the possibility of making choices that are compatible with their morals and their demands according to the principle of non-discrimination set out in the Charter.

53. The Italian Government would like to thank the European Committee of Social Rights for its diligence in examining its submissions and is willing to supply any other submission requested of it to show that the complaint is unfounded because the situation in Italy is in conformity with Article 11 of the revised European Social Charter read alone or in conjunction with Article E, with all the other articles of the Charter mentioned in the complaint and, in particular, with Article G.

Rome, 29 May 2013

Ersiliagrazia Spatafora
Government Agent