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

3 September 2013

Case Document No.6

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

**OBSERVATIONS FROM
AIED - ASSOCIAZIONE ITALIANA PER
L'EDUCAZIONE DEMOGRAFICA**

Registered at the Secretariat on 3 September 2013



ASSOCIAZIONE ITALIANA PER L'EDUCAZIONE DEMOGRAFICA

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Rome, 3 September 2013

CONFEDERAZIONE GENERALE ITALIANA DEL LAVORO

COMPLAINT N.91/2013

Observations

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Reasons

With the present observations to the complaint N. 91/2013 submitted by the CONFEDERAZIONE GENERALE ITALIANA DEL LAVORO (CGIL) versus the Republic of Italy, the Associazione Italiana per l'Educazione Demografica, (AIED) intends to support said complaint with its direct experience in the application of the Law 194, which concerns the possibility to interrupt a pregnancy on the Italian territory.

Background of the Law 194

Article 4 of Law 194, adopted on 22 May 1978, guarantees the possibility to “accede to the voluntary interruption of a pregnancy for a woman that accuses circumstances for which the pregnancy, the delivery and the actual maternity would imply a serious danger for her physical and mental health, for her general state of health, or for her economic, social, and familiar conditions or to the circumstances in which the pregnancy has happened, and on the prevision of possible anomalies or malformations of the conceived child”.

Article 6 states that, after the first 90 days, abortions should be limited to cases in which the pregnancy or the delivery would imply a serious danger for the life of the woman or when pathological processes are ascertained, among which those relating to relevant anomalies or malformations of the conceived child that will determine a grave danger for the physical or psychical health of the woman have been ascertained.

Law 405 of 1975, which regulates the so-called familiar centers for consultation (consultori), expressly indicates that, among their objectives, there is the provision of “psychological and social assistance for the preparation of responsible maternities and paternities”; “the provision of the necessary means to pursue the aims freely chosen by the couple and by each single parent concerning the responsible procreation in the respect of the ethical convictions and physical integrity of the subjects”; “the protection of the health of the woman and the product of the conception”; “the divulgation of information fit to promote or prevent pregnancy, including the promotion of methods and pharmacological solutions designed for each case”. The centers for consultation constitute a place that is medical as much as “social” and that is rooted in a specific area, a place where one can find a point of reference free of charge and open to any question concerning one's procreative life (but not exclusively);

Sentence N. 27 adopted on the matter by the Italian Constitutional Court in 1975, when the national legislation considered abortion a crime, framed the issue in the constitutional system identifying the principles eventually included in the Law 194 and in the subsequent jurisprudence. The right for a pregnant woman and the right for the conceived child were both included, in general, in the constitutional respect for the protection of maternity (Article 31). The protection of the conceived and that of the mother find separate and further normative ground in additional constitutional dispositions: the autonomous protection of the conceived is derived from Article 2 of the Constitution that recognizes and guarantees the fundamental rights of the individual; the protection of the mother, Article 32 that contains norms on the psycho-physical health of the individual. Furthermore, the decision of the Constitutional Court constitutes an “obligation for the legislator to devise the necessary cautions to impede that abortions are caused without the serious ascertainment of the reality and gravity of the damage and danger that could derive to the mother in continuing her pregnancy: for these reasons the freedom to abort will need to be anchored to a previous evaluation of the existence of the conditions to justify such an act”;

Law 194 and conscientious objection

The cultural and political climate in which this legislation has matured (coming from the Constitutional Court's declaration of unconstitutionality of the rule criminalising the voluntary termination of pregnancy –Judgment n.27 of 1975) respectful of the many interests at stake, was also considered the position of health personnel and allied health personnel to raise moral objection in relation to procedures resulting in the termination of pregnancy. The reason for this has to be found in the sudden change introduced by the new law.

The transition from abortion as a crime to abortion as a women's right might have created, at that time, some disorientation in the healthcare personnel (although it is certain that the practice of abortion was already widespread before 1978). Therefore, at a legislative level, moral objection played a role of "mitigation" or an accompaniment between the two dimensions of crime vs. right. Today, after 35 years, moral objection has no longer any logical and legal foundation, and it represents the greatest obstacle to the full implementation of Law 194/1978.

The massive use of moral objection –even if it does not represent a crime in itself, according to Italian criminal law –effectively causes the interruption of a public service which might indeed constitute a crime under Italian law (art. 340 of the criminal code).

It appears clear that a well thought out objection clause was limited to establish a non-compulsory nature of the procedure for those not willing to sacrifice their own personal beliefs. Notwithstanding this provision it is established that a woman's right to access to the required treatment cannot in any way be sacrificed.

According to the Annual Report on the Law 194 published by the Ministry of Health in 2012, as far as the consulting centers are concerned, at 35 years of the entry into force of the Law, there has been a reduction in the number of abortions in absolute terms, which is equally distributed throughout the national territory. The decrease amounts to 50.4 percent between 1983 and 2010. Such a figure confirms the spirit that moved the legislator at the moment of the drafting of the law, stated in Article 1, which contains the principle according to which the voluntary interruption of a pregnancy cannot be considered as a means for birth control.

Article 9 of the Law 194 disciplines the exercise of the conscientious objection by the sanitary personnel that, through a preventive declaration, affirms the will to be exonerated from the procedures connected to the interruption of the pregnancy. The possibility to conscientiously object concerns exclusively those activities that are specifically necessary and directly determining the abortion and not those to assist before and after the intervention. In order to ensure the access to health services throughout the national territory, Article 4 of the Law imposes upon the Regional administrations to control and guarantee the implementation of the procedures foreseen by the law also through the mobility of the personnel with measures that should be adequate to ensure the provision of services in such a way that neither the conscientious objectors nor the doctors are discriminated in their personal choices.

The AIED wishes to highlight the following critical points concerning the application of the Law 194 in this regard:

- figures relating to conscientious objectors have registered a stabilization in 2010 among gynecologists and anesthesiologist. At the national level, gynecologists have passed from 58.7 percent in 2005, to 69.2 percent in 2006, to 70.5 percent in 2007, to 71.5 percent in 2008, to 70.7 percent in 2009 and finally to 69,3 percent in 2010. An average number that, as of 2012, sees seven objectors every 10 doctors. The territorial distribution of the figures is not homogenous, beyond 80 percent among gynecologists are to be found in the south of Italy: 85.7 percent in Molise, 85.2 in Basilicata, 83,9 in Campania and 80.6 percent in Sicily;

- these last figures are disputed by the sanitary presidiums where abortions are practiced, such as for instance the Hospital San Camillo in Roma. As recently discussed in a conference on the state of the implementation of the Law 194 of 1978, convened by the LAIGA (Free association of Italian Gynecologists for the Application of the Law 194 of 1978), AIED and the Luca Coscioni Association for Freedom of Scientific Research, the percentage of objectors is way larger than that registered by the Italian Ministry of Health.

In fact, according to what denounced by the LAIGA, in the region of Lazio the percentage of objector gynecologists reaches 91.3 percent! And only in 10 centers out of the existing 31 it is possible to interrupt a pregnancy. The number goes down to four centers in the case in which the request will concern the so-called therapeutic abortion. Other studies carried out in the region of Lombardy highlight how the figure concerning objectors should be corrected fixing the percentage at 83, eight points more than what registered by the Ministry of Health;

- at the same time illegal abortions are increasing. In fact, the latest figures released by the Ministry of Health in 2008, put at 20,000 the number of clandestine abortions. As in the case of the figures concerning the conscientious objectors, the numbers may be underestimated as they only concern the interruptions practiced on Italian women. In fact, if we were to consider abortions among the immigrant communities, where the number of unwanted pregnancies is believed to be three times the one concerning Italian citizens, it is reasonable to believe that the overall numbers compiled by the Ministry cannot be considered as representative of the phenomenon and could comprise only half of the illegal abortions practiced in Italy. In addition to this, we are witnessing a considerable increase in the number of spontaneous abortions, which the National Institute of Statistics, ISTAT, estimates at some 73,000 cases per year compared to some 50,000 in the 1980s. An increase that in minor girls reaches 70 percent!. It is possible that these figures are due to the come-back of the so-called "masked clandestine abortions" - a very common phenomenon before the law was adopted in 1978. After having tried to interrupt their pregnancies by themselves, women go to the local hospital where doctors can only terminate what has been started by the mothers registering the abortion as "spontaneous";

- without prejudice to the safeguard of the legitimate choice of conscientious objectors to the voluntary interruption of pregnancies, such a high percentage of doctors can only be considered as a "structural objection". The result of such a structural behavior is clearly described by other data: 188 criminal proceedings launched only last year, confiscation of illegal ambulatories and clinics, trafficking and contraband of abortive medicines;

- Article 12 of the Convention on the elimination of any form of discrimination against women affirms that States party to the document are to take all "appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the

right: (a) To participate in the elaboration and implementation of development planning at all levels; (b) To have access to adequate health care facilities, including information, counselling and services in family planning”;

Although the live ethical debate has emerged around the concept of "conscientious or moral objection" in recent years -including those who theorize that there is also an inability to appeal to the said clause because access to medical facilities is voluntary and then the assumption of compulsion would fail. This is necessary in order to operate a conscientious objection and it should be noted, here, that, as often happens around these matters, the application of a rule may create distortions that theoretically it were difficult to predict.

In fact, today we are witnessing a disturbing exploitation of clause objection until reaching the circumstances of denial of service or, even more dehumanizing, service performed by non specialized personnel.

For these reasons, as it is argued below, it appears inadequate to the requirement under Article 9 of Law 194/78, since the right to health protection that the European Charter of Social Rights aims to guarantee in accordance with pursuant to art. 11 is strongly violated.

The key issue today is the unsustainable incompatibility between women willing to undergo VPI and non-objector personnel, that cannot answer every request, thus determining a major risk to the right provided by the law.

We request, therefore, the European Committee of Social Rights to declare the violation of the European Charter of Social Rights by the Italian State, specifically for violating of Article. 11 of the Charter, taken alone or in conjunction with art. E, since the current Italian legislation regulating the termination of pregnancy is not suitable to provide a comprehensive healthcare service due to permanent shortage of non-objector medical personnel and allied health personnel. Furthermore, the Association intends to note that also the position of the non-objectors is violated, since the application of art. 1, 2 and 26 of the European Charter of Social Rights is not guaranteed, in reference to the circumstances for which their work is limited to termination of pregnancy. In this respect an intervention by the European Committee of Social Rights is considered as a necessary action.

AIED background

The Italian Association for Demographic Education (AIED) was founded on 10 October 1953 by a group of scientists, advocates and journalists, of all political orientations, that shared the attachment to strong democratic values.

From the outset, the group set several priorities for the Association such as the spreading of the concept and practice of a free and responsible procreation; the stimulation of cultural and social growth in matters pertaining to sexuality; the promotion and support of initiatives aimed at improving the quality of life and at safeguarding human health, both at the individual and collective level; the stimulation, but also the monitoring, of governmental institutions to ensure the enforcement of the law with regard to contraception, abortion, sexual and andrological information, social-health prevention, and the respect of minorities and “diversity” (i.e. homosexuality). In addition, the Association aims at promoting ways to update, upgrade or amend legislations in cases where norms the center of the mandate of the Association prove to be inadequate.

Based on its own by-laws, the Association has non commercial not-for-profit organization. AIED operates through its various bodies: the National Congress, the National Board of Directors, the National Presidency, the National Executive Body and its 21 local Sections. AIED operates in collaboration with other associations, committees, public and private entities, both Italian and foreign, which aims do not contrast with those of AIED.

Services offered by AIED

Since its inception, AIED has focused its work on the psychological and physical well-being of women, including the reproductive system. Over the last decades, the concept of prevention has become integrated into the health conscience of women, especially in the younger generations of the higher socio-economic strata. In fact, the need for regular check-ups has become a well established practice even for women without demonstrated symptoms and/or diseases.

A gynecological check-up, a Pap test, a mammography, or breast examination, as well as other laboratory exams (pelvic and mammary sonograms, bone density exams etc.) have been consistently promoted by the Association to catch symptoms of potential medical problems as early as possible as a way to prevent future treatments.

AIED also offers assistance to women who want to terminate a pregnancy under the Law 194.

Services offered by the Association include:

GYNECOLOGICAL VISITS

PAP TEST and THIN PREP (a new Pap test technique)

MEDICAL CONSULTANCY AND ASSISTANCE REGARDING CONTRACEPTIVE METHODS

CONSULTANCY REGARDING VOLUNTARY INTERRUPTION OF PREGNANCIES

ENDOMETRIAL CYTOLOGICAL EXAM

BACTERIOLOGICAL STRIP EXAMS

COLPOSCOPY / VIDEO-COLPOSCOPY

VULVOSCOPY

HYSTEROSCOPY

MICRO-COLPOSCOPY

HYSTOLOGICAL EXAM

DIATHERMO-COAGULATION AND RADIOFREQUENCY SURGERY

LASER SURGERY

EARLY PREGNANCY DIAGNOSIS

HPV VACCINATION, CERVICAL CANCER SCREENING

PELVIC SONOGRAM – ENDOVAGINAL SONOGRAM

POLYPECTOMY

CERVICAL BIOPSY

VAGINAL CULTURAL EXAMS

SONO-HYSTEROGRAPHY

List of local sections:

Albenga
Ascoli Piceno
Bari
Bergamo
Bolzano
Brescia
Genova
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La Spezia
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Novara
Pisa
Pordenone
Roma
Sassari
Udine
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Il Presidente
Mario Puiatti
