EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

9 September 2013

Case Document No.8

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

OBSERVATIONS FROM THE ASSOCIATION "*GIURISTI PER LA VITA*" ON BEHALF OF *ASSOCIAZIONE MEDICI CATTOLICI ITALIANI* (A.M.C.I.), *ASSOCIAZIONE ITALIANA GINECOLOGI OSTETRICI CATTOLICI* (A.I.G.O.C.), *CONFEDERAZIONE ITALIANA DEI CONSULTORI FAMILIARI DI ISPIRAZIONE CRISTIANA* (C.F.C), *CENTRO STUDI PER LA TUTELA DELLA SALUTE DELLA MADRE E DEL CONCEPITO DELL'UNIVERSITÀ CATTOLICA DEL SACRO CUORE DI ROMA, FORUM DELLE ASSOCIAZIONI FAMILIARI*

Registered at the Secretariat on 26 August 2013

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

*** * ***

Secretariat of the European Social Charter
Directorate General of Human Rights and Legal Affairs
Directorate of Monitoring
F-67075 STRASBOURG CEDEX
FRANCE

*** * ***

Complaint No.91/2013

Confederazione Generale Italiana del Lavoro - (CGIL) v. Italy
Registered at the Secretariat on 17th January 2013

MEMORANDUM

presented by the A.M.C.I. Associazione Medici Cattolici Italiani ("Italian Association of Catholic Doctors"), represented by Prof. Filippo Maria Boscia (www.amci.it), assisted by Mr. Gianfranco Amato, Italian lawyer registered with the Bar Association of Grosseto, as President of the Associazione Giuristi per la Vita ("Jurists for Life") and with address for service in Rome, Piazza di Santa Balbina 8.

1. Introduction.

1.1. The CGIL Confederazione Generale Italiana del Lavoro (Italian General Confederation of Labour) filed a collective complaint versus Italy with the European Committee of Social Rights, registered with the Secretariat on 17 January 2013 (*complaint* No.91/2013).

With said complaint, the CGIL requests that the European Committee of Social Rights declare the legislation of art. 9 of Italian law no. 194 of 1987, regulating elective abortions, to be in contrast with art. 11 of the European Social Charter (Right to the protection of health) alone or in combination with art. E (Non discrimination), relating

to the legal position of women; with art. 1 of the European Social Charter (Right to work), relating to the legal position of medical personnel and assistants who are not conscientious objectors; with art. 2 (Right to just conditions at work), 3 (Right to safe and healthy working conditions) and 26 (Right to dignity at work) of the European Social Charter, relating to the legal position of medical personnel and assistants who are not conscientious objectors.

Furthermore, the complaint censures the violation of art. 21 (Right to information and consultation) and 22 (Right to take part in the determination and improvement of the working conditions and environment) of the European Social Charter.

1.2. With this memorandum, the A.M.C.I. Associazione Medici Cattolici Italiani challenges in full the considerations and conclusions presented in the aforementioned complaint, as they are unfounded and irrelevant. Moreover, it highlights the fact that they are actually aimed at restricting, if not denying, the right of medical, health and assistant personnel to exercise conscientious objection towards abortion practices, in contrast with the principles of the Italian Constitution, the European Convention on Human Rights, and international legislation.

2. The value of conscientious objection of health care workers.

2.1. It must be remembered that Resolution no. 1763 (2010) adopted by the Council of Europe Parliamentary Assembly on 7.10.2010, stressing the need to confirm the right to conscientious objection, solemnly declared: «*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*». Based on that assumption, the same resolution has invited member States to «*guarantee the right to conscientious objection»* (4.1).

This important decision was adopted in order to ensure that the right to the freedom of belief, conscience and religion of health care workers is respected.

The Resolution also stressed how it is the State's responsibility to ensure that patients are able to promptly access medical care, expressing the concern that unregulated use of conscientious objection could harm women, particularly those with low income or who live in rural areas.

According to the Resolution, a balanced legislation must: a) guarantee the right to conscientious objection relating to the previously indicated procedures; b) ensure that the patients are informed of the conscientious objection in reasonable time and referred to another health facility; c) ensure that the patients receive appropriate treatment, particularly in emergency cases.

2.2. The cited Resolution no. 1763 (2010) applied the solemn principles affirmed by the Convention to the theme of conscientious objection in order to safeguard human rights and fundamental freedoms: the right to life (article 2), respect of private and family life (article 8), freedom of belief, conscience and religion (article 9), freedom of expression (article 10) as well as prohibition of discrimination (article 14).

These principles can certainly not be disapplied based on the distorted use of the European Social Charter invoked by the claimant CGIL: as emerges from the *procedure* that led to its approval and then to its revision and is affirmed in the Preamble, along with the European Social Charter, the member States intend to reiterate the fundamental rights guaranteed by the Rome Convention of 1950 («*Considering that in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified*») and to these add the social rights indicated in order to improve the standard of living and well-being of the population («*considering that in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being*»); the Preamble recalls, in fact, the choice of protecting the indivisible nature of all human, civil, political, financial, social and cultural rights guaranteed by the Convention («*the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus*»).

2.3. Of note is how the complaint adopts an approach that completely disregards the fundamental rights guaranteed by the Convention of 1950, only referencing certain articles of the European Social Charter, as if they were separate and independent from the principles that gave rise to the first Convention adopted by the European Council merely a year after its creation, whose ratification by a State is a pre-requisite to adhere to the Council.

It is no coincidence that, in presenting the conscientious objection regulation in Italy (par. 3.3 of the complaint), the CGIL completely omits any reference to the foundation of the institution to be found in the European Convention of Human Rights, presenting the standard of art. 9 of law 194 of 1978 as justified exclusively - and with some limits - by the standards of the Italian Constitution.

It is a matter of incorrect perspective: it wants to set the Italian legislation against the international regulations, and specifically against those that fall under the

European Council; a completely factitious conflict inasmuch as the inviolable rights of humans, human dignity, the freedom of religion and the freedom to manifest beliefs, which the Italian Constitutional Court has repeatedly referenced to justify standards related to conscientious objection, are the foundation on which the communities of the free and democratic States that make up the European Council are based.

Furthermore, it is important to highlight that the right to conscientious objection is also acknowledged by art. 18 of the Universal Declaration of Human Rights, signed in Paris on 10 December 1948, and by art. 18 of the International Pact on Civil and Political Rights, adopted by the General Assembly of the United Nations on 16 December 1966 and made law on 23 March 1976. Remaining in Europe, this right is explicitly acknowledged in art. 9 of the European Convention for the protection of human rights and fundamental freedoms, and in art. 10 of the Charter of fundamental rights of the European Union. This final regulation in particular does not allow for any doubts to arise. In fact, the second clause of art. 10 reads: «*The right to conscientious objection is acknowledged according to the national laws that regulate the practice*». In fact, precisely art. 9 of Law 194, regarding abortion, provides for and regulates the right to conscientious objection in Italy.

2.4. Both the principles of the European Convention of Human Rights and those of the Italian Constitution justify, therefore, the regulation of conscientious objection as cited in art. 9 of law no. 194, of 22 May 1978.

This is a right that is fully acknowledged to all health care workers («*health personnel and assistants*»), which can be exercised via a simple prior declaration with no possibility for the public Authority or the health Direction to criticise the health worker's choice.

On the other hand, considering that conscientious objection is governed within the limits of a law that, despite declaring to «*protect human life from its beginning*», allows, via interruption of pregnancy, the embryo or the foetus to be terminated before birth, the reasons for which a health care worker declares his/her conscientious objection are evident and refer to the ancient origins of the art of medicine (Hippocratic Oath).

Exercising the right «*exempts health personnel and assistants from carrying out procedures and activities specifically and necessarily aimed at terminating pregnancy*»; obviously, it does not exempt them from assisting the patient nor from the procedure personnel when, given the particularity of the circumstances, it «*is indispensable to save the life of the woman in imminent danger*».

The law does not require the conscientious objectors to guarantee the efficiency of the pregnancy termination service: it would be impossible inasmuch as they exercise their right acknowledged by the Constitution and by the law; instead, the public companies must be proactive in guaranteeing that the service insured by the

law is effectively executed.

However, contrary to what the complaint (par. 3.3) claims, it is not a matter of a «*balance between the protection of the freedom of conscience of physicians and that of other constitutional rights for women*»: actually, the legislator intends to *fully* protect both the right to freedom of conscience of the health care workers as well as the position of expectant mothers who intend to access the service guaranteed by law; nor would a limitation of conscientious objection be justified for reasons pertaining to the difficulty in rendering the service, inasmuch as - as art. 9 of the European Convention of Human Rights establishes - *no* limitation is allowed for the freedom of belief, conscience or religion (the second paragraph allows limitations only for the freedom of manifesting belief or religion). Indeed, the previsions for which the objecting health care worker cannot refuse assistance, both before and after the elective abortion procedure, nor is exempt from the procedure personnel to save the life of a woman in imminent danger by no means constitutes a limitation of the right acknowledged to the objector but rather its logical development: the assistance does not, in fact, contribute in causing the death of the embryo or foetus, while the procedure to save the life of the woman is consistent with the objector's moral and religious obligations of saving life and not terminating it.

2.5. These fundamental freedoms must be acknowledged and respected in their entirety: historical experience shows that any even partial or minimal limitation, any claims of interference by the public Authority in the conscience and belief of individuals, any possibility to criticise the fundamental choices of a person dictated by conscience, belief or religion, are transformed into the complete negation of these freedoms; thus the risk that a totalitarian State could re-emerge from the ashes of history.

The approach of the complaint, therefore, is worrying, as it limits the institution of conscientious objection to the «*specific sectors of the legal order in which it is explicitly provided for*», in order to make it understood that the legislator of a democratic State and member of the European Council could freely deny this crime or limit it; also worrying is the fact that the claimant union organisation considers conscientious objection to be guaranteed only «*indirectly*» by the Italian Constitution, while «*the right to life, health and self-determination of the expectant mother who intends to access the techniques of elective abortion*» are presented as definitely inviolable. As is known, on the contrary, the Grand Chamber of the European Court of Human rights, in its decision on 16.12.2010 in case A, B and C v Ireland ruled out the inviolable nature of a woman's right to self-determination regarding abortion. The Court decreed that the restrictions on the possibility to abort legally (in this case, in Ireland) constitute legitimate, necessary and proportionate interference in relation to the right to respect for private and family life protected by the conventional standard. The Court

considered that the restrictions on elective abortions can be founded on deep moral values on the nature of life and can, therefore, pursue the legitimate aim of defending moral principles, including protecting the life of the unborn. In that decision, the Court stressed the broad margin of appreciation given to the Contracting States regarding abortion, to thus conclude that, in the specific case of the Irish legislation, prohibiting abortion in cases where the woman's health and well-being are at risk does not exceed said margin of appreciation and demonstrates an irreprehensible balance between the right to respect for private and family life on the one hand, and the rights invoked on behalf of the unborn on the other.

This memorandum does not in any way intend to introduce the subject of the legitimacy of law no. 194 of 1978 at this time: the observations expressed thus far are aimed at contextualising the conscientious objection of health personnel regarding abortions in order to highlight its *essential* role for a democratic State that respects human rights and has adopted legislation legitimising them.

3.1. Violation of women's right to health - European Social Charter art. 11

According to the complaint, the application of art. 9 of law 194 of 1978 violates article 11 of the European Social Charter, regarding the right to protection of health and art. E, regarding non-discrimination referring to a woman's legal position.

The claimant claims, in fact, that «*in practical application, the high number of objecting physicians impedes complete fulfilment of the legislative provision, in the context of the lack of the same provision regarding the concrete process to ensure an adequate number of non-objecting physicians in every hospital structure*».

In fact, the standard decreeing that public and authorised private hospitals are required *in any case* to guarantee the completion of the procedures provided for by art. 7 (issuance of medical certificate) and the fulfilment of elective abortion procedures (art. 9, par. 4, law 194 of 1978), is directly correlated to the protection of the right to health of the expectant mother who intends to abort.

This suggests the conclusion that, inasmuch as not all hospitals are able to guarantee the service imposed by law and the non-objecting personnel in some of these structures is particularly limited, women's right to health is violated.

It is a matter of erroneous perspective: to evaluate whether a women's right to health is violated or endangered by the real circumstances in which pregnancy termination services are carried out in a specific country, a situation in which *all* the hospitals in the territory guarantee abortions is not significant. Rather, the difficulty with which women who intend to abort legally can actually abort and the degree of health care efficiency with which the abortions are guaranteed must be verified.

The CGIL intentionally confuses standards of extremely different nature and range: the standards of law 194 which guarantee, under certain conditions, the

possibility for expectant women to terminate pregnancy with the consequent right to receive safe and efficient treatment; and an administrative standard of health care planning nature.

3.2. In fact, further examining the nature and the effective range of the aforementioned standard, it must be established that this appears *illogical* and *contrasting to the principles regarding health care planning.*

It seems evident - and it is general experience that counts for each field of medicine - that multiplying the wards that treat a specific pathology or perform a specific surgical operation - as an abortion could be considered, at least in its current most widespread form - does not lead to increased efficiency of the service but rather, can lead to the opposite results to those hoped for. Only a structure of adequate and non-minimal dimensions can guarantee a sufficient number of personnel, both medical and assistant, adequate professionalism and training in the field of interest, proper sized rooms kept in respectable conditions, modern and efficient machinery.

The effort of maintaining devices in every hospital that guarantee elective abortion procedures in any case can lead to nothing but precarious results, restricted spaces shared with other specialities (for example: maternity), reduced personnel especially at times, like the present, of reduced public spending, particularly in health care.

Therefore, the standard in question - most likely against the will of the 1978 legislator - causes complications and criticality in completing the elective abortion service and must be considered *unique* compared to all the other medical specialities.

3.3. Furthermore, it is a matter of a provision that serves the passing of time and is no longer current even from the standpoint of increased personal mobility.

The situation in Italy and in all the western world has certainly changed in thirty-five years so that people move easily, by public and private means, more quickly and without particular difficulty. Also bear in mind that Italy does not have rural areas which are absolutely isolated, extremely distant from residential areas and poorly or not connected to these areas.

Ultimately, the fact that in a large city only one or two hospitals perform elective abortion procedures is a circumstance that does not constitute a true obstacle for women to access the service, as they can easily reach the hospital with private and public means; likewise should the hospital be some dozen kilometres from a small city or village, keeping in mind the overall satisfactory situation of the roads and railways in Italy.

The Committee's attention is directed to table no. 11, attached to the 2012 Health Ministry Report: this demonstrates that the mobility of women who undergo EAB procedures is very high, both from province to province and from region to region; the

figure, therefore, has nothing to do with the impossibility of obtaining the service in a specific hospital:

Tabella 11 - *IVG e luogo di residenza, 2010*

REGIONE	IVG EFFETTUATA DA RESIDENTI NELLA REGIONE						IVG EFF. DA RES. FUORI REGIONE		IVG EFF. DA RES. ALL'ESTERO		NON RILEVATO		TOTALE
	NELLA PROVINCIA DI INTERVENTO		FUORI PROVINCIA DI INTERVENTO		TOTALE								
	N	%*	N	%*	N	%**	N	%**	N	%**	N	%***	
ITALIA SETTENTRIONALE	**42562**	**88.6**	**5486**	**11.4**	**48048**	**90.5**	**2928**	**5.5**	**2098**	**4.0**	**237**	**0.4**	**53311**
Piemonte	7655	85.8	1266	14.2	8921	92.3	340	3.5	409	4.2	0	0.0	9670
Valle d'Aosta	218	100.0	0	0.0	218	90.1	16	6.6	8	3.3	0	0.0	242
Lombardia	15027	87.0	2240	13.0	17267	92.0	734	3.9	766	4.1	192	1.0	18959
Bolzano	527	100.0	0	0.0	527	87.0	66	10.9	13	2.1	0	0.0	606
Trento	685	100.0	0	0.0	685	75.8	203	22.5	16	1.8	5	0.6	909
Veneto	5479	86.6	845	13.4	6324	94.4	208	3.1	165	2.5	31	0.5	6728
Friuli Venezia Giulia	1613	89.8	184	10.2	1797	91.6	141	7.2	23	1.2	9	0.5	1970
Liguria	3053	96.6	109	3.4	3162	91.5	220	6.4	73	2.1	0	0.0	3455
Emilia Romagna	8305	90.8	842	9.2	9147	84.9	1000	9.3	625	5.8	0	0.0	10772
ITALIA CENTRALE	**19087**	**90.5**	**2000**	**9.5**	**21087**	**85.7**	**1904**	**7.7**	**1611**	**6.5**	**226**	**0.9**	**24828**
Toscana	5710	85.3	987	14.7	6697	88.8	504	6.7	341	4.5	123	1.6	7665
Umbria	1587	96.9	50	3.1	1637	87.4	227	12.1	8	0.4	12	0.6	1884
Marche	1553	92.2	132	7.8	1685	72.7	591	25.5	43	1.9	90	3.7	2409
Lazio	10237	92.5	831	7.5	11068	86.0	582	4.5	1219	9.5	1	0.0	12870
ITALIA MERIDIONALE	**17386**	**77.5**	**5034**	**22.5**	**22420**	**89.4**	**2354**	**9.4**	**313**	**1.2**	**2645**	**9.5**	**27732**
Abruzzo	1682	79.4	436	20.6	2118	89.7	244	10.3	0	0.0	100	4.1	2462
Molise	432	100.0	0	0.0	432	75.1	137	23.8	6	1.0	0	0.0	575
Campania	5744	70.0	2466	30.0	8210	94.4	351	4.0	134	1.5	2486	22.2	11181
Puglia	6681	82.3	1438	17.7	8119	83.6	1470	15.1	117	1.2	5	0.1	9711
Basilicata	481	87.3	70	12.7	551	86.9	80	12.6	3	0.5	54	7.8	688
Calabria	2366	79.1	624	20.9	2990	96.0	72	2.3	53	1.7	0	0.0	3115
ITALIA INSULARE	**7446**	**83.4**	**1487**	**16.6**	**8933**	**96.3**	**195**	**2.1**	**146**	**1.6**	**836**	**8.3**	**10110**
Sicilia	5725	84.9	1018	15.1	6743	96.6	144	2.1	90	1.3	818	10.5	7795
Sardegna	1721	78.6	469	21.4	2190	95.3	51	2.2	56	2.4	18	0.8	2315
ITALIA	**86481**	**86.1**	**14007**	**13.9**	**100488**	**89.7**	**7381**	**6.6**	**4168**	**3.7**	**3944**	**3.4**	**115981**

* calcolata sulla somma delle prime due colonne ** calcolata sulla somma delle colonne tre, quattro e cinque *** calcolata sul totale

As we can notice, 13.9% of procedures are performed outside the women's province of residence, while 6.6% of procedures are performed outside the women's region of residence.

In essence, more than 20% of EABs are performed in a different province or region from the one in which the woman resides, clearly as a choice of the women themselves and not for local problems, being a matter of widespread mobility over the entire national territory. The figure, on the other hand, has remained stable over time.

3.4. Further examining this subject stresses the fact that law 194 of 1978 contemplates extremely different hypotheses, not anticipating, for all circumstances, the abortion procedure to be urgent.

Sections 4 and 5 of the law, in fact, consider the procedure in the first ninety days of pregnancy to be non-urgent, so much so as to *oblige* a woman requesting an abortion to wait a minimum of seven days from the day of the request: only «*after the seven days have passed may the woman come to obtain the abortion (...) at one of the authorised locations*».

As the ministerial statistics clearly show, it is a matter of the regime foreseen for the great majority of abortions performed in Italy: as shown by the ministerial statistics, 96.6% of abortions were performed in the first ninety days; the procedure was considered urgent only in 9.7% of the cases. In absolute figures, no less than

99,697 elective abortions in 2010 were considered non-urgent and, therefore, could have been adequately planned both by the women (referring to a potential transfer from the place of residence) and by the health care facility that performed the procedure. This data can be obtained from table 18 attached to the ministerial report from 2012, which is duplicated below:

Tabella 18 - *IVG ed urgenza, 2010*

REGIONE	URGENTI		NON URGENTI		DATO NON RILEVATO		TOTALE
	N	%*	N	%*	N	%**	
ITALIA SETTENTRIONALE	**4967**	**9.5**	**47123**	**90.5**	**1221**	**2.3**	**53311**
Piemonte	1087	11.3	8530	88.7	53	0.5	9670
Valle d'Aosta	19	7.9	223	92.1	0	0.0	242
Lombardia	1235	6.7	17113	93.3	611	3.2	18959
Bolzano	66	10.9	540	89.1	0	0.0	606
Trento	75	8.3	834	91.7	0	0.0	909
Veneto	582	9.3	5699	90.7	447	6.6	6728
Friuli Venezia Giulia	162	8.7	1699	91.3	109	5.5	1970
Liguria	117	3.4	3337	96.6	1	0.0	3455
Emilia Romagna	1624	15.1	9148	84.9	0	0.0	10772
ITALIA CENTRALE	**3051**	**12.7**	**21065**	**87.3**	**712**	**2.9**	**24828**
Toscana	1395	18.8	6043	81.2	227	3.0	7665
Umbria	41	2.2	1831	97.8	12	0.6	1884
Marche	239	10.3	2075	89.7	95	3.9	2409
Lazio	1376	11.0	11116	89.0	378	2.9	12870
ITALIA MERIDIONALE	**2245**	**9.0**	**22784**	**91.0**	**2703**	**9.7**	**27732**
Abruzzo	123	5.2	2244	94.8	95	3.9	2462
Molise	23	4.0	552	96.0	0	0.0	575
Campania	995	11.3	7785	88.7	2401	21.5	11181
Puglia	963	10.0	8714	90.0	34	0.4	9711
Basilicata	50	9.4	484	90.6	154	22.4	688
Calabria	91	2.9	3005	97.1	19	0.6	3115
ITALIA INSULARE	**465**	**5.1**	**8725**	**94.9**	**920**	**9.1**	**10110**
Sicilia	193	2.8	6761	97.2	841	10.8	7795
Sardegna	272	12.2	1964	87.8	79	3.4	2315
ITALIA	**10728**	**9.7**	**99697**	**90.3**	**5556**	**4.8**	**115981**

* calcolata sulla somma delle prime due colonne ** calcolata sul totale

It must be stressed that - contrary to what is presented in the complaint - in this case, the abortion is performed even if continuing the pregnancy presents no risks to the woman's health: in fact, the women must «*suffer circumstances for which the continuation of the pregnancy, the birth or maternity would entail serious risks for physical or psychological health*», but the existence of this risk is not verified by a physician, nor is it confirmed by a certificate, so that the expectant mother, after conversing with the trusted physician or the clinic, has the right to undergo the procedure even if the circumstances «*suffered*» do not exist, or if her fears are unfounded, with no one who can criticise her choice from a medical point of view. It is a matter of the principle of self-determination, based on which the expectant mother is the only subject who can evaluate the circumstances originating from the pregnancy and decide to proceed with or interrupt it.

What has been previously presented has an evident repercussion on the subject of the necessary distribution of public and private hospitals in the territory that perform abortion procedures: in fact, in this hypothesis, the procedure, in addition to not being urgent, can be planned by the structure and the woman herself, further

discrediting the importance of any potential physical transfers from the woman's place of residence to the structure where she will undergo the abortion.

That these procedures are not urgent can also be found from art. 9, par. 3, law 194 of 1978, which contemplates the hypothesis in which the physician «*verifies the existence of conditions that render the procedure urgent*»: indeed an exceptional hypothesis which waives the general rule of deferrability over time and the ability to plan abortive procedures in the first ninety days of pregnancy.

3.5. The parameters to verify whether the elective abortion service is performed safely and efficiently are not, therefore, those indicated in the complaint by the CGIL; in addition to reporting that specific hospitals no longer provide the service, other data must be ascertained: the waiting time from the woman's request to the completion of the procedure, the length of the woman's hospitalisation, the percentage of complications deriving from the procedures performed, the presence of cases in which the woman's request was not satisfied, guaranteed completion of urgent procedures, the number (necessarily estimated) of illegal abortions which cause greater risk to the woman's heath.

This is data which can be found in the Report to the Health Ministry Parliament and which will later be shown; data which - surprisingly - are omitted from the complaint of the CGIL, which is only intent on stressing the increase in the number of objectors and the impossibility for some hospitals to provide abortion services with no evaluation of the concrete incidence of this data on women's health.

Contrarily, this Committee cannot stop at the numerical data shown by the claimant and must verify whether there was and is *actually* a violation of the right to health of expecting women; especially because the CGIL's complaint reports a situation related to the *application* of art. 9 of law 194 of 1978, thereby evoking the need to verify the concrete, and not abstract, situation.

3.6. The waiting period effective from the moment the woman asks to undergo an abortion to when the procedure is performed is shown in table no. 21 attached to the 2012 ministerial report duplicated and commented below:

Tabella 21 - *Tempi di attesa tra certificazione ed intervento, 2010*

REGIONE	GIORNI										TOTALE
	≤ 14		15-21		22-28		> 28		NON RILEVATO		
	N	%*	N	%*	N	%*	N	%*	N	%**	
ITALIA SETTENTRIONALE	**29637**	**56.4**	**13347**	**25.4**	**6442**	**12.3**	**3087**	**5.9**	**798**	**1.5**	**53311**
Piemonte	5696	58.9	2542	26.3	1017	10.5	411	4.3	4	0.0	9670
Valle d'Aosta	157	66.8	51	21.7	19	8.1	8	3.4	7	2.9	242
Lombardia	9978	54.4	4716	25.7	2305	12.6	1330	7.3	630	3.3	18959
Bolzano	371	64.3	165	28.6	36	6.2	5	0.9	29	4.8	606
Trento	361	39.7	204	22.4	230	25.3	114	12.5	0	0.0	909
Veneto	2638	39.6	1826	27.4	1463	21.9	739	11.1	62	0.9	6728
Friuli Venezia Giulia	1132	59.3	523	27.4	187	9.8	66	3.5	62	3.1	1970
Liguria	1851	53.6	936	27.1	449	13.0	215	6.2	4	0.1	3455
Emilia Romagna	7453	69.2	2384	22.1	736	6.8	199	1.8	0	0.0	10772
ITALIA CENTRALE	**13358**	**54.8**	**6409**	**26.3**	**3275**	**13.4**	**1354**	**5.6**	**432**	**1.7**	**24828**
Toscana	4535	59.7	1857	24.4	814	10.7	391	5.1	68	0.9	7665
Umbria	725	39.3	620	33.6	318	17.2	183	9.9	38	2.0	1884
Marche	1697	74.0	406	17.7	132	5.8	59	2.6	115	4.8	2409
Lazio	6401	50.6	3526	27.9	2011	15.9	721	5.7	211	1.6	12870
ITALIA MERIDIONALE	**16832**	**69.4**	**4948**	**20.4**	**1760**	**7.3**	**729**	**3.0**	**3463**	**12.5**	**27732**
Abruzzo	1341	57.3	570	24.3	283	12.1	147	6.3	121	4.9	2462
Molise	497	86.4	63	11.0	9	1.6	6	1.0	0	0.0	575
Campania	5382	67.1	1859	23.2	571	7.1	203	2.5	3166	28.3	11181
Puglia	7061	73.3	1785	18.5	572	5.9	214	2.2	79	0.8	9711
Basilicata	535	88.0	53	8.7	13	2.1	7	1.2	80	11.6	688
Calabria	2016	65.1	618	19.9	312	10.1	152	4.9	17	0.5	3115
ITALIA INSULARE	**5388**	**58.4**	**2072**	**22.5**	**1193**	**12.9**	**573**	**6.2**	**884**	**8.7**	**10110**
Sicilia	3724	53.9	1630	23.6	1029	14.9	528	7.6	884	11.3	7795
Sardegna	1664	71.9	442	19.1	164	7.1	45	1.9	0	0.0	2315
ITALIA	**65215**	**59.1**	**26776**	**24.3**	**12670**	**11.5**	**5743**	**5.2**	**5577**	**4.8**	**115981**

* calcolata sulla somma delle prime quattro colonne ** calcolata sul totale

As we can note, in nearly six out of ten cases (precisely in 59.1% of cases), the elective abortion is performed within fourteen days of the issuance of the certificate which allows the woman to go to the public or private hospital to undergo the procedure.

This is an absolutely optimal figure, unlikely to be found for any other surgical operation. Remember that the *minimum* time span established by law, as already mentioned, is of seven days from the issuance of the certificate: this means that, in the high percentage cited above, the procedure is performed *within a week* from when it is possible! An additional 24.3% of procedures are performed within three weeks of the issuance of the certificate (therefore within two weeks from the day in which it is legally possible) and another 11.5% within four weeks from the issuance of the certificate and, therefore, within three weeks from when it is legally possible.

Therefore, in more than nine out of ten cases (exactly 94.9%), the public or private health care facility is able to satisfy a woman's request to interrupt pregnancy within three weeks from when it is legally possible. If we consider that, as highlighted, it is a matter of non-urgent procedures, the percentage must be considered definitely positive.

This figure itself would be sufficient to eliminate the doubt - suggested by the CGIL's complaint - that the number of objectors can affect the efficiency of the elective abortion service and, therefore, the protection of women's health: instead, we have in front of us the first figure that expresses the efficiency of the service.

Not only that: the figure is also in compliance in the four regions (Marche, Abruzzo, Sicily and Puglia) that are mentioned in paragraph 3.7 of the complaint to emphasise the cases of difficulty in providing the service: the national figure has improved in Marche (97.5%) and Puglia (97.7%) and has almost been reached in Sicily (92.4%) and Abruzzo (93.7%). Indeed Marche and Puglia present data that is clearly higher than the national (respectively, 74.0% and 73.3% compared to the national figure of 59.1%) referring to elective abortions performed within two weeks of the issuance of the certificate (and therefore within a week from the day in which the procedure is legally allowed).

But that the number of conscientious objectors does not affect - obviously when there is adequate health care planning - the efficiency of the service is unmistakably obtained from the comparison between the figure just reported (related to the year 2010, the last available official data) and the figure related to the year 2005, reported in the 2007 Ministerial Report. That year, as arises from paragraph 3.7 of the complaint, the objectors amounted to 58.7% of the total among the gynaecologists (versus 69.3% in 2010), 45.7% of the total among anaesthesiologists (versus 50.8% in 2010), 38.6% of the total among non medical personnel (versus 44.7% in 2010): in essence, the number of objectors was clearly lower, in all three categories, than the current one.

The table related to the waiting time from certification and procedure regarding the year 2005 is duplicated:

Tabella 21 - *Tempi di attesa tra certificazione ed intervento, 2005*

REGIONE	GIORNI										TOTALE
	≤ 14		15-21		22-28		> 28		NON RILEVATO		
	N	%*	N	%*	N	%*	N	%*	N	%**	
ITALIA SETTENTRIONALE	**31829**	**53,0**	**16328**	**27,2**	**8141**	**13,5**	**3805**	**6,3**	**177**	**0,3**	**60280**
Piemonte	5839	52,3	3317	29,7	1524	13,6	494	4,4	0	0,0	11174
Valle d'Aosta	173	72,4	52	21,8	9	3,8	5	2,1	3	1,2	242
Lombardia	12982	57,9	5711	25,5	2444	10,9	1294	5,8	37	0,2	22468
Bolzano	316	55,3	173	30,3	62	10,9	20	3,5	17	2,9	588
Trento	756	60,8	225	18,1	168	13,5	94	7,6	0	0,0	1243
Veneto	2381	33,3	1667	23,3	1790	25,0	1313	18,4	0	0,0	7151
Friuli Venezia Giulia	1026	46,9	544	24,9	455	20,8	164	7,5	120	5,2	2309
Liguria	1915	51,4	1186	31,8	500	13,4	125	3,4	0	0,0	3726
Emilia Romagna	6441	56,6	3453	30,3	1189	10,4	296	2,6	0	0,0	11379
ITALIA CENTRALE	**16425**	**57,5**	**7908**	**27,7**	**3202**	**11,2**	**1027**	**3,6**	**938**	**3,2**	**29500**
Toscana	5298	61,1	2268	26,1	845	9,7	266	3,1	81	0,9	8758
Umbria	1395	62,7	631	28,4	159	7,1	40	1,8	54	2,4	2279
Marche	1769	70,1	392	15,5	224	8,9	138	5,5	66	2,5	2589
Lazio	7963	52,6	4617	30,5	1974	13,0	583	3,9	737	4,6	15874
ITALIA MERIDIONALE	**16783**	**65,5**	**5597**	**21,8**	**2409**	**9,4**	**842**	**3,3**	**5512**	**17,7**	**31143**
Abruzzo	2065	77,0	466	17,4	107	4,0	45	1,7	77	2,8	2760
Molise	93	84,5	13	11,8	2	1,8	2	1,8	506	82,1	616
Campania	6323	65,3	2166	22,4	921	9,5	273	2,8	2284	19,1	11967
Puglia	5693	60,6	2270	24,2	1057	11,2	379	4,0	2554	21,4	11953
Basilicata	468	80,1	80	13,7	25	4,3	11	1,9	7	1,2	591
Calabria	2141	67,5	602	19,0	297	9,4	132	4,2	84	2,6	3256
ITALIA INSULARE	**7169**	**70,7**	**2010**	**19,8**	**698**	**6,9**	**266**	**2,6**	**1724**	**14,5**	**11867**
Sicilia	5256	67,6	1680	21,6	630	8,1	207	2,7	1724	18,2	9497
Sardegna	1913	80,7	330	13,9	68	2,9	59	2,5	0	0,0	2370
ITALIA	**72206**	**58,0**	**31843**	**25,6**	**14450**	**11,6**	**5940**	**4,8**	**8351**	**6,3**	**132790**

* calcolata sulla somma delle prime quattro colonne ** calcolata sul totale

As we can note, the abortions were performed within four weeks from certification (therefore within three weeks from the day in which the procedure was legally possible) in 95.2% of cases: essentially the same percentage as in 2010 (94.9%).

It is not difficult to deduce the irrelevance of the increase in the number of objectors on the efficiency of the service provided. In 2010, even the figure of the abortions performed in the first possible week is slightly higher (59.1% of procedures versus 58.0% in 2005).

3.7. Another optimal figure regards hospitalisation time necessary to complete the abortion procedure. Although it is more a question of a parameter related to the minor discomfort of a woman who aborts, rather than directly to the protection of her health, the high percentage of abortions performed without even one overnight stay (therefore in *same-day surgery*) is considered a sign of efficiency.

As shown in the duplicated table, in more than nine procedures out of ten there was no overnight stay and in one case out of twenty, the woman stayed only one night. Obviously the residual figure of longer overnight stays is physiological, due to the appearance of complications:

Tabella 26 - *IVG e durata della degenza, 2010*

REGIONE	<1		1		2		3		4		5		≥6		NON RIL.		TOTALE
	N	%*	N	%*	N	%*	N	%*	N	%*	N	%*	N	%*	N	%**	
ITALIA SETTENTRIONALE	**49289**	**92.8**	**2185**	**4.1**	**916**	**1.7**	**475**	**0.9**	**115**	**0.2**	**51**	**0.1**	**109**	**0.2**	**171**	**0.3**	**53311**
Piemonte	8708	90.1	716	7.4	159	1.6	54	0.6	12	0.1	9	0.1	12	0.1	0	0.0	9670
Valle d'Aosta	188	79.0	43	18.1	2	0.8	3	1.3	2	0.8	0	0.0	0	0.0	4	1.7	242
Lombardia	17962	94.7	536	2.8	215	1.1	175	0.9	35	0.2	9	0.0	27	0.1	0	0.0	18959
Bolzano	548	90.4	23	3.8	21	3.5	10	1.7	0	0.0	1	0.2	3	0.5	0	0.0	606
Trento	853	93.8	17	1.9	31	3.4	6	0.7	2	0.2	0	0.0	0	0.0	0	0.0	909
Veneto	6210	93.5	112	1.7	135	2.0	104	1.6	32	0.5	14	0.2	37	0.6	84	1.2	6728
Friuli Venezia Giulia	1772	93.6	44	2.3	55	2.9	12	0.6	6	0.3	3	0.2	2	0.1	76	3.9	1970
Liguria	3121	90.5	179	5.2	106	3.1	32	0.9	7	0.2	2	0.1	1	0.0	7	0.2	3455
Emilia Romagna	9927	92.2	515	4.8	192	1.8	79	0.7	19	0.2	13	0.1	27	0.3	0	0.0	10772
ITALIA CENTRALE	**23225**	**93.9**	**926**	**3.7**	**269**	**1.1**	**146**	**0.6**	**56**	**0.2**	**37**	**0.1**	**77**	**0.3**	**92**	**0.4**	**24828**
Toscana	6773	88.4	716	9.3	67	0.9	45	0.6	16	0.2	8	0.1	40	0.5	0	0.0	7665
Umbria	1837	97.6	28	1.5	7	0.4	5	0.3	3	0.2	1	0.1	1	0.1	2	0.1	1884
Marche	2162	93.2	91	3.9	29	1.3	14	0.6	12	0.5	5	0.2	6	0.3	90	3.7	2409
Lazio	12453	96.8	91	0.7	166	1.3	82	0.6	25	0.2	23	0.2	30	0.2	0	0.0	12870
ITALIA MERIDIONALE	**22404**	**89.1**	**2268**	**9.0**	**179**	**0.7**	**156**	**0.6**	**64**	**0.3**	**21**	**0.1**	**48**	**0.2**	**2592**	**9.3**	**27732**
Abruzzo	2376	98.6	4	0.2	17	0.7	7	0.3	2	0.1	1	0.0	2	0.1	53	2.2	2462
Molise	545	94.8	8	1.4	16	2.8	6	1.0	0	0.0	0	0.0	0	0.0	0	0.0	575
Campania	8675	98.8	43	0.5	29	0.3	11	0.1	11	0.1	4	0.0	8	0.1	2400	21.5	11181
Puglia	7238	74.9	2172	22.5	67	0.7	104	1.1	39	0.4	13	0.1	27	0.3	51	0.5	9711
Basilicata	563	90.8	25	4.0	16	2.6	9	1.5	2	0.3	0	0.0	5	0.8	68	9.9	688
Calabria	3007	97.2	16	0.5	34	1.1	19	0.6	10	0.3	3	0.1	6	0.2	20	0.6	3115
ITALIA INSULARE	**8544**	**92.0**	**136**	**1.5**	**143**	**1.5**	**416**	**4.5**	**23**	**0.2**	**7**	**0.1**	**16**	**0.2**	**825**	**8.2**	**10110**
Sicilia	6396	91.7	69	1.0	96	1.4	382	5.5	16	0.2	5	0.1	8	0.1	823	10.6	7795
Sardegna	2148	92.9	67	2.9	47	2.0	34	1.5	7	0.3	2	0.1	8	0.3	2	0.1	2315
ITALIA	**103462**	**92.1**	**5515**	**4.9**	**1507**	**1.3**	**1193**	**1.1**	**258**	**0.2**	**116**	**0.1**	**250**	**0.2**	**3680**	**3.2**	**115981**

* calcolata sulla somma delle prime sette colonne ** calcolata sul totale

The figure has improved since 2005, when procedures without overnight stay were 90.5% of the total (compared to 92.1% in 2010) and those with only one overnight stay was 5.3% of the total (compared to 4.9% in 2010), therefore further increasing the procedures performed in *same-day surgery*.

3.8. The figure of complications deriving from the abortion procedure is also considered by the 2012 ministerial report, reassuring and nearly stable over the course of the years. The figure is 4.2 complications for every 1,000 procedures. The data is shown in the following table:

Tabella 27 - *IVG e complicanze, 2010*

REGIONE	EMORRAGIA		INFEZIONE		ALTRO		NON RILEVATO		TOTALE
	N	%*	N	%*	N	%*	N	%**	
ITALIA SETTENTRIONALE	**141**	**2.7**	**19**	**0.4**	**111**	**2.1**	**953**	**1.8**	**53311**
Piemonte	20	2.1	2	0.2	20	2.1	157	1.6	9670
Valle d'Aosta	0	0.0	0	0.0	0	0.0	0	0.0	242
Lombardia	50	2.7	5	0.3	23	1.2	336	1.8	18959
Bolzano	1	1.7	0	0.0	4	6.6	0	0.0	606
Trento	4	4.4	0	0.0	0	0.0	0	0.0	909
Veneto	20	3.2	2	0.3	15	2.4	398	5.9	6728
Friuli Venezia Giulia	7	3.7	1	0.5	2	1.0	61	3.1	1970
Liguria	1	0.3	1	0.3	7	2.0	1	0.0	3455
Emilia Romagna	38	3.5	8	0.7	40	3.7	0	0.0	10772
ITALIA CENTRALE	**41**	**1.7**	**6**	**0.3**	**39**	**1.6**	**969**	**3.9**	**24828**
Toscana	21	3.1	2	0.3	13	1.9	804	10.5	7665
Umbria	2	1.1	1	0.6	1	0.6	69	3.7	1884
Marche	2	0.9	2	0.9	0	0.0	89	3.7	2409
Lazio	16	1.2	1	0.1	25	1.9	7	0.1	12870
ITALIA MERIDIONALE	**79**	**3.1**	**3**	**0.1**	**17**	**0.7**	**2608**	**9.4**	**27732**
Abruzzo	6	2.5	0	0.0	1	0.4	99	4.0	2462
Molise	0	0.0	0	0.0	1	1.7	0	0.0	575
Campania	36	4.1	0	0.0	4	0.5	2404	21.5	11181
Puglia	31	3.2	3	0.3	6	0.6	29	0.3	9711
Basilicata	5	8.1	0	0.0	4	6.4	67	9.7	688
Calabria	1	0.3	0	0.0	1	0.3	9	0.3	3115
ITALIA INSULARE	**9**	**1.0**	**0**	**0.0**	**3**	**0.3**	**1112**	**11.0**	**10110**
Sicilia	6	0.9	0	0.0	3	0.4	827	10.6	7795
Sardegna	3	1.5	0	0.0	0	0.0	285	12.3	2315
ITALIA	**270**	**2.4**	**28**	**0.3**	**170**	**1.5**	**5642**	**4.9**	**115981**

* per 1000 calcolata sul totale meno i non rilevati ** percentuale calcolata sul totale

The figure directly regards the protection of health of women who undergo elective abortions, and the fact that the Health Ministry considers it essentially a physiological figure (in 2010: 468 cases out of 115,981 procedures) that is stable over the years should lead one to reflect on the groundlessness of the claimant's thesis, according to which the increase in the number of conscientious objectors would lead to the «*irreparable sacrifice of a woman's right to life and health*».

3.9. Additional data - mentioned briefly so as not to burden this memorandum - are important to allow the Committee to adequately evaluate the first aspect of the CGIL's complaint.

First of all, there are no cases - not even one case! - in which the abortion requested by the woman was not performed; and, further, there are no cases of abortions considered urgent that were not performed urgently.

The CGIL's complaint, which even asserts that «*a woman's rights to life and health, as well as to self-determination were irreparably sacrificed*» (par. 3.4 of the complaint), does not mention a single episode that can fall under those indicated above; nor does the Ministerial Report make any acknowledgement.

Second, according to the Ministerial Report, the number of illegal abortions by now is extremely low: this figure cannot be verified but is noted. The reduction of illegal abortions leads to the reduction of health risks for women that undergo elective abortions.

Finally, the figure of elective abortions undergone by foreign citizens is to be noted. This is ever-growing in Italy and reached 34.2% of the total in 2010, as shown in the following table:

Tabella 12 - *IVG e cittadinanza, 2010*

REGIONE	CITTADINANZA ITALIANA	CITTADINANZA STRANIERA									NON RILEVATO	TOTALE
		Europa dell'Est	Altri Paesi dell'Europa	Africa	America del Nord	America del Centro Sud	Asia	Oceania	TOTALE IVG N	%*		
ITALIA SETTENTRIONALE	**29971**	**10036**	**263**	**5117**	**25**	**4089**	**3626**	**13**	**23169**	**43.6**	**171**	**53311**
Piemonte	5650	2132	45	954	2	618	254	0	4005	41.5	15	9670
Valle d'Aosta	175	34	2	19	0	8	4	0	67	27.7	0	242
Lombardia	10440	2903	91	1632	12	2180	1649	0	8467	44.8	52	18959
Bolzano	363	145	2	30	0	33	33	0	243	40.1	0	606
Trento	600	171	1	64	0	49	24	0	309	34.0	0	909
Veneto	3549	1521	18	735	3	187	626	3	3093	46.6	86	6728
Friuli Venezia Giulia	1272	367	7	167	3	50	86	0	680	34.8	18	1970
Liguria	2022	546	22	211	1	561	91	1	1433	41.5	0	3455
Emilia Romagna	5900	2217	75	1305	4	403	859	9	4872	45.2	0	10772
ITALIA CENTRALE	**14839**	**5584**	**129**	**1170**	**31**	**1259**	**1594**	**4**	**9771**	**39.7**	**218**	**24828**
Toscana	4267	1584	57	423	12	430	779	2	3287	43.5	111	7665
Umbria	1051	514	8	133	4	109	55	0	823	43.9	10	1884
Marche	1405	480	11	156	0	90	176	1	914	39.4	90	2409
Lazio	8116	3006	53	458	15	630	584	1	4747	36.9	7	12870
ITALIA MERIDIONALE	**21240**	**2993**	**74**	**402**	**9**	**149**	**267**	**3**	**3897**	**15.5**	**2595**	**27732**
Abruzzo	1731	480	10	66	1	45	62	0	664	27.7	67	2462
Molise	552	12	4	3	0	0	4	0	23	4.0	0	575
Campania	7426	1002	41	108	5	48	93	3	1300	14.9	2455	11181
Puglia	8630	788	12	168	3	37	58	0	1066	11.0	15	9711
Basilicata	530	81	1	6	0	5	11	0	104	16.4	54	688
Calabria	2371	630	6	51	0	14	39	0	740	23.8	4	3115
ITALIA INSULARE	**7762**	**949**	**22**	**260**	**3**	**54**	**204**	**2**	**1494**	**16.1**	**854**	**10110**
Sicilia	5832	725	12	204	3	42	151	1	1138	16.3	825	7795
Sardegna	1930	224	10	56	0	12	53	1	356	15.6	29	2315
ITALIA	**73812**	**19562**	**488**	**6949**	**68**	**5551**	**5691**	**22**	**38331**	**34.2**	**3838**	**115981**

* Calcolata sul totale dei rilevati

The figure is important in demonstrating that even foreign women have no difficulty in accessing the elective abortion service and are not forced to resort to illegal abortions.

We must, finally, remember that the elective abortion procedure is free, as it is at the expense of the National Health Care Service.

3.10. Conclusions.

The data that have been thus far reported have shown the absolute groundlessness of the CGIL's complaint in the section in which it connects the increase in the number of conscientious objectors to the violation of the right to health of a woman who intends to undergo an abortion procedure.

The ideological approach adopted by the claimant seems truly unacceptable, according to which any violation of a woman's right to self-determination integrates, *per se*, a violation of her right to health; however, even adopting this perspective, the solid data presented by the Health Ministry shows that the free access to the public

service of elective abortion for women who want to abort is *rapid* (reduced waiting period from certification to the procedure), *efficient* (increase in the number of procedures in *same-day surgery*), *safe* (reduced percentage of complications due to the procedure), *available* (access for foreign women, free procedure).

These characteristics have not changed as a result of the increase in the number of conscientious objectors, nor for the fact that some hospitals no longer provide this type of service. This shows that efficient health care planning and abandoning the *rigid* solution imposed by law 194 of 1978 allows the service in question to be improved and rationalised.

The Committee is not called to evaluate whether a specific state standard is violated or disapplied; not even the regions identified as the authority delegated to guarantee the efficiency of the service are of interest for its judgement.

Rather, the Committee must take note that the reported violation *does not exist* and, moreover, that *the significant data is not worsening*, being, instead, stable and, at times, improving. The claimant's reference to art. E, which prohibits discrimination, merits a mere mention. The contents of Paragraph 3.8.2 of the complaint are confused and irrelevant and, above all, not demonstrated and inconsistent with the data presented thus far.

The complaint claims that women who intend to abort are discriminated against in that some of them are forced to move from one hospital to another to perform the procedure: but it has been shown how, on the one hand, the mobility of women who abort from one province to another and from one region to another has always been high and, therefore, has nothing to do with the number of conscientious objectors; on the other hand that, keeping in mind that non-urgent procedures are planned (and, therefore, de facto *booked*), national transfers do not create particular problems.

A further discriminatory aspect, according to the complaint, would be between pregnant women who intend to interrupt their pregnancy and those who intend to continue, and between the first women and those who are not pregnant: these are utterly abstract considerations in that the conditions of the other "categories" of women are not minimally described and, therefore, how the claimant can compare these different conditions is incomprehensible. In any case, it seems obvious that - dealing, in fact, with categories that are all made up by women - there can be no discrimination based on gender; the situations of the three "categories" indicated in the complaint are also completely different from each other.

4.1. Violation of the right to work - art. 1 European Social Charter.

The CGIL's complaint claims that section 9 of law 194 of 1978, which governs conscientious objection of health care workers to abortion procedures, violates article 1 of the European Social Charter, which states that «*to ensure the effective exercise of*

the right to work, the Parties undertake to effectively protect the right of the worker to earn a living with a freely undertaken job».

According to the contents of par. 3.5, the increase in the number of objectors «*leads to an increased workload for those who, unlike the objecting personnel, decide not to raise conscientious objection. The rights of the non-objecting physicians thus result compromised, precisely due to the high number of objecting physicians in view of the same workload related to abortion procedures. From this point of view, therefore, the specific provision of the concrete application method is imposed, with which to ensure a suitable number of non-objecting physicians in every hospital structure in order to avoid compromising and sacrificing their legal position*».

Before specifically facing this subject, this use of the expression "increased workload" is challenged under two aspects.

On the one hand, it is obvious - but, as it is not mentioned in the complaint, it appears necessary to highlight it - that the objecting health personnel *have different tasks*; that is, they are not without work. In other words, a *larger quantity of work for the non-objecting personnel compared to the objecting personnel* does not exist.

Second, and as a consequence of the first observation, the non-objecting personnel does not have an «increase» in work, meaning that by increasing the number of conscientious objectors, the non-objectors work *more*: the complaint - which is actually by no means proven - is that most of their work time is dedicated to a specific professional activity: indeed, elective abortions.

4.2. Paragraph 3.9 clarifies the censure, claiming that the two categories of homogeneous subjects - the objecting physicians and the non-objecting physicians - are treated differently, with «indirect» discrimination of the second category and that this difference in treatment is not «*based on any objective and rational justifications*».

These are paradoxical and provocative statements for the objecting physicians: the «*objective and rational justification*» is constituted by the acknowledgement of conscientious objection by a State that has legalised elective abortion. In essence, it appears that the claimant organisation has a very simple solution: deny physicians and health personnel their right to raise conscientious objection!

Doing so, there is no doubt that there would no longer be «different treatment»: but - as has already been noted - this is a question of a State's democratic nature and respect for fundamental human rights.

4.3. According to the complaint, article 1 of the European Social Charter is violated by the Italian standard even under the aspect of «*prohibition to impose specific work activities*».

This is clearly a stretch, as the claimant itself admits, reporting that the prohibition was applied regarding completely different settings: prisoner (!) work and unemployment aid legislation.

But even overlooking this limit, the considerations presented are paradoxical: in fact, the complaint is forced to start with the following sentence: «*regardless of the considerations for which those who do not raise conscientious objection expressed this choice(…)*»; in other words, they admit that the non-objecting physicians *are not obliged* to perform abortion procedures precisely because, in deciding not to declare conscientious objection, they have consciously and freely accepted to perform them.

However, the continuing explanation shows that the claimant insists on using a vague evanescent notion of the *prohibition of imposing work activity*: the non-objecting personnel, in fact, is «*forced to carry out a single and specific service for most of or all working hours*», and «*cannot carry out other tasks, thus precluding them the possibility of using their expertise acquired to realise the work of their choice*».

These are - we wish to immediately stress - unproven and simply declared statements: no concrete examples are proposed; the explanation, after all, is extremely generic («*for most working hours or even for all working hours*»).

However, apart from this premise, it is obvious that the claimant wants to include in the *prohibition of imposing work activities* the extremely broad subject of *worker satisfaction in completing his/her own work activity*: a clear and evident stretch.

This is a matter, namely, of the subject of work organisation - public and private - of manager responsibility, of worker participation in the direction of the company and the structure, and so on.

Does the claimant truly believe that this extremely vast subject matter can be pigeon-holed into the categories of *obligation* and *prohibition*?

To be noted, once again, is how, in order to reach this paradoxical result, the complaint completely omits the responsibility of top management - as well as political managers, referring to the public health system - proposing a logical process, which is not only unproven but also simplistic and unacceptable: the increase in the number of objectors *obligates* health directors, local health authority presidents, gynaecology ward directors to *force* non-objecting physicians to *only* perform abortion procedures.

The complaint then lets a phrase slip: «*moreover, abortion treatments can certainly not be assimilated to other health procedures, due to their particularly delicate, not only technically speaking, nature*».

This statement is actually perfectly comprehensible for conscientious objecting physicians: abortion procedures *cannot be assimilated* to other procedures as it causes the death of a human being; this is precisely why many health care workers raise conscientious objection; it seems out of place in a complaint supporting non-objecting doctors, as there is no explanation as to *why* elective abortions *cannot be assimilated* to other procedures.

In fact, if the procedure in question is part of the extensive professional knowledge of gynaecologists, anaesthesiologists and non-medical personnel, on the basis of what criteria can said professionals, not having raised conscientious objection, *refuse* to perform a procedure which is typical of their professional profiles?

In any case, it is evident no obligation of work activities exists.

4.4. Finally, the complaint claims that article 1 of the European Social Charter is violated under the aspect of protection from any interference, in their private and personal life, which is associated or originates from their work situation.

The considerations are the same (the presumed - and unproven - impossibility for non-objecting physicians to carry out other tasks) and the irrelevance of the regulation cited is even more evident: this is by no means "interference" as intended by the European Committee.

5.1. The further reported violations of the European Social Charter.

According to the complaint, the situation caused by the increase in the number of conscientious objectors leads to a violation of article 2 of the European Social Charter which requires, in order to ensure the right to just conditions of work, to provide for *reasonable* daily and weekly working hours.

It claims - apodictically yet providing no evidential support to the statement whatsoever - that «considering the insufficient number of physicians who do not raise conscientious objection, the distribution of the workload is susceptible to being transformed into completely unreasonable daily and weekly working hours as, «*in any case*», access to the requested health procedure must always be guaranteed, as required by section 9 of law 194 of 1978.

Reiterating that no proof is provided to show that non-objecting physicians are subjected to back-breaking shifts in terms of the number of hours worked or the obligation of continuous night shifts etc., and observing that the great majority of elective abortions are *non-urgent* and *can be planned* (and, therefore, are surely *planned*), so that such a negative picture seems extremely implausible, we wish to note, once again, the negative incidence of the - absolutely unreasonable - standard that obliges *all hospitals* to guarantee the service in question.

If this obligation, which - as the complaint itself shows - makes organising the service *rigid* and *difficult to manage*(especially at a time of reduced public spending, particularly in health care), it shall be abandoned, suitable health planning shall be possible, as well as wards with a substantial number of physicians and assistant personnel, *reasonable* work shifts.

Once again, the responsibility of the increased number of objectors for the situation presented - but whose existence, we repeat, is contested - is by no means demonstrated.

5.2. Similar considerations must be made referring to the reported violation of article 3 of the European Social Charter, which undertakes to ensure safe and healthy working conditions.

Yet again, however, the complaint attempts to stretch the notion of «*safe and healthy working conditions*» which - it admits - has always been interpreted as referring exclusively to a *physical* health aspect; continuing, we are even subjected to the pretension of identifying the «*violations*» and the «*incidents*» suffered by the workers in the «*inconveniences*» and the «*deteriorated conditions in which those who decide not to raise conscientious objection are called to work, as the entire workload regarding abortion treatments falls only on them*».

Therefore: the fact that there have been no work-related injuries to objecting personnel notwithstanding, the safe and healthy working conditions have allegedly been violated for the psychological «discomfort» of the non-objecting physicians.

According to the complaint, there is even a *mathematical* correlation between «*the figures regarding the number of objecting physicians*» and the «*frequency with which these situations arise*» and, consequently, «*the same endangerment of the right to both psychological and physical health of the category of workers who decide not to raise conscientious objection*»!

The notion of «safe and healthy working conditions» is actually well-known and defined by ample normative texts which demonstrate that, in this case, its citation is entirely out of place.

The working conditions of the non-objecting physicians and personnel are obviously not irrelevant, just like the conditions of any worker: what is being challenged at this time is the nearly explicit "blame" placed on the objecting personnel for the situation that - is said with no demonstration whatsoever - afflicts some non-objectors.

5.3. There is nothing further to add, even regarding the reference in the complaint to a supposed violation of art. 26 of the European Social Charter which ensures the right to dignity at work.

For that matter, it is unclear how what is presented in the complaint has anything to do with «*deplorable or explicitly hostile or offensive acts repeatedly directed at every wage earner in the workplace or in connection with work*»: there is no trace of these hostile or offensive acts in paragraph 3.9.4 of the complaint, which limits these acts to reiterating the same considerations on the working conditions of non-objecting physicians who «*shall be* (therefore, currently are not) *called to take on all the requests*

for elective abortions and thus to uninterruptedly perform that specific type of procedure which continues to be, beyond the choice of objecting or not, a treatment of a particularly delicate, not only technically speaking, nature».

This condition - affirms the complaint, without proving it in any way - would compromise or sacrifice entirely «*the dignity of the health care-medical profession*».

As previously stated, the considerations that have already been presented are sufficient also with regards to this reference: however, the reference to the dignity of the health care-medical profession made in the complaint cannot but prompt a consideration: the physicians and the health care workers who raise conscientious objection to abortion consider their choice to be *a duty* in the awareness that elective abortions, by causing the death of an innocent human being, gravely violates the dignity of the medical profession. A physician is called to heal, not to kill.

5.4. The reference to the principle of non-discrimination in art. E, previously commented with regards to a woman's legal position, is also entirely irrelevant as for the working position of the objecting and non-objecting health care workers.

The complaint claims that there is a missing objective and rational justification for the deteriorated treatment of the "category" of non-objecting health care workers compared to the objecting health workers: contrarily, the justification exists and consists in the right acknowledged to health care workers to raise conscientious objection. In any case, to reiterate, discrimination damaging non-objecting personnel has in no way been proven for the considerations presented thus far.

5.5. Article 21 of the European Social Charter (Right to information and consultation) is not emphasised whatsoever in the subject of conscientious objection of health care workers.

First of all - as the complaint itself admits - the standard in question is not applied to public employees, as established by the European Committee of Social Rights.

Second, the objecting physicians are - once again admitted by the complaint itself! - «*aware of the organisational choices of their hospital structure*»; not only that: it does not even infer that they are not consulted but claims that, the situation being what is described, any consultation is useless.

This is clearly a specious and contradictory reference in light of the complaint's own text.

For the same reason, the reference to art. 22 of the European Social Charter results incongruous.

6.1. Conclusions.

What has been thus far presented and discussed has clearly shown that the entire complaint proposed by the Italian General Confederation of Labour versus Italy is unfounded and specious.

The complaint is founded on the assumption that the increase in the number of conscientious objectors (gynaecologists, anaesthesiologists and assistant personnel) harms or puts at risk the health of expecting women who intend to electively abort and, simultaneously, puts non-objecting physicians in working conditions that gravely violate their right to work, as well as their right to just, safe and healthy working conditions and dignity at work.

On the contrary, as has been extensively demonstrated, on the one hand, the health of women who intend to abort has not worsened whatsoever over the years; on the other, the conditions of access to the «*pregnancy termination service*» (conditions that comply with ensuring the right to self-determination rather than to the protection of the right to health) have reached absolutely positive standards which are ostensibly better than many other health services.

As for the position of non-objecting physicians, the fact that the references to art. 1, 2, 3 and 26 of the European Social Charter are out of place has been stressed. These are the fruit of obvious interpretative stretches and are in no way justified by the text of the standards and by their interpretation by the European Committee of Social Rights. In any case, the complaint does not prove whatsoever the deteriorated conditions of non-objecting personnel, limiting itself to apodictical declarations.

The standard of art. 9, par. 5, law 194 of 1978 falls on both subject matters, mandating *all* hospital structures to ensure abortion procedures *in any case*: taken as a "cardinal standard" by the complaint, the respect or disapplication of which shows the effective protection of women's right to health. Instead, it is a matter of an administrative and organisational standard which is clearly illogical and however no longer current, and which leads to a rigidity of the system that impedes rational organisation of the service in question.

6.2. The claimant asks the Committee to better specify the concrete methods with which to ensure the rights of non-objecting health care personnel.

Whether this is the duty of the Committee is dubious, especially after having taken note that, contrarily to what is presented in this memorandum, no right, neither of women nor of non-objecting personnel, is violated.

The complaint, however, references three practical solutions adopted over time: resorting to external non-objecting personnel, resorting to agreements with private hospitals, competition announcements reserved to non-objecting physicians. The claimant organisation's preference for this last solution shines through quite clearly, as

it highlights the fact that resorting to external non-objecting personnel does not guarantee «*round the clock welfare service*», an expression with no real meaning as elective pregnancy termination is *not* a welfare service. The claimant rejects the solution of agreements with private hospitals because this «*compromises the public nature of the law 194 of 1978 system*»: a subject completely unrelated to the proposed issues and, above all, belied by the same law 194 which, in art. 8, explicitly provides for the fact that the procedures, within a certain percentage, can be performed by authorised private hospitals.

The third solution, of competitions reserved for non-objectors, has not only been rejected as being discriminatory by the administrative judge but also gravely - this time truly - violates the prohibition of discrimination ensured by art. 14 of the European Convention of Human Rights, as referenced in the solemn declaration contained in the Resolution of the Parliamentary Assembly of the Council of Europe mentioned at the beginning of this memorandum.

6.3 The A.M.C.I. Associazione Medici Cattolici Italiani therefore asks the Committee to reject and, in any case, to consider unfounded CGIL's complaint, not accepting the conclusions contained within; however not to violate in any way the rights - acknowledged by the Italian Constitution and the European Convention of Human Rights - of health care workers - physicians and assistant personnel - who have raised conscientious objection under the power of art. 9 of law 194 of 1978.

Rome, 26 April 2013

Gianfranco Amato
PRESIDENT OF GIURISTI PER LA VITA

Prof. Filippo Maria Boscia
PRESIDENT OF A.M.C.I.

it highlights the fact that resorting to external non-objecting personnel does not guarantee «*round the clock welfare service*», an expression with no real meaning as elective pregnancy termination is *not* a welfare service. The claimant rejects the solution of agreements with private hospitals because this «*compromises the public nature of the law 194 of 1978 system*»: a subject completely unrelated to the proposed issues and, above all, belied by the same law 194 which, in art. 8, explicitly provides for the fact that the procedures, within a certain percentage, can be performed by authorised private hospitals.

The third solution, of competitions reserved for non-objectors, has not only been rejected as being discriminatory by the administrative judge but also gravely - this time truly - violates the prohibition of discrimination ensured by art. 14 of the European Convention of Human Rights, as referenced in the solemn declaration contained in the Resolution of the Parliamentary Assembly of the Council of Europe mentioned at the beginning of this memorandum.

6.3 THE A.I.G.O.C. Associazione Italiana Ginecologi e Ostetrici Cattolic ("Italian Association of Catholic Gynaecologists and Obstetricians") therefore asks the Committee to reject and, in any case, to consider unfounded CGIL's complaint, not accepting the conclusions contained within; however not to violate in any way the rights - acknowledged by the Italian Constitution and the European Convention of Human Rights - of health care workers - physicians and assistant personnel - who have raised conscientious objection under the power of art. 9 of law 194 of 1978.

Rome, 26 April 2013

Gianfranco Amato
PRESIDENT OF GIURISTI PER LA VITA

Prof. Giuseppe Noia
PRESIDENTE A.I.G.O.C.

6.1. Conclusions.

What has been thus far presented and discussed has clearly shown that the entire complaint proposed by the Italian General Confederation of Labour versus Italy is unfounded and specious.

The complaint is founded on the assumption that the increase in the number of conscientious objectors (gynaecologists, anaesthesiologists and assistant personnel) harms or puts at risk the health of expecting women who intend to electively abort and, simultaneously, puts non-objecting physicians in working conditions that gravely violate their right to work, as well as their right to just, safe and healthy working conditions and dignity at work.

On the contrary, as has been extensively demonstrated, on the one hand, the health of women who intend to abort has not worsened whatsoever over the years; on the other, the conditions of access to the «*pregnancy termination service*» (conditions that comply with ensuring the right to self-determination rather than to the protection of the right to health) have reached absolutely positive standards which are ostensibly better than many other health services.

As for the position of non-objecting physicians, the fact that the references to art. 1, 2, 3 and 26 of the European Social Charter are out of place has been stressed. These are the fruit of obvious interpretative stretches and are in no way justified by the text of the standards and by their interpretation by the European Committee of Social Rights. In any case, the complaint does not prove whatsoever the deteriorated conditions of non-objecting personnel, limiting itself to apodictical declarations.

The standard of art. 9, par. 5, law 194 of 1978 falls on both subject matters, mandating *all* hospital structures to ensure abortion procedures *in any case*: taken as a "cardinal standard" by the complaint, the respect or disapplication of which shows the effective protection of women's right to health. Instead, it is a matter of an administrative and organisational standard which is clearly illogical and however no longer current, and which leads to a rigidity of the system that impedes rational organisation of the service in question.

6.2. The claimant asks the Committee to better specify the concrete methods with which to ensure the rights of non-objecting health care personnel.

Whether this is the duty of the Committee is dubious, especially after having taken note that, contrarily to what is presented in this memorandum, no right, neither of women nor of non-objecting personnel, is violated.

The complaint, however, references three practical solutions adopted over time: resorting to external non-objecting personnel, resorting to agreements with private hospitals, competition announcements reserved to non-objecting physicians. The claimant organisation's preference for this last solution shines through quite clearly, as

for elective abortions and thus to uninterruptedly perform that specific type of procedure which continues to be, beyond the choice of objecting or not, a treatment of a particularly delicate, not only technically speaking, nature».

This condition - affirms the complaint, without proving it in any way - would compromise or sacrifice entirely «*the dignity of the health care-medical profession*».

As previously stated, the considerations that have already been presented are sufficient also with regards to this reference: however, the reference to the dignity of the health care-medical profession made in the complaint cannot but prompt a consideration: the physicians and the health care workers who raise conscientious objection to abortion consider their choice to be *a duty* in the awareness that elective abortions, by causing the death of an innocent human being, gravely violates the dignity of the medical profession. A physician is called to heal, not to kill.

5.4. The reference to the principle of non-discrimination in art. E, previously commented with regards to a woman's legal position, is also entirely irrelevant as for the working position of the objecting and non-objecting health care workers.

The complaint claims that there is a missing objective and rational justification for the deteriorated treatment of the "category" of non-objecting health care workers compared to the objecting health workers: contrarily, the justification exists and consists in the right acknowledged to health care workers to raise conscientious objection. In any case, to reiterate, discrimination damaging non-objecting personnel has in no way been proven for the considerations presented thus far.

5.5. Article 21 of the European Social Charter (Right to information and consultation) is not emphasised whatsoever in the subject of conscientious objection of health care workers.

First of all - as the complaint itself admits - the standard in question is not applied to public employees, as established by the European Committee of Social Rights.

Second, the objecting physicians are - once again admitted by the complaint itself! - «*aware of the organisational choices of their hospital structure*»; not only that: it does not even infer that they are not consulted but claims that, the situation being what is described, any consultation is useless.

This is clearly a specious and contradictory reference in light of the complaint's own text.

For the same reason, the reference to art. 22 of the European Social Charter results incongruous.

Once again, the responsibility of the increased number of objectors for the situation presented - but whose existence, we repeat, is contested - is by no means demonstrated.

5.2. Similar considerations must be made referring to the reported violation of article 3 of the European Social Charter, which undertakes to ensure safe and healthy working conditions.

Yet again, however, the complaint attempts to stretch the notion of «*safe and healthy working conditions*» which - it admits - has always been interpreted as referring exclusively to a *physical* health aspect; continuing, we are even subjected to the pretension of identifying the «*violations*» and the «*incidents*» suffered by the workers in the «*inconveniences*» and the «*deteriorated conditions in which those who decide not to raise conscientious objection are called to work, as the entire workload regarding abortion treatments falls only on them*».

Therefore: the fact that there have been no work-related injuries to objecting personnel notwithstanding, the safe and healthy working conditions have allegedly been violated for the psychological «discomfort» of the non-objecting physicians.

According to the complaint, there is even a *mathematical* correlation between «*the figures regarding the number of objecting physicians*» and the «*frequency with which these situations arise*» and, consequently, «*the same endangerment of the right to both psychological and physical health of the category of workers who decide not to raise conscientious objection*»!

The notion of «safe and healthy working conditions» is actually well-known and defined by ample normative texts which demonstrate that, in this case, its citation is entirely out of place.

The working conditions of the non-objecting physicians and personnel are obviously not irrelevant, just like the conditions of any worker: what is being challenged at this time is the nearly explicit "blame" placed on the objecting personnel for the situation that - is said with no demonstration whatsoever - afflicts some non-objectors.

5.3. There is nothing further to add, even regarding the reference in the complaint to a supposed violation of art. 26 of the European Social Charter which ensures the right to dignity at work.

For that matter, it is unclear how what is presented in the complaint has anything to do with «*deplorable or explicitly hostile or offensive acts repeatedly directed at every wage earner in the workplace or in connection with work*»: there is no trace of these hostile or offensive acts in paragraph 3.9.4 of the complaint, which limits these acts to reiterating the same considerations on the working conditions of non-objecting physicians who «*shall be* (therefore, currently are not) *called to take on all the requests*

In fact, if the procedure in question is part of the extensive professional knowledge of gynaecologists, anaesthesiologists and non-medical personnel, on the basis of what criteria can said professionals, not having raised conscientious objection, *refuse* to perform a procedure which is typical of their professional profiles?

In any case, it is evident no obligation of work activities exists.

4.4. Finally, the complaint claims that article 1 of the European Social Charter is violated under the aspect of protection from any interference, in their private and personal life, which is associated or originates from their work situation.

The considerations are the same (the presumed - and unproven - impossibility for non-objecting physicians to carry out other tasks) and the irrelevance of the regulation cited is even more evident: this is by no means "interference" as intended by the European Committee.

5.1. The further reported violations of the European Social Charter.

According to the complaint, the situation caused by the increase in the number of conscientious objectors leads to a violation of article 2 of the European Social Charter which requires, in order to ensure the right to just conditions of work, to provide for *reasonable* daily and weekly working hours.

It claims - apodictically yet providing no evidential support to the statement whatsoever - that «considering the insufficient number of physicians who do not raise conscientious objection, the distribution of the workload is susceptible to being transformed into completely unreasonable daily and weekly working hours as, «*in any case*», access to the requested health procedure must always be guaranteed, as required by section 9 of law 194 of 1978.

Reiterating that no proof is provided to show that non-objecting physicians are subjected to back-breaking shifts in terms of the number of hours worked or the obligation of continuous night shifts etc., and observing that the great majority of elective abortions are *non-urgent* and *can be planned* (and, therefore, are surely *planned*), so that such a negative picture seems extremely implausible, we wish to note, once again, the negative incidence of the - absolutely unreasonable - standard that obliges *all hospitals* to guarantee the service in question.

If this obligation, which - as the complaint itself shows - makes organising the service *rigid* and *difficult to manage*(especially at a time of reduced public spending, particularly in health care), it shall be abandoned, suitable health planning shall be possible, as well as wards with a substantial number of physicians and assistant personnel, *reasonable* work shifts.

This is clearly a stretch, as the claimant itself admits, reporting that the prohibition was applied regarding completely different settings: prisoner (!) work and unemployment aid legislation.

But even overlooking this limit, the considerations presented are paradoxical: in fact, the complaint is forced to start with the following sentence: «*regardless of the considerations for which those who do not raise conscientious objection expressed this choice(…)*»; in other words, they admit that the non-objecting physicians *are not obliged* to perform abortion procedures precisely because, in deciding not to declare conscientious objection, they have consciously and freely accepted to perform them.

However, the continuing explanation shows that the claimant insists on using a vague evanescent notion of the *prohibition of imposing work activity*: the non-objecting personnel, in fact, is «*forced to carry out a single and specific service for most of or all working hours*», and «*cannot carry out other tasks, thus precluding them the possibility of using their expertise acquired to realise the work of their choice*».

These are - we wish to immediately stress - unproven and simply declared statements: no concrete examples are proposed; the explanation, after all, is extremely generic («*for most working hours or even for all working hours*»).

However, apart from this premise, it is obvious that the claimant wants to include in the *prohibition of imposing work activities* the extremely broad subject of *worker satisfaction in completing his/her own work activity*: a clear and evident stretch.

This is a matter, namely, of the subject of work organisation - public and private - of manager responsibility, of worker participation in the direction of the company and the structure, and so on.

Does the claimant truly believe that this extremely vast subject matter can be pigeon-holed into the categories of *obligation* and *prohibition*?

To be noted, once again, is how, in order to reach this paradoxical result, the complaint completely omits the responsibility of top management - as well as political managers, referring to the public health system - proposing a logical process, which is not only unproven but also simplistic and unacceptable: the increase in the number of objectors *obligates* health directors, local health authority presidents, gynaecology ward directors to *force* non-objecting physicians to *only* perform abortion procedures.

The complaint then lets a phrase slip: «*moreover, abortion treatments can certainly not be assimilated to other health procedures, due to their particularly delicate, not only technically speaking, nature*».

This statement is actually perfectly comprehensible for conscientious objecting physicians: abortion procedures *cannot be assimilated* to other procedures as it causes the death of a human being; this is precisely why many health care workers raise conscientious objection; it seems out of place in a complaint supporting non-objecting doctors, as there is no explanation as to *why* elective abortions *cannot be assimilated* to other procedures.

the right to work, the Parties undertake to effectively protect the right of the worker to earn a living with a freely undertaken job».

According to the contents of par. 3.5, the increase in the number of objectors «*leads to an increased workload for those who, unlike the objecting personnel, decide not to raise conscientious objection. The rights of the non-objecting physicians thus result compromised, precisely due to the high number of objecting physicians in view of the same workload related to abortion procedures. From this point of view, therefore, the specific provision of the concrete application method is imposed, with which to ensure a suitable number of non-objecting physicians in every hospital structure in order to avoid compromising and sacrificing their legal position*».

Before specifically facing this subject, this use of the expression "increased workload" is challenged under two aspects.

On the one hand, it is obvious - but, as it is not mentioned in the complaint, it appears necessary to highlight it - that the objecting health personnel *have different tasks*; that is, they are not without work. In other words, a *larger quantity of work for the non-objecting personnel compared to the objecting personnel* does not exist.

Second, and as a consequence of the first observation, the non-objecting personnel does not have an «increase» in work, meaning that by increasing the number of conscientious objectors, the non-objectors work *more*: the complaint - which is actually by no means proven - is that most of their work time is dedicated to a specific professional activity: indeed, elective abortions.

4.2. Paragraph 3.9 clarifies the censure, claiming that the two categories of homogeneous subjects - the objecting physicians and the non-objecting physicians - are treated differently, with «indirect» discrimination of the second category and that this difference in treatment is not «*based on any objective and rational justifications*».

These are paradoxical and provocative statements for the objecting physicians: the «*objective and rational justification*» is constituted by the acknowledgement of conscientious objection by a State that has legalised elective abortion. In essence, it appears that the claimant organisation has a very simple solution: deny physicians and health personnel their right to raise conscientious objection!

Doing so, there is no doubt that there would no longer be «different treatment»: but - as has already been noted - this is a question of a State's democratic nature and respect for fundamental human rights.

4.3. According to the complaint, article 1 of the European Social Charter is violated by the Italian standard even under the aspect of «*prohibition to impose specific work activities*».

service of elective abortion for women who want to abort is *rapid* (reduced waiting period from certification to the procedure), *efficient* (increase in the number of procedures in *same-day surgery*), *safe* (reduced percentage of complications due to the procedure), *available* (access for foreign women, free procedure).

These characteristics have not changed as a result of the increase in the number of conscientious objectors, nor for the fact that some hospitals no longer provide this type of service. This shows that efficient health care planning and abandoning the *rigid* solution imposed by law 194 of 1978 allows the service in question to be improved and rationalised.

The Committee is not called to evaluate whether a specific state standard is violated or disapplied; not even the regions identified as the authority delegated to guarantee the efficiency of the service are of interest for its judgement.

Rather, the Committee must take note that the reported violation *does not exist* and, moreover, that *the significant data is not worsening*, being, instead, stable and, at times, improving. The claimant's reference to art. E, which prohibits discrimination, merits a mere mention. The contents of Paragraph 3.8.2 of the complaint are confused and irrelevant and, above all, not demonstrated and inconsistent with the data presented thus far.

The complaint claims that women who intend to abort are discriminated against in that some of them are forced to move from one hospital to another to perform the procedure: but it has been shown how, on the one hand, the mobility of women who abort from one province to another and from one region to another has always been high and, therefore, has nothing to do with the number of conscientious objectors; on the other hand that, keeping in mind that non-urgent procedures are planned (and, therefore, de facto *booked*), national transfers do not create particular problems.

A further discriminatory aspect, according to the complaint, would be between pregnant women who intend to interrupt their pregnancy and those who intend to continue, and between the first women and those who are not pregnant: these are utterly abstract considerations in that the conditions of the other "categories" of women are not minimally described and, therefore, how the claimant can compare these different conditions is incomprehensible. In any case, it seems obvious that - dealing, in fact, with categories that are all made up by women - there can be no discrimination based on gender; the situations of the three "categories" indicated in the complaint are also completely different from each other.

4.1. Violation of the right to work - art. 1 European Social Charter.

The CGIL's complaint claims that section 9 of law 194 of 1978, which governs conscientious objection of health care workers to abortion procedures, violates article 1 of the European Social Charter, which states that «*to ensure the effective exercise of*

Second, according to the Ministerial Report, the number of illegal abortions by now is extremely low: this figure cannot be verified but is noted. The reduction of illegal abortions leads to the reduction of health risks for women that undergo elective abortions.

Finally, the figure of elective abortions undergone by foreign citizens is to be noted. This is ever-growing in Italy and reached 34.2% of the total in 2010, as shown in the following table:

Tabella 12 - *IVG e cittadinanza, 2010*

REGIONE	CITTADINANZA ITALIANA	CITTADINANZA STRANIERA									NON RILEVATO	TOTALE
		Europa dell'Est	Altri Paesi dell'Europa	Africa	America del Nord	America del Centro Sud	Asia	Oceania	TOTALE IVG N	%*		
ITALIA SETTENTRIONALE	**29971**	**10036**	**263**	**5117**	**25**	**4089**	**3626**	**13**	**23169**	**43.6**	**171**	**53311**
Piemonte	5650	2132	45	954	2	618	254	0	4005	41.5	15	9670
Valle d'Aosta	175	34	2	19	0	8	4	0	67	27.7	0	242
Lombardia	10440	2903	91	1632	12	2180	1649	0	8467	44.8	52	18959
Bolzano	363	145	2	30	0	33	33	0	243	40.1	0	606
Trento	600	171	1	64	0	49	24	0	309	34.0	0	909
Veneto	3549	1521	18	735	3	187	626	3	3093	46.6	86	6728
Friuli Venezia Giulia	1272	367	7	167	3	50	86	0	680	34.8	18	1970
Liguria	2022	546	22	211	1	561	91	1	1433	41.5	0	3455
Emilia Romagna	5900	2217	75	1305	4	403	859	9	4872	45.2	0	10772
ITALIA CENTRALE	**14839**	**5584**	**129**	**1170**	**31**	**1259**	**1594**	**4**	**9771**	**39.7**	**218**	**24828**
Toscana	4267	1584	57	423	12	430	779	2	3287	43.5	111	7665
Umbria	1051	514	8	133	4	109	55	0	823	43.9	10	1884
Marche	1405	480	11	156	0	90	176	1	914	39.4	90	2409
Lazio	8116	3006	53	458	15	630	584	1	4747	36.9	7	12870
ITALIA MERIDIONALE	**21240**	**2993**	**74**	**402**	**9**	**149**	**267**	**3**	**3897**	**15.5**	**2595**	**27732**
Abruzzo	1731	480	10	66	1	45	62	0	664	27.7	67	2462
Molise	552	12	4	3	0	0	4	0	23	4.0	0	575
Campania	7426	1002	41	108	5	48	93	3	1300	14.9	2455	11181
Puglia	8630	788	12	168	3	37	58	0	1066	11.0	15	9711
Basilicata	530	81	1	6	0	5	11	0	104	16.4	54	688
Calabria	2371	630	6	51	0	14	39	0	740	23.8	4	3115
ITALIA INSULARE	**7762**	**949**	**22**	**260**	**3**	**54**	**204**	**2**	**1494**	**16.1**	**854**	**10110**
Sicilia	5832	725	12	204	3	42	151	1	1138	16.3	825	7795
Sardegna	1930	224	10	56	0	12	53	1	356	15.6	29	2315
ITALIA	**73812**	**19562**	**488**	**6949**	**68**	**5551**	**5691**	**22**	**38331**	**34.2**	**3838**	**115981**

* Calcolata sul totale dei rilevati

The figure is important in demonstrating that even foreign women have no difficulty in accessing the elective abortion service and are not forced to resort to illegal abortions.

We must, finally, remember that the elective abortion procedure is free, as it is at the expense of the National Health Care Service.

3.10. Conclusions.

The data that have been thus far reported have shown the absolute groundlessness of the CGIL's complaint in the section in which it connects the increase in the number of conscientious objectors to the violation of the right to health of a woman who intends to undergo an abortion procedure.

The ideological approach adopted by the claimant seems truly unacceptable, according to which any violation of a woman's right to self-determination integrates, *per se*, a violation of her right to health; however, even adopting this perspective, the solid data presented by the Health Ministry shows that the free access to the public

3.8. The figure of complications deriving from the abortion procedure is also considered by the 2012 ministerial report, reassuring and nearly stable over the course of the years. The figure is 4.2 complications for every 1,000 procedures. The data is shown in the following table:

Tabella 27 - *IVG e complicanze, 2010*

REGIONE	EMORRAGIA		INFEZIONE		ALTRO		NON RILEVATO		TOTALE
	N	%*	N	%*	N	%*	N	%**	
ITALIA SETTENTRIONALE	**141**	**2.7**	**19**	**0.4**	**111**	**2.1**	**953**	**1.8**	**53311**
Piemonte	20	2.1	2	0.2	20	2.1	157	1.6	9670
Valle d'Aosta	0	0.0	0	0.0	0	0.0	0	0.0	242
Lombardia	50	2.7	5	0.3	23	1.2	336	1.8	18959
Bolzano	1	1.7	0	0.0	4	6.6	0	0.0	606
Trento	4	4.4	0	0.0	0	0.0	0	0.0	909
Veneto	20	3.2	2	0.3	15	2.4	398	5.9	6728
Friuli Venezia Giulia	7	3.7	1	0.5	2	1.0	61	3.1	1970
Liguria	1	0.3	1	0.3	7	2.0	1	0.0	3455
Emilia Romagna	38	3.5	8	0.7	40	3.7	0	0.0	10772
ITALIA CENTRALE	**41**	**1.7**	**6**	**0.3**	**39**	**1.6**	**969**	**3.9**	**24828**
Toscana	21	3.1	2	0.3	13	1.9	804	10.5	7665
Umbria	2	1.1	1	0.6	1	0.6	69	3.7	1884
Marche	2	0.9	2	0.9	0	0.0	89	3.7	2409
Lazio	16	1.2	1	0.1	25	1.9	7	0.1	12870
ITALIA MERIDIONALE	**79**	**3.1**	**3**	**0.1**	**17**	**0.7**	**2608**	**9.4**	**27732**
Abruzzo	6	2.5	0	0.0	1	0.4	99	4.0	2462
Molise	0	0.0	0	0.0	1	1.7	0	0.0	575
Campania	36	4.1	0	0.0	4	0.5	2404	21.5	11181
Puglia	31	3.2	3	0.3	6	0.6	29	0.3	9711
Basilicata	5	8.1	0	0.0	4	6.4	67	9.7	688
Calabria	1	0.3	0	0.0	1	0.3	9	0.3	3115
ITALIA INSULARE	**9**	**1.0**	**0**	**0.0**	**3**	**0.3**	**1112**	**11.0**	**10110**
Sicilia	6	0.9	0	0.0	3	0.4	827	10.6	7795
Sardegna	3	1.5	0	0.0	0	0.0	285	12.3	2315
ITALIA	**270**	**2.4**	**28**	**0.3**	**170**	**1.5**	**5642**	**4.9**	**115981**

* per 1000 calcolata sul totale meno i non rilevati ** percentuale calcolata sul totale

The figure directly regards the protection of health of women who undergo elective abortions, and the fact that the Health Ministry considers it essentially a physiological figure (in 2010: 468 cases out of 115,981 procedures) that is stable over the years should lead one to reflect on the groundlessness of the claimant's thesis, according to which the increase in the number of conscientious objectors would lead to the «*irreparable sacrifice of a woman's right to life and health*».

3.9. Additional data - mentioned briefly so as not to burden this memorandum - are important to allow the Committee to adequately evaluate the first aspect of the CGIL's complaint.

First of all, there are no cases - not even one case! - in which the abortion requested by the woman was not performed; and, further, there are no cases of abortions considered urgent that were not performed urgently.

The CGIL's complaint, which even asserts that «*a woman's rights to life and health, as well as to self-determination were irreparably sacrificed*» (par. 3.4 of the complaint), does not mention a single episode that can fall under those indicated above; nor does the Ministerial Report make any acknowledgement.

As we can note, the abortions were performed within four weeks from certification (therefore within three weeks from the day in which the procedure was legally possible) in 95.2% of cases: essentially the same percentage as in 2010 (94.9%).

It is not difficult to deduce the irrelevance of the increase in the number of objectors on the efficiency of the service provided. In 2010, even the figure of the abortions performed in the first possible week is slightly higher (59.1% of procedures versus 58.0% in 2005).

3.7. Another optimal figure regards hospitalisation time necessary to complete the abortion procedure. Although it is more a question of a parameter related to the minor discomfort of a woman who aborts, rather than directly to the protection of her health, the high percentage of abortions performed without even one overnight stay (therefore in *same-day surgery*) is considered a sign of efficiency.

As shown in the duplicated table, in more than nine procedures out of ten there was no overnight stay and in one case out of twenty, the woman stayed only one night. Obviously the residual figure of longer overnight stays is physiological, due to the appearance of complications:

Tabella 26 - *IVG e durata della degenza, 2010*

REGIONE	<1		1		2		3		4		5		≥6		NON RIL.		TOTALE
	N	%*	N	%*	N	%*	N	%*	N	%*	N	%*	N	%*	N	%**	
ITALIA SETTENTRIONALE	**49289**	**92.8**	**2185**	**4.1**	**916**	**1.7**	**475**	**0.9**	**115**	**0.2**	**51**	**0.1**	**109**	**0.2**	**171**	**0.3**	**53311**
Piemonte	8708	90.1	716	7.4	159	1.6	54	0.6	12	0.1	9	0.1	12	0.1	0	0.0	9670
Valle d'Aosta	188	79.0	43	18.1	2	0.8	3	1.3	2	0.8	0	0.0	0	0.0	4	1.7	242
Lombardia	17962	94.7	536	2.8	215	1.1	175	0.9	35	0.2	9	0.0	27	0.1	0	0.0	18959
Bolzano	548	90.4	23	3.8	21	3.5	10	1.7	0	0.0	1	0.2	3	0.5	0	0.0	606
Trento	853	93.8	17	1.9	31	3.4	6	0.7	2	0.2	0	0.0	0	0.0	0	0.0	909
Veneto	6210	93.5	112	1.7	135	2.0	104	1.6	32	0.5	14	0.2	37	0.6	84	1.2	6728
Friuli Venezia Giulia	1772	93.6	44	2.3	55	2.9	12	0.6	6	0.3	3	0.2	2	0.1	76	3.9	1970
Liguria	3121	90.5	179	5.2	106	3.1	32	0.9	7	0.2	2	0.1	1	0.0	7	0.2	3455
Emilia Romagna	9927	92.2	515	4.8	192	1.8	79	0.7	19	0.2	13	0.1	27	0.3	0	0.0	10772
ITALIA CENTRALE	**23225**	**93.9**	**926**	**3.7**	**269**	**1.1**	**146**	**0.6**	**56**	**0.2**	**37**	**0.1**	**77**	**0.3**	**92**	**0.4**	**24828**
Toscana	6773	88.4	716	9.3	67	0.9	45	0.6	16	0.2	8	0.1	40	0.5	0	0.0	7665
Umbria	1837	97.6	28	1.5	7	0.4	5	0.3	3	0.2	1	0.1	1	0.1	2	0.1	1884
Marche	2162	93.2	91	3.9	29	1.3	14	0.6	12	0.5	5	0.2	6	0.3	90	3.7	2409
Lazio	12453	96.8	91	0.7	166	1.3	82	0.6	25	0.2	23	0.2	30	0.2	0	0.0	12870
ITALIA MERIDIONALE	**22404**	**89.1**	**2268**	**9.0**	**179**	**0.7**	**156**	**0.6**	**64**	**0.3**	**21**	**0.1**	**48**	**0.2**	**2592**	**9.3**	**27732**
Abruzzo	2376	98.6	4	0.2	17	0.7	7	0.3	2	0.1	1	0.0	2	0.1	53	2.2	2462
Molise	545	94.8	8	1.4	16	2.8	6	1.0	0	0.0	0	0.0	0	0.0	0	0.0	575
Campania	8675	98.8	43	0.5	29	0.3	11	0.1	11	0.1	4	0.0	8	0.1	2400	21.5	11181
Puglia	7238	74.9	2172	22.5	67	0.7	104	1.1	39	0.4	13	0.1	27	0.3	51	0.5	9711
Basilicata	563	90.8	25	4.0	16	2.6	9	1.5	2	0.3	0	0.0	5	0.8	68	9.9	688
Calabria	3007	97.2	16	0.5	34	1.1	19	0.6	10	0.3	3	0.1	6	0.2	20	0.6	3115
ITALIA INSULARE	**8544**	**92.0**	**136**	**1.5**	**143**	**1.5**	**416**	**4.5**	**23**	**0.2**	**7**	**0.1**	**16**	**0.2**	**825**	**8.2**	**10110**
Sicilia	6396	91.7	69	1.0	96	1.4	382	5.5	16	0.2	5	0.1	8	0.1	823	10.6	7795
Sardegna	2148	92.9	67	2.9	47	2.0	34	1.5	7	0.3	2	0.1	8	0.3	2	0.1	2315
ITALIA	**103462**	**92.1**	**5515**	**4.9**	**1507**	**1.3**	**1193**	**1.1**	**258**	**0.2**	**116**	**0.1**	**250**	**0.2**	**3680**	**3.2**	**115981**

* calcolata sulla somma delle prime sette colonne ** calcolata sul totale

The figure has improved since 2005, when procedures without overnight stay were 90.5% of the total (compared to 92.1% in 2010) and those with only one overnight stay was 5.3% of the total (compared to 4.9% in 2010), therefore further increasing the procedures performed in *same-day surgery*.

Not only that: the figure is also in compliance in the four regions (Marche, Abruzzo, Sicily and Puglia) that are mentioned in paragraph 3.7 of the complaint to emphasise the cases of difficulty in providing the service: the national figure has improved in Marche (97.5%) and Puglia (97.7%) and has almost been reached in Sicily (92.4%) and Abruzzo (93.7%). Indeed Marche and Puglia present data that is clearly higher than the national (respectively, 74.0% and 73.3% compared to the national figure of 59.1%) referring to elective abortions performed within two weeks of the issuance of the certificate (and therefore within a week from the day in which the procedure is legally allowed).

But that the number of conscientious objectors does not affect - obviously when there is adequate health care planning - the efficiency of the service is unmistakably obtained from the comparison between the figure just reported (related to the year 2010, the last available official data) and the figure related to the year 2005, reported in the 2007 Ministerial Report. That year, as arises from paragraph 3.7 of the complaint, the objectors amounted to 58.7% of the total among the gynaecologists (versus 69.3% in 2010), 45.7% of the total among anaesthesiologists (versus 50.8% in 2010), 38.6% of the total among non medical personnel (versus 44.7% in 2010): in essence, the number of objectors was clearly lower, in all three categories, than the current one.

The table related to the waiting time from certification and procedure regarding the year 2005 is duplicated:

Tabella 21 - *Tempi di attesa tra certificazione ed intervento, 2005*

REGIONE	GIORNI										TOTALE
	≤ 14		15-21		22-28		> 28		NON RILEVATO		
	N	%*	N	%*	N	%*	N	%*	N	%**	
ITALIA SETTENTRIONALE	**31829**	**53,0**	**16328**	**27,2**	**8141**	**13,5**	**3805**	**6,3**	**177**	**0,3**	**60280**
Piemonte	5839	52,3	3317	29,7	1524	13,6	494	4,4	0	0,0	11174
Valle d'Aosta	173	72,4	52	21,8	9	3,8	5	2,1	3	1,2	242
Lombardia	12982	57,9	5711	25,5	2444	10,9	1294	5,8	37	0,2	22468
Bolzano	316	55,3	173	30,3	62	10,9	20	3,5	17	2,9	588
Trento	756	60,8	225	18,1	168	13,5	94	7,6	0	0,0	1243
Veneto	2381	33,3	1667	23,3	1790	25,0	1313	18,4	0	0,0	7151
Friuli Venezia Giulia	1026	46,9	544	24,9	455	20,8	164	7,5	120	5,2	2309
Liguria	1915	51,4	1186	31,8	500	13,4	125	3,4	0	0,0	3726
Emilia Romagna	6441	56,6	3453	30,3	1189	10,4	296	2,6	0	0,0	11379
ITALIA CENTRALE	**16425**	**57,5**	**7908**	**27,7**	**3202**	**11,2**	**1027**	**3,6**	**938**	**3,2**	**29500**
Toscana	5298	61,1	2268	26,1	845	9,7	266	3,1	81	0,9	8758
Umbria	1395	62,7	631	28,4	159	7,1	40	1,8	54	2,4	2279
Marche	1769	70,1	392	15,5	224	8,9	138	5,5	66	2,5	2589
Lazio	7963	52,6	4617	30,5	1974	13,0	583	3,9	737	4,6	15874
ITALIA MERIDIONALE	**16783**	**65,5**	**5597**	**21,8**	**2409**	**9,4**	**842**	**3,3**	**5512**	**17,7**	**31143**
Abruzzo	2065	77,0	466	17,4	107	4,0	45	1,7	77	2,8	2760
Molise	93	84,5	13	11,8	2	1,8	2	1,8	506	82,1	616
Campania	6323	65,3	2166	22,4	921	9,5	273	2,8	2284	19,1	11967
Puglia	5693	60,6	2270	24,2	1057	11,2	379	4,0	2554	21,4	11953
Basilicata	468	80,1	80	13,7	25	4,3	11	1,9	7	1,2	591
Calabria	2141	67,5	602	19,0	297	9,4	132	4,2	84	2,6	3256
ITALIA INSULARE	**7169**	**70,7**	**2010**	**19,8**	**698**	**6,9**	**266**	**2,6**	**1724**	**14,5**	**11867**
Sicilia	5256	67,6	1680	21,6	630	8,1	207	2,7	1724	18,2	9497
Sardegna	1913	80,7	330	13,9	68	2,9	59	2,5	0	0,0	2370
ITALIA	**72206**	**58,0**	**31843**	**25,6**	**14450**	**11,6**	**5940**	**4,8**	**8351**	**6,3**	**132790**

* calcolata sulla somma delle prime quattro colonne ** calcolata sul totale

Tabella 21 - *Tempi di attesa tra certificazione ed intervento, 2010*

REGIONE	GIORNI										TOTALE
	≤ 14		15-21		22-28		> 28		NON RILEVATO		
	N	%*	N	%*	N	%*	N	%*	N	%**	
ITALIA SETTENTRIONALE	**29637**	**56.4**	**13347**	**25.4**	**6442**	**12.3**	**3087**	**5.9**	**798**	**1.5**	**53311**
Piemonte	5696	58.9	2542	26.3	1017	10.5	411	4.3	4	0.0	9670
Valle d'Aosta	157	66.8	51	21.7	19	8.1	8	3.4	7	2.9	242
Lombardia	9978	54.4	4716	25.7	2305	12.6	1330	7.3	630	3.3	18959
Bolzano	371	64.3	165	28.6	36	6.2	5	0.9	29	4.8	606
Trento	361	39.7	204	22.4	230	25.3	114	12.5	0	0.0	909
Veneto	2638	39.6	1826	27.4	1463	21.9	739	11.1	62	0.9	6728
Friuli Venezia Giulia	1132	59.3	523	27.4	187	9.8	66	3.5	62	3.1	1970
Liguria	1851	53.6	936	27.1	449	13.0	215	6.2	4	0.1	3455
Emilia Romagna	7453	69.2	2384	22.1	736	6.8	199	1.8	0	0.0	10772
ITALIA CENTRALE	**13358**	**54.8**	**6409**	**26.3**	**3275**	**13.4**	**1354**	**5.6**	**432**	**1.7**	**24828**
Toscana	4535	59.7	1857	24.4	814	10.7	391	5.1	68	0.9	7665
Umbria	725	39.3	620	33.6	318	17.2	183	9.9	38	2.0	1884
Marche	1697	74.0	406	17.7	132	5.8	59	2.6	115	4.8	2409
Lazio	6401	50.6	3526	27.9	2011	15.9	721	5.7	211	1.6	12870
ITALIA MERIDIONALE	**16832**	**69.4**	**4948**	**20.4**	**1760**	**7.3**	**729**	**3.0**	**3463**	**12.5**	**27732**
Abruzzo	1341	57.3	570	24.3	283	12.1	147	6.3	121	4.9	2462
Molise	497	86.4	63	11.0	9	1.6	6	1.0	0	0.0	575
Campania	5382	67.1	1859	23.2	571	7.1	203	2.5	3166	28.3	11181
Puglia	7061	73.3	1785	18.5	572	5.9	214	2.2	79	0.8	9711
Basilicata	535	88.0	53	8.7	13	2.1	7	1.2	80	11.6	688
Calabria	2016	65.1	618	19.9	312	10.1	152	4.9	17	0.5	3115
ITALIA INSULARE	**5388**	**58.4**	**2072**	**22.5**	**1193**	**12.9**	**573**	**6.2**	**884**	**8.7**	**10110**
Sicilia	3724	53.9	1630	23.6	1029	14.9	528	7.6	884	11.3	7795
Sardegna	1664	71.9	442	19.1	164	7.1	45	1.9	0	0.0	2315
ITALIA	**65215**	**59.1**	**26776**	**24.3**	**12670**	**11.5**	**5743**	**5.2**	**5577**	**4.8**	**115981**

* calcolata sulla somma delle prime quattro colonne ** calcolata sul totale

As we can note, in nearly six out of ten cases (precisely in 59.1% of cases), the elective abortion is performed within fourteen days of the issuance of the certificate which allows the woman to go to the public or private hospital to undergo the procedure.

This is an absolutely optimal figure, unlikely to be found for any other surgical operation. Remember that the *minimum* time span established by law, as already mentioned, is of seven days from the issuance of the certificate: this means that, in the high percentage cited above, the procedure is performed *within a week* from when it is possible! An additional 24.3% of procedures are performed within three weeks of the issuance of the certificate (therefore within two weeks from the day in which it is legally possible) and another 11.5% within four weeks from the issuance of the certificate and, therefore, within three weeks from when it is legally possible.

Therefore, in more than nine out of ten cases (exactly 94.9%), the public or private health care facility is able to satisfy a woman's request to interrupt pregnancy within three weeks from when it is legally possible. If we consider that, as highlighted, it is a matter of non-urgent procedures, the percentage must be considered definitely positive.

This figure itself would be sufficient to eliminate the doubt - suggested by the CGIL's complaint - that the number of objectors can affect the efficiency of the elective abortion service and, therefore, the protection of women's health: instead, we have in front of us the first figure that expresses the efficiency of the service.

discrediting the importance of any potential physical transfers from the woman's place of residence to the structure where she will undergo the abortion.

That these procedures are not urgent can also be found from art. 9, par. 3, law 194 of 1978, which contemplates the hypothesis in which the physician «*verifies the existence of conditions that render the procedure urgent*»: indeed an exceptional hypothesis which waives the general rule of deferrability over time and the ability to plan abortive procedures in the first ninety days of pregnancy.

3.5. The parameters to verify whether the elective abortion service is performed safely and efficiently are not, therefore, those indicated in the complaint by the CGIL; in addition to reporting that specific hospitals no longer provide the service, other data must be ascertained: the waiting time from the woman's request to the completion of the procedure, the length of the woman's hospitalisation, the percentage of complications deriving from the procedures performed, the presence of cases in which the woman's request was not satisfied, guaranteed completion of urgent procedures, the number (necessarily estimated) of illegal abortions which cause greater risk to the woman's heath.

This is data which can be found in the Report to the Health Ministry Parliament and which will later be shown; data which - surprisingly - are omitted from the complaint of the CGIL, which is only intent on stressing the increase in the number of objectors and the impossibility for some hospitals to provide abortion services with no evaluation of the concrete incidence of this data on women's health.

Contrarily, this Committee cannot stop at the numerical data shown by the claimant and must verify whether there was and is *actually* a violation of the right to health of expecting women; especially because the CGIL's complaint reports a situation related to the *application* of art. 9 of law 194 of 1978, thereby evoking the need to verify the concrete, and not abstract, situation.

3.6. The waiting period effective from the moment the woman asks to undergo an abortion to when the procedure is performed is shown in table no. 21 attached to the 2012 ministerial report duplicated and commented below:

99,697 elective abortions in 2010 were considered non-urgent and, therefore, could have been adequately planned both by the women (referring to a potential transfer from the place of residence) and by the health care facility that performed the procedure. This data can be obtained from table 18 attached to the ministerial report from 2012, which is duplicated below:

Tabella 18 - *IVG ed urgenza, 2010*

REGIONE	URGENTI		NON URGENTI		DATO NON RILEVATO		TOTALE
	N	%*	N	%*	N	%**	
ITALIA SETTENTRIONALE	**4967**	**9.5**	**47123**	**90.5**	**1221**	**2.3**	**53311**
Piemonte	1087	11.3	8530	88.7	53	0.5	9670
Valle d'Aosta	19	7.9	223	92.1	0	0.0	242
Lombardia	1235	6.7	17113	93.3	611	3.2	18959
Bolzano	66	10.9	540	89.1	0	0.0	606
Trento	75	8.3	834	91.7	0	0.0	909
Veneto	582	9.3	5699	90.7	447	6.6	6728
Friuli Venezia Giulia	162	8.7	1699	91.3	109	5.5	1970
Liguria	117	3.4	3337	96.6	1	0.0	3455
Emilia Romagna	1624	15.1	9148	84.9	0	0.0	10772
ITALIA CENTRALE	**3051**	**12.7**	**21065**	**87.3**	**712**	**2.9**	**24828**
Toscana	1395	18.8	6043	81.2	227	3.0	7665
Umbria	41	2.2	1831	97.8	12	0.6	1884
Marche	239	10.3	2075	89.7	95	3.9	2409
Lazio	1376	11.0	11116	89.0	378	2.9	12870
ITALIA MERIDIONALE	**2245**	**9.0**	**22784**	**91.0**	**2703**	**9.7**	**27732**
Abruzzo	123	5.2	2244	94.8	95	3.9	2462
Molise	23	4.0	552	96.0	0	0.0	575
Campania	995	11.3	7785	88.7	2401	21.5	11181
Puglia	963	10.0	8714	90.0	34	0.4	9711
Basilicata	50	9.4	484	90.6	154	22.4	688
Calabria	91	2.9	3005	97.1	19	0.6	3115
ITALIA INSULARE	**465**	**5.1**	**8725**	**94.9**	**920**	**9.1**	**10110**
Sicilia	193	2.8	6761	97.2	841	10.8	7795
Sardegna	272	12.2	1964	87.8	79	3.4	2315
ITALIA	**10728**	**9.7**	**99697**	**90.3**	**5556**	**4.8**	**115981**

* calcolata sulla somma delle prime due colonne ** calcolata sul totale

It must be stressed that - contrary to what is presented in the complaint - in this case, the abortion is performed even if continuing the pregnancy presents no risks to the woman's health: in fact, the women must «*suffer circumstances for which the continuation of the pregnancy, the birth or maternity would entail serious risks for physical or psychological health*», but the existence of this risk is not verified by a physician, nor is it confirmed by a certificate, so that the expectant mother, after conversing with the trusted physician or the clinic, has the right to undergo the procedure even if the circumstances «*suffered*» do not exist, or if her fears are unfounded, with no one who can criticise her choice from a medical point of view. It is a matter of the principle of self-determination, based on which the expectant mother is the only subject who can evaluate the circumstances originating from the pregnancy and decide to proceed with or interrupt it.

What has been previously presented has an evident repercussion on the subject of the necessary distribution of public and private hospitals in the territory that perform abortion procedures: in fact, in this hypothesis, the procedure, in addition to not being urgent, can be planned by the structure and the woman herself, further

figure, therefore, has nothing to do with the impossibility of obtaining the service in a specific hospital:

Tabella 11 - *IVG e luogo di residenza, 2010*

REGIONE	IVG EFFETTUATA DA RESIDENTI NELLA REGIONE						IVG EFF. DA RES. FUORI REGIONE		IVG EFF. DA RES. ALL'ESTERO		NON RILEVATO		TOTALE
	NELLA PROVINCIA DI INTERVENTO		FUORI PROVINCIA DI INTERVENTO		TOTALE								
	N	%*	N	%*	N	%**	N	%**	N	%**	N	%***	
ITALIA SETTENTRIONALE	**42562**	**88.6**	**5486**	**11.4**	**48048**	**90.5**	**2928**	**5.5**	**2098**	**4.0**	**237**	**0.4**	**53311**
Piemonte	7655	85.8	1266	14.2	8921	92.3	340	3.5	409	4.2	0	0.0	9670
Valle d'Aosta	218	100.0	0	0.0	218	90.1	16	6.6	8	3.3	0	0.0	242
Lombardia	15027	87.0	2240	13.0	17267	92.0	734	3.9	766	4.1	192	1.0	18959
Bolzano	527	100.0	0	0.0	527	87.0	66	10.9	13	2.1	0	0.0	606
Trento	685	100.0	0	0.0	685	75.8	203	22.5	16	1.8	5	0.6	909
Veneto	5479	86.6	845	13.4	6324	94.4	208	3.1	165	2.5	31	0.5	6728
Friuli Venezia Giulia	1613	89.8	184	10.2	1797	91.6	141	7.2	23	1.2	9	0.5	1970
Liguria	3053	96.6	109	3.4	3162	91.5	220	6.4	73	2.1	0	0.0	3455
Emilia Romagna	8305	90.8	842	9.2	9147	84.9	1000	9.3	625	5.8	0	0.0	10772
ITALIA CENTRALE	**19087**	**90.5**	**2000**	**9.5**	**21087**	**85.7**	**1904**	**7.7**	**1611**	**6.5**	**226**	**0.9**	**24828**
Toscana	5710	85.3	987	14.7	6697	88.8	504	6.7	341	4.5	123	1.6	7665
Umbria	1587	96.9	50	3.1	1637	87.4	227	12.1	8	0.4	12	0.6	1884
Marche	1553	92.2	132	7.8	1685	72.7	591	25.5	43	1.9	90	3.7	2409
Lazio	10237	92.5	831	7.5	11068	86.0	582	4.5	1219	9.5	1	0.0	12870
ITALIA MERIDIONALE	**17386**	**77.5**	**5034**	**22.5**	**22420**	**89.4**	**2354**	**9.4**	**313**	**1.2**	**2645**	**9.5**	**27732**
Abruzzo	1682	79.4	436	20.6	2118	89.7	244	10.3	0	0.0	100	4.1	2462
Molise	432	100.0	0	0.0	432	75.1	137	23.8	6	1.0	0	0.0	575
Campania	5744	70.0	2466	30.0	8210	94.4	351	4.0	134	1.5	2486	22.2	11181
Puglia	6681	82.3	1438	17.7	8119	83.6	1470	15.1	117	1.2	5	0.1	9711
Basilicata	481	87.3	70	12.7	551	86.9	80	12.6	3	0.5	54	7.8	688
Calabria	2366	79.1	624	20.9	2990	96.0	72	2.3	53	1.7	0	0.0	3115
ITALIA INSULARE	**7446**	**83.4**	**1487**	**16.6**	**8933**	**96.3**	**195**	**2.1**	**146**	**1.6**	**836**	**8.3**	**10110**
Sicilia	5725	84.9	1018	15.1	6743	96.6	144	2.1	90	1.3	818	10.5	7795
Sardegna	1721	78.6	469	21.4	2190	95.3	51	2.2	56	2.4	18	0.8	2315
ITALIA	**86481**	**86.1**	**14007**	**13.9**	**100488**	**89.7**	**7381**	**6.6**	**4168**	**3.7**	**3944**	**3.4**	**115981**

* calcolata sulla somma delle prime due colonne ** calcolata sulla somma delle colonne tre, quattro e cinque *** calcolata sul totale

As we can notice, 13.9% of procedures are performed outside the women's province of residence, while 6.6% of procedures are performed outside the women's region of residence.

In essence, more than 20% of EABs are performed in a different province or region from the one in which the woman resides, clearly as a choice of the women themselves and not for local problems, being a matter of widespread mobility over the entire national territory. The figure, on the other hand, has remained stable over time.

3.4. Further examining this subject stresses the fact that law 194 of 1978 contemplates extremely different hypotheses, not anticipating, for all circumstances, the abortion procedure to be urgent.

Sections 4 and 5 of the law, in fact, consider the procedure in the first ninety days of pregnancy to be non-urgent, so much so as to *oblige* a woman requesting an abortion to wait a minimum of seven days from the day of the request: only «*after the seven days have passed may the woman come to obtain the abortion (...) at one of the authorised locations*».

As the ministerial statistics clearly show, it is a matter of the regime foreseen for the great majority of abortions performed in Italy: as shown by the ministerial statistics, 96.6% of abortions were performed in the first ninety days; the procedure was considered urgent only in 9.7% of the cases. In absolute figures, no less than

possibility for expectant women to terminate pregnancy with the consequent right to receive safe and efficient treatment; and an administrative standard of health care planning nature.

3.2. In fact, further examining the nature and the effective range of the aforementioned standard, it must be established that this appears *illogical* and *contrasting to the principles regarding health care planning.*

It seems evident - and it is general experience that counts for each field of medicine - that multiplying the wards that treat a specific pathology or perform a specific surgical operation - as an abortion could be considered, at least in its current most widespread form - does not lead to increased efficiency of the service but rather, can lead to the opposite results to those hoped for. Only a structure of adequate and non-minimal dimensions can guarantee a sufficient number of personnel, both medical and assistant, adequate professionalism and training in the field of interest, proper sized rooms kept in respectable conditions, modern and efficient machinery.

The effort of maintaining devices in every hospital that guarantee elective abortion procedures in any case can lead to nothing but precarious results, restricted spaces shared with other specialities (for example: maternity), reduced personnel especially at times, like the present, of reduced public spending, particularly in health care.

Therefore, the standard in question - most likely against the will of the 1978 legislator - causes complications and criticality in completing the elective abortion service and must be considered *unique* compared to all the other medical specialities.

3.3. Furthermore, it is a matter of a provision that serves the passing of time and is no longer current even from the standpoint of increased personal mobility.

The situation in Italy and in all the western world has certainly changed in thirty-five years so that people move easily, by public and private means, more quickly and without particular difficulty. Also bear in mind that Italy does not have rural areas which are absolutely isolated, extremely distant from residential areas and poorly or not connected to these areas.

Ultimately, the fact that in a large city only one or two hospitals perform elective abortion procedures is a circumstance that does not constitute a true obstacle for women to access the service, as they can easily reach the hospital with private and public means; likewise should the hospital be some dozen kilometres from a small city or village, keeping in mind the overall satisfactory situation of the roads and railways in Italy.

The Committee's attention is directed to table no. 11, attached to the 2012 Health Ministry Report: this demonstrates that the mobility of women who undergo EAB procedures is very high, both from province to province and from region to region; the

considered that the restrictions on elective abortions can be founded on deep moral values on the nature of life and can, therefore, pursue the legitimate aim of defending moral principles, including protecting the life of the unborn. In that decision, the Court stressed the broad margin of appreciation given to the Contracting States regarding abortion, to thus conclude that, in the specific case of the Irish legislation, prohibiting abortion in cases where the woman's health and well-being are at risk does not exceed said margin of appreciation and demonstrates an irreprehensible balance between the right to respect for private and family life on the one hand, and the rights invoked on behalf of the unborn on the other.

This memorandum does not in any way intend to introduce the subject of the legitimacy of law no. 194 of 1978 at this time: the observations expressed thus far are aimed at contextualising the conscientious objection of health personnel regarding abortions in order to highlight its *essential* role for a democratic State that respects human rights and has adopted legislation legitimising them.

3.1. Violation of women's right to health - European Social Charter art. 11

According to the complaint, the application of art. 9 of law 194 of 1978 violates article 11 of the European Social Charter, regarding the right to protection of health and art. E, regarding non-discrimination referring to a woman's legal position.

The claimant claims, in fact, that «*in practical application, the high number of objecting physicians impedes complete fulfilment of the legislative provision, in the context of the lack of the same provision regarding the concrete process to ensure an adequate number of non-objecting physicians in every hospital structure*».

In fact, the standard decreeing that public and authorised private hospitals are required *in any case* to guarantee the completion of the procedures provided for by art. 7 (issuance of medical certificate) and the fulfilment of elective abortion procedures (art. 9, par. 4, law 194 of 1978), is directly correlated to the protection of the right to health of the expectant mother who intends to abort.

This suggests the conclusion that, inasmuch as not all hospitals are able to guarantee the service imposed by law and the non-objecting personnel in some of these structures is particularly limited, women's right to health is violated.

It is a matter of erroneous perspective: to evaluate whether a women's right to health is violated or endangered by the real circumstances in which pregnancy termination services are carried out in a specific country, a situation in which *all* the hospitals in the territory guarantee abortions is not significant. Rather, the difficulty with which women who intend to abort legally can actually abort and the degree of health care efficiency with which the abortions are guaranteed must be verified.

The CGIL intentionally confuses standards of extremely different nature and range: the standards of law 194 which guarantee, under certain conditions, the

law is effectively executed.

However, contrary to what the complaint (par. 3.3) claims, it is not a matter of a «*balance between the protection of the freedom of conscience of physicians and that of other constitutional rights for women*»: actually, the legislator intends to *fully* protect both the right to freedom of conscience of the health care workers as well as the position of expectant mothers who intend to access the service guaranteed by law; nor would a limitation of conscientious objection be justified for reasons pertaining to the difficulty in rendering the service, inasmuch as - as art. 9 of the European Convention of Human Rights establishes - *no* limitation is allowed for the freedom of belief, conscience or religion (the second paragraph allows limitations only for the freedom of manifesting belief or religion). Indeed, the previsions for which the objecting health care worker cannot refuse assistance, both before and after the elective abortion procedure, nor is exempt from the procedure personnel to save the life of a woman in imminent danger by no means constitutes a limitation of the right acknowledged to the objector but rather its logical development: the assistance does not, in fact, contribute in causing the death of the embryo or foetus, while the procedure to save the life of the woman is consistent with the objector's moral and religious obligations of saving life and not terminating it.

2.5. These fundamental freedoms must be acknowledged and respected in their entirety: historical experience shows that any even partial or minimal limitation, any claims of interference by the public Authority in the conscience and belief of individuals, any possibility to criticise the fundamental choices of a person dictated by conscience, belief or religion, are transformed into the complete negation of these freedoms; thus the risk that a totalitarian State could re-emerge from the ashes of history.

The approach of the complaint, therefore, is worrying, as it limits the institution of conscientious objection to the «*specific sectors of the legal order in which it is explicitly provided for*», in order to make it understood that the legislator of a democratic State and member of the European Council could freely deny this crime or limit it; also worrying is the fact that the claimant union organisation considers conscientious objection to be guaranteed only «*indirectly*» by the Italian Constitution, while «*the right to life, health and self-determination of the expectant mother who intends to access the techniques of elective abortion*» are presented as definitely inviolable. As is known, on the contrary, the Grand Chamber of the European Court of Human rights, in its decision on 16.12.2010 in case A, B and C v Ireland ruled out the inviolable nature of a woman's right to self-determination regarding abortion. The Court decreed that the restrictions on the possibility to abort legally (in this case, in Ireland) constitute legitimate, necessary and proportionate interference in relation to the right to respect for private and family life protected by the conventional standard. The Court

European Council; a completely factitious conflict inasmuch as the inviolable rights of humans, human dignity, the freedom of religion and the freedom to manifest beliefs, which the Italian Constitutional Court has repeatedly referenced to justify standards related to conscientious objection, are the foundation on which the communities of the free and democratic States that make up the European Council are based.

Furthermore, it is important to highlight that the right to conscientious objection is also acknowledged by art. 18 of the Universal Declaration of Human Rights, signed in Paris on 10 December 1948, and by art. 18 of the International Pact on Civil and Political Rights, adopted by the General Assembly of the United Nations on 16 December 1966 and made law on 23 March 1976. Remaining in Europe, this right is explicitly acknowledged in art. 9 of the European Convention for the protection of human rights and fundamental freedoms, and in art. 10 of the Charter of fundamental rights of the European Union. This final regulation in particular does not allow for any doubts to arise. In fact, the second clause of art. 10 reads: «*The right to conscientious objection is acknowledged according to the national laws that regulate the practice*». In fact, precisely art. 9 of Law 194, regarding abortion, provides for and regulates the right to conscientious objection in Italy.

2.4. Both the principles of the European Convention of Human Rights and those of the Italian Constitution justify, therefore, the regulation of conscientious objection as cited in art. 9 of law no. 194, of 22 May 1978.

This is a right that is fully acknowledged to all health care workers («*health personnel and assistants*»), which can be exercised via a simple prior declaration with no possibility for the public Authority or the health Direction to criticise the health worker's choice.

On the other hand, considering that conscientious objection is governed within the limits of a law that, despite declaring to «*protect human life from its beginning*», allows, via interruption of pregnancy, the embryo or the foetus to be terminated before birth, the reasons for which a health care worker declares his/her conscientious objection are evident and refer to the ancient origins of the art of medicine (Hippocratic Oath).

Exercising the right «*exempts health personnel and assistants from carrying out procedures and activities specifically and necessarily aimed at terminating pregnancy*»; obviously, it does not exempt them from assisting the patient nor from the procedure personnel when, given the particularity of the circumstances, it «*is indispensable to save the life of the woman in imminent danger*».

The law does not require the conscientious objectors to guarantee the efficiency of the pregnancy termination service: it would be impossible inasmuch as they exercise their right acknowledged by the Constitution and by the law; instead, the public companies must be proactive in guaranteeing that the service insured by the

2.2. The cited Resolution no. 1763 (2010) applied the solemn principles affirmed by the Convention to the theme of conscientious objection in order to safeguard human rights and fundamental freedoms: the right to life (article 2), respect of private and family life (article 8), freedom of belief, conscience and religion (article 9), freedom of expression (article 10) as well as prohibition of discrimination (article 14).

These principles can certainly not be disapplied based on the distorted use of the European Social Charter invoked by the claimant CGIL: as emerges from the *procedure* that led to its approval and then to its revision and is affirmed in the Preamble, along with the European Social Charter, the member States intend to reiterate the fundamental rights guaranteed by the Rome Convention of 1950 («*Considering that in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified*») and to these add the social rights indicated in order to improve the standard of living and well-being of the population («*considering that in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being*»); the Preamble recalls, in fact, the choice of protecting the indivisible nature of all human, civil, political, financial, social and cultural rights guaranteed by the Convention («*the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus*»).

2.3. Of note is how the complaint adopts an approach that completely disregards the fundamental rights guaranteed by the Convention of 1950, only referencing certain articles of the European Social Charter, as if they were separate and independent from the principles that gave rise to the first Convention adopted by the European Council merely a year after its creation, whose ratification by a State is a pre-requisite to adhere to the Council.

It is no coincidence that, in presenting the conscientious objection regulation in Italy (par. 3.3 of the complaint), the CGIL completely omits any reference to the foundation of the institution to be found in the European Convention of Human Rights, presenting the standard of art. 9 of law 194 of 1978 as justified exclusively - and with some limits - by the standards of the Italian Constitution.

It is a matter of incorrect perspective: it wants to set the Italian legislation against the international regulations, and specifically against those that fall under the

work), relating to the legal position of medical personnel and assistants who are not conscientious objectors; with art. 2 (Right to just conditions at work), 3 (Right to safe and healthy working conditions) and 26 (Right to dignity at work) of the European Social Charter, relating to the legal position of medical personnel and assistants who are not conscientious objectors.

Furthermore, the complaint censures the violation of art. 21 (Right to information and consultation) and 22 (Right to take part in the determination and improvement of the working conditions and environment) of the European Social Charter.

1.2. With this memorandum, the A.I.G.O.C. Associazione Italiana Ginecologi e Ostetrici Cattolici ("Italian Association of Catholic Gynaecologists and Obstetricians"), challenges in full the considerations and conclusions presented in the aforementioned complaint, as they are unfounded and irrelevant. Moreover, it highlights the fact that they are actually aimed at restricting, if not denying, the right of medical, health and assistant personnel to exercise conscientious objection towards abortion practices, in contrast with the principles of the Italian Constitution, the European Convention on Human Rights, and international legislation.

2. The value of conscientious objection of health care workers.

2.1. It must be remembered that Resolution no. 1763 (2010) adopted by the Council of Europe Parliamentary Assembly on 7.10.2010, stressing the need to confirm the right to conscientious objection, solemnly declared: «*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*». Based on that assumption, the same resolution has invited member States to «*guarantee the right to conscientious objection»* (4.1).

This important decision was adopted in order to ensure that the right to the freedom of belief, conscience and religion of health care workers is respected.

The Resolution also stressed how it is the State's responsibility to ensure that patients are able to promptly access medical care, expressing the concern that unregulated use of conscientious objection could harm women, particularly those with low income or who live in rural areas.

According to the Resolution, a balanced legislation must: a) guarantee the right to conscientious objection relating to the previously indicated procedures; b) ensure that the patients are informed of the conscientious objection in reasonable time and referred to another health facility; c) ensure that the patients receive appropriate treatment, particularly in emergency cases.

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

*** * ***

Secretariat of the European Social Charter
Directorate General of Human Rights and Legal Affairs
Directorate of Monitoring
F-67075 STRASBOURG CEDEX
FRANCE

*** * ***

Complaint No.91/2013

Confederazione Generale Italiana del Lavoro - (CGIL) v. Italy
Registered at the Secretariat on 17th January 2013

MEMORANDUM

presented by the A.I.G.O.C. Associazione Italiana Ginecologi Ostetrici Cattolici ("Italian Association of Catholic Gynaecologists and Obstetricians"), represented by the President Prof. Giuseppe Noia (http://www.aigoc.com/), assisted by Mr. Gianfranco Amato, Italian lawyer registered with the Bar Association of Grosseto, as President of the Associazione Giuristi per la Vita ("Jurists for Life") and with address for service in Rome, Piazza di Santa Balbina 8.

1. Introduction.

1.1. The CGIL Confederazione Generale Italiana del Lavoro ("Italian General Confederation of Labour") filed a collective complaint versus Italy with the European Committee of Social Rights, registered with the Secretariat on 17 January 2013 (*complaint* No.91/2013).

With said complaint, the CGIL requests that the European Committee of Social Rights declare the legislation of art. 9 of Italian law no. 194 of 1987, regulating elective abortions, to be in contrast with art. 11 of the European Social Charter (Right to the protection of health) alone or in combination with art. E (Non discrimination), relating to the legal position of women; with art. 1 of the European Social Charter (Right to