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COMITÉ EUROPÉEN DES DROITS SOCIAUX

13 February 2013

Case No. 4

International Planned Parenthood Federation - European Network (IPPF-EN) v. Italy
Complaint No. 87/2012

RESPONSE FROM (IPPF-EN) TO THE GOVERNMENT'S SUBMISSION ON THE MERITS

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RESPONSE TO THE GOVERNMENT'S SUBMISSIONS

Lodged in accordance with the European Committee of Social Rights' decision on admissibility of the IPPF EN collective complaint against Italy, No. 87/2012

INTERNATIONAL PLANNED PARENTHOOD FEDERATION EUROPEAN NETWORK

V.

ITALY

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Preliminary remarks.

This documents intends to further develop the considerations put forward in the collective complaint, in relation to the "Observations of the Italian government on admissibility" (15 October 2012) – which, as declared by the European Committee of Social Rights (§ 8 "Decision on Admissibility", 22 October 2012), concern the merits of the question raised by the collective complaint of IPPF EN which were not considered in the phase concerning admissibility of the said complaint – and the "Observations of the Italian government on the merits" (4 December 2012), which entirely reiterate the first observations.

The two documents of the government are, in fact, completely identical, apart from their conclusions; in the former, the European Committee of Social Rights is requested to declare the collective complaint inadmissible, while in the latter, it is requested to declare it unfounded.

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1. The reference made by the Italian government to Part V of the Annex to the European Social Charter in relation to Art. E: "conscientious objection as a reasonable and objective justification" to establish an impairment of the right of access to the voluntary termination of pregnancy (and thus the rights to life, health and self-determination of women).

The Italian government affirms that Law No. 194 of 1978 is particularly rooted in Part V of the Annex to the European Social Charter in relation to Art. E (§6, "Observations of the Italian government on admissibility", 15 October 2012; §7 "Observations of the Italian government on the merits", 4 December 2012).

Art. E (*Non discrimination*) provides that:

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

The provision recalled by the government, which in Part V of the European Social Charter specifies the scope of Art. E, makes it clear that:

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

From this rule, the government believes that conscientious objection constitutes a "reasonable and objective justification" which does not discriminate because the same law provides that medical personnel can always revoke their conscientious objection, thereby ensuring respect for the right to health of the woman (§ 7, "Observations of the Italian government on admissibility", § 8 "Observations of the Italian government on the merits").

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The provision referred to expresses a fundamental principal according to which, where discrimination occurs, differential treatment may be justified where there exist identifiable reasonable and objective grounds.

Under these conditions, therefore, differential treatment is not unreasonable and thus not discriminatory.

The reference made by the Government to this provision appears, in the present case, as irrelevant, given that it advances the right to raise conscientious objection for medical personnel and ancillary staff as an objective and reasonable justification supporting the impairment of the right to access termination procedures.

Conscientious objection, as was pointed out in the collective complaint, is a fundamental right, the nature of which no one doubts and which finds a clear balance as regards its exercise in relation to the right to access procedures for the termination of pregnancy (and thus respect for the inherent rights to life, health and self-determination of the woman).

In fact, Art. 9 of Law No. 194 of 1978, as was also pointed out by the Italian government, provides – in addition to the recognition of the right to raise conscientious objection for medical personnel and ancillary staff – that the right to access this type of termination procedure should always be guaranteed in all hospitals.

It is not about giving precedence to one of the two rights over the other, thus identifying a reasonable and objective basis justifying an impairment of the right to access procedures for the termination of pregnancy.

Art. 9, furthermore, provides only one case in which one of the rights – that of raising conscientious objection – should be sacrificed in favour of the other. When there is an imminent danger to the life of the woman, which requires access to the termination of pregnancy, the doctor who has raised conscientious objection has the duty to intervene and offer his or her services when it is necessary to save the life of the woman. In this case, therefore, the safeguarding of the life of the woman constitutes a reasonable and objective justification for the impairment of the right to freedom of conscience.

It should be repeated that Law No. 194 of 1978 does not provide any case in which the legal position of the woman can or should be compromised in the face of reasonable and objective grounds justifying such a compromise in favour of the right to conscientious objection.

Furthermore, the Government's assertion is quite apodictic, as it is devoid of any normative reference or any argument aimed at demonstrating the merits.

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2. The provision on revocability of the declaration of conscientious objection as a means of ensuring the right to health of women.

The reference made by the Italian Government to the possibility of withdrawing conscientious objection (§ 7 "Observations of the Italian government on admissibility"; § 8, "Observations of the Italian government on the merits"), in order not to compromise the right to health of women, is in contradiction with the argument put forward, given that it appears to admit that the provision on the possibility of raising conscientious objection (Art. 9, first paragraph) itself compromises the right to health of the woman and that only its revocation guarantees the effective exercise of such a right.

The withdrawal of conscientious objection, moreover, is an eventuality that is not possible to predict and which in any case is not manifest in the

information concerning the increasingly high percentage of medical personnel and ancillary staff who are conscientious objectors.

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From this perspective, the subsequent passage also appears contradictory (§ 8, "Observations of the Italian government on admissibility"; § 9, "Observations of the Italian government on the merits), in which it is stated that the high number of conscientious objectors does not constitute a violation of Art. 11 of the European Social Charter, which safeguards the right to health.

In fact, it is not clear why reference has been made to the withdrawal of conscientious objection as a means for guaranteeing respect for the right to health of women, if in any case the high number of objecting medical personnel does not compromise the effective exercise of such a right, through guaranteeing the right to access procedures for the termination of pregnancy.

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3. The reference to the margin of appreciation of the national legislature to regulate on the issue of the voluntary termination of pregnancy (Art. G of the European Social Charter).

The government believes that the Italian legal system enjoys a so-called margin of appreciation in this sphere, in Art. G (*Limitations*) of the European Social Charter (§ 9, "Observations of the Italian government on admissibility"; § 10, "Observations of the Italian government on the merits").

This article provides that:

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

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

Moreover, as has been clarified, it is necessary that such restrictions on the enjoyment of the rights and the application of the principles established by the European Social Charter are provided by law, meaning "statutory law or any other text or case-law provided that the text is sufficiently clear i.e. that satisfy the requirements of precision and foreseeability implied by the concept of 'prescribed by law'" (*Digest of the Case Law of the European Committee of Social Rights*, 1 September 2008, p. 177).

In the case of conscientious objection with regard to the voluntary termination of pregnancy, it must be stressed (as seen in para. 1) that there is no provision requiring the sacrifice of the right to access such procedures in favour of the right to raise conscientious objection.

On the contrary, Art. 9 of Law No. 194 of 1978 provides a clear restriction on the right to raise conscientious objection where there exists an imminent danger to the life of the woman: in this case the objecting doctor must also offer his/her services and thus carry out the necessary procedure terminating the pregnancy.

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It should be noted that the Italian government has not put forward any arguments justifying the assumption that, in the present case, Art. G of the European Social Charter should be applied.

The government has merely stated, citing the content of Art. G, a few words:

"for the protection of the rights and freedoms"; "protection of"; "public health".

In relation to this principle, expressed by the said Art. G, according to which restrictions on the exercise and guarantee of such rights can only be placed when necessary for the protection of rights and freedoms and the protection of public health, it is not clear to what extent the rights to life, health and self-determination of women requesting access to the termination

pregnancy may be sacrificed, according to the conditions laid down by Law No. 194 of 1978, to protect public health.

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4. The document of the Ministry of Health, presented by the Italian government.

4.1. An erroneous assumption: that the purpose of Law No. 194 of 1978 is to ensure the possibility of raising conscientious objection.

In its "Observations on admissibility" the Italian government attached a document from the Ministry of Health, which is also referred to in its "Observations on the merits", and which argues that Law No. 194 of 1978 has a very clear objective: that of offering medical personnel and ancillary staff the possibility of raising conscientious objection. This objective is apparently outlined by Art. 9 of the said law.

First of all, it should be clarified that the scope of Law No. 194 of 1978 is not to guarantee the exercise of the right to conscientious objection for medical personnel.

Law No. 194 actually aims to establish "Standards for the social protection of maternity and for the voluntary termination of pregnancy". The objective of this regime, therefore, is not to regulate the exercise of the right to raise conscientious objection. While it is true that conscientious objection is recognised as a right in the matter of abortion, it must be stated that its regulation is dictated by Art. 9 of Law 194 of 1978 in relation to the right of access to procedures for the termination of pregnancy.

Against this very clear objective of Law No. 194 of 1978 identified by the Ministry of Health – which would, as it turns out, erroneously guarantee the freedom of conscience of medical personnel – the subjects that must ensure organisational aspects – that is "the Regions and health facilities" – would have the task of providing the "necessary measures".

By linking, as the Ministry of Health does, the provision of "necessary measures" to the exercise on the part of medical personnel of their right to raise conscientious objection, it seems to support the argument that Art. 9 of Law No. 194 of 1978 regulates the right to conscientious objection, and that the Regions and hospitals have, as a consequence, the responsibility of making it effective.

The content of the same Art. 9, as well as the system of Law No. 194 of 1978, however, point towards an opposite assessment of the balance – between the rights inherent in this matter – identified by the legislator.

Given the recognition of the right to raise conscientious objection for medical personnel, this presupposes an obligation on the part of public hospitals and the Regions to, in any case, ensure the exercise of the right to access termination procedures.

It is according to this right that public entities are called upon to make the necessary arrangements to ensure the effective exercise of this right, and it is the same law that requires the Regions to monitor the activities of hospitals with the aim of guaranteeing the right to access procedures for the termination of pregnancy, provided by the same law.

4.2. The adequacy of the wording of Law No. 194 of 1978 for guaranteeing the right to access termination procedures.

From this erroneous assumption, the Ministry of Health states that there is no need to amend the rules governing the matter.

The collective claim is purportedly unfounded, therefore, since the wording of the law – in particular Art. 9 – is enough in itself to ensure the effective exercise of the right to access termination procedures.

The problem identified by IPPF EN surrounding the high number of objecting doctors would be a mere matter of fact which the Regions would have to address "in their full and complete organisational autonomy". The only remedy to deal with a possible impairment of the procedures for the termination of pregnancy would be recourse to "a central or regional authority or even the judiciary".

Pausing briefly on this last remark, before dealing broadly with the central question that concerns the wording of Art. 9, it should be noted how any claims to an unspecified central or regional authority or judiciary presents many notable critical aspects.

The first thing to bear in mind is that in the matter at hand, the time factor is crucial, since Law No. 194 imposes strict time limits for access to the termination of pregnancy (Arts. 4 and 6).

The establishment of procedures aimed at ascertaining liability for the lack of implementation of termination procedures and the time necessary to define them, itself affects the legal position of women who, within the limits established by Law No. 194, intend to terminate a pregnancy. Even admitting in some cases that it is possible to arrive at an immediate solution to the proceedings, this would be circumscribed by the same parties, and would not produce any generalised effect - the only solution to solving the problems emanating from the increasingly high number of objecting medical personnel (think, for example, of a situation that could occur on the same day, in relation to a woman wishing to terminate a pregnancy, compared to a decision establishing responsibility to a hospital authority or a Region in relation to the case of another woman).

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With regard to the wording of Art. 9, which in the opinion of the Italian government is able to guarantee the right of access to the termination of pregnancy and thus does not require any changes to legislation, firstly, it is worth recalling the normative references to the objective of the control system consisting in the collective complaints procedure, and second, the consolidated approach adopted by the European Committee of Social Rights in relation to the principal of effectiveness in guaranteeing the rights that the European Social Charter recognises and protects.

4.2.1. The objective of the control system consisting in the collective complaints procedure.

The objective of the control procedure carried out by the European Committee of Social Rights, in relation to the presentation of collective complaints, is clearly defined in the following provisions.

Particularly relevant are Arts. 1 and 4 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, which highlights how for collective complaints there should be proof of unsatisfactory application of one or more of the provisions of the European Social Charter by the Member State to which the complaint is addressed:

"Article 1- The Contracting Parties to this Protocol recognise the right of the following organisations to submit complaints alleging **unsatisfactory application of the Charter** [...]";

"Article 4 - The complaint shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has **not** ensured the **satisfactory application of this provision**."

Also notable are paragraphs 11 and 31 of the Explanatory Report to the Additional Protocol to the European Social Charter providing for a system of collective complaints, which specifies how the unsatisfactory application of the European Social Charter can be determined not only by a provision of law, but also by practice:

"11. [...] The Committee then draws up a report containing, in particular, conclusions as to **whether or not the state concerned has complied with the Charter**. [...]"

"31. [...] because of their "collective" nature, complaints may only raise questions concerning **non-compliance of a state's law or practice with one of the provisions of the Charter**. [...]".

While the collective complaint elaborated on the arguments more broadly, in this document we limit ourselves to remembering how the wording of Art. 9 does not adequately provide concrete measures for guaranteeing the effective exercise of the right to access procedures for the

termination of pregnancy, as shown by the facts presented in relation to the practice.

4.2.2. The consolidated approach adopted by the European Committee of Social Rights, in relation to the principal of effectiveness in guaranteeing the rights and recognised and protected by the European Social Charter.

Given these normative references, the well-established orientation of the European Committee of Social Rights must be recalled, which considers not only the provision of legislation to formally comply with the principles laid down by the European Social Charter, but also its effective implementation and the effective exercise of the rights contained therein.

As mentioned above, the European Committee of Social Rights is called upon to verify compliance with the European Social Charter on the part of the Member State, taking into account not only the law of the state in question, but also taking into account its practice.

This is derived from the identification, well-established in the case law of the European Committee itself, of the principle of effectiveness in guaranteeing the rights recognised and protected by the European Social Charter.

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In its decision on the merits of collective complaint No. 1 of 1998 (The International Commission of Jurists against Portugal) the European Committee of Social Rights, in recognising Portugal's failure to uphold the European Social Charter, pointed out the following:

"32. Finally, the Committee recalls that **the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact**. In this regard, it considers that **the satisfactory application** of Article 7 **cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised** (see for example Conclusions XIII-3, pp. 283 and 286) [...]".

In its decision on the merits of collective complaint No. 6 of 1999 (the Syndicat national des Professions du tourisme against France) the Committee reiterated this assumption:

"26. The Committee points out that "the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact" (Complaint No. 1/1998, International Commission of Jurists v. Portugal, para. 32). It is therefore of the opinion that **compliance** with Article 1 para. 2 **cannot result from the mere existence of legislation if the legislation in question is not applied in practice.**"

In its decision on the merits of collective complaint No. 13 of 2002 (Autism-Europe against France), again referring to its decision on complaint No. 1 of 1998, the European Committee of Social Rights stated:

"53. The Committee recalls, as stated in its decision relative to Complaint No.1/1998 (International Commission of Jurists v. Portugal, § 32), that **the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter**. [...]"

In its decision on the merits of collective complaint No. 15 of 2003 (European Roma Rights Centre against Greece), recalling the same principle, the European Committee of Social Rights referred to its decision on collective complaint No. 13 of 2003 (Autism-Europe against France):

"'The Committee recalls, as stated in its decision Complaint No 1/1998 (International Commission of Jurists v. Portugal, §32), that **the implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter** [...]' Complaint No. 13/2002, Autism Europe v France decision on the merits, November 2003, §53."

And again, in its **decision on the merits of collective complaint No.33 of 2006** (International Movement ATD Fourth World against France) the European Committee of Social Rights established that:

"61. In connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, **the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and**

introduce the operational procedures necessary to give full effect to the rights specified therein (Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53)."

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In collective complaints the European Committee of Social Rights decides on the admissibility and merits of the case, taking into consideration whether or not the Member State in question guarantees the satisfactory application of the European Social Charter.

In this evaluation, as reflected in the provisions referred to above, as well as in the case law of the European Committee of Social Rights, it is not only the legislative provisions of the Member State that is relevant, but also state practice, which may include, in addition to the lack of national legislation, gaps and omissions of legislative acts which may frustrate in whole or in part the very application of the rules of law formally required by the European Social Charter.

The practice reveals, therefore, that when judging the Member States' compliance with the European Social Charter, the European Committee of Social Rights deems it necessary - as is clear from the case law - to guarantee the effectiveness of the rights enshrined in the European Social Charter and thus, it is not possible to consider only the regulations drawn up by the Member States.

With regard to the subject matter of collective complaint No. 87 of 2012, it should be noted how the practice has demonstrated and continues to demonstrate the unsuitability of the wording of Art. 9 of Law No. 194 of 1978, namely, that it does not provide for the specific means by which to guarantee a sufficient number of non-objecting medical doctors in all hospitals.

4.3 The responsibility of Member States in relation to the monitoring of local and regional authorities in order to guarantee the exercise of rights: the decision on the merits of collective complaint No. 15 of 2003.

With particular reference to the question at the centre of collective complaint No. 87 of 2012, it is necessary to recall a decision on the merits made by the European Committee of Social Rights which identifies a principal, relating to the responsibility of Member States, which is applicable in the present case before the same European Committee of Social Rights.

In the decision on the merits of collective complaint No. 15 of 2003 (the European Roma Rights Centre against Greece), the European Committee of Social Rights actually included, among the responsibilities of Member States, the monitoring of local and regional authorities entrusted with developing policies and measures for access to the rights (contained within the European Social Charter):

"29. The Committee recalls that **even if under domestic law local or regional authorities**, trade unions or professional organisations **are responsible for exercising a particular function, states party to the Charter are still responsible**, under their international obligations **to ensure that such responsibilities are properly exercised**. [...]".

This decision and the principal identified by the European Committee of Social Rights, appears perfectly applicable to the subject matter of collective complaint No. 87 of 2012.

Even if Art. 9 of Law No. 194 of 1978 requires first and foremost that public hospitals always guarantee the right of access to procedures for the termination of pregnancy and that Regions must monitor this activity, the state cannot be considered free from liability if in the application of such a provision, the result and thus the provision of measures for the effective access to such a right, are not guaranteed.

4.4. The information presented in the document of the Ministry of Health and the lack of dispute on the high number of objecting doctors.

In the document of the Ministry of Health attached to the "Observations on admissibility" and recalled in "Observations on the merits", after having recognised in a contradictory manner that on the one hand the number of objecting doctors is high and that on the other, a woman's right to terminate a pregnancy is not being compromised, the Italian government reports "some information which may support the arguments".

It should be noted, however, that the information provided by the government is totally irrelevant as regards the high number of conscientious objectors and the impairment of the right to access voluntary termination of pregnancy (and thus, the rights to life, health and self-determination) of women.

Indeed, the Ministry of Health reports figures relating to: the number of voluntary terminations of pregnancy in 2009; the abortion rate; the "increasing contribution of women with foreign citizenship" who would, in the opinion of the Ministry, have "a different attitude to the use of birth control and the voluntary termination of pregnancy" and which would therefore have led to "a slowdown in the general reduction of elective abortion in Italy"; the stabilisation of recourse to abortion among foreign women; the repetition of elective abortion; the initiation of specific projects for foreign women; the recourse to emergency procedures; the recourse to interventions using the Karman method; the length of stay after termination; the waiting times between certification and intervention; complications; and the availability of abortion medication in Italy. In addition, the government cites several practical solutions adopted to cope with the high number of objecting doctors, such as recourse to the mobility of staff and contracts in agreement with specialists. These methodologies, as reported in collective complaint No. 87 of 2012, have proved to be insufficient in order to guarantee an adequate number of non-objecting medical staff in all hospitals.

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In the document of the Ministry of Health it is claimed, moreover, that "elective abortion has not to date constituted a danger to the health of the woman".

In fact, what determines a violation of women's rights – to life, health and self-determination – is the lack of a guarantee of the right to access this procedure.

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Before focusing on the conclusion put forward by the Italian government, in both "Observations" sent to the European Committee of Social Rights, it must be noted how in various passages the same government

and also the Ministry of Health recognise that the number of objecting medical personnel and ancillary staff is high.

In the two "Observations", in fact, the Italian government maintains that the high number of objecting doctors does not affect the right to health of women (§ 8 and § 9); yet it does not provide any proof on how the high level of objecting doctors has *not* affected the right to access termination procedures.

In both the conclusions, the Italian government, in section B, maintains that the legal order cannot in any case limit the number of conscientious objectors, thus recognising the situation that characterises – as demonstrated by the information attached to collective complaint No. 87 of 2012 – every region in Italy.

In various passages in the document the government attached to its "Observations", the Ministry of Health also recognises that the number of conscientious objectors is high.

First of all, it declares that "in fact, high levels of conscientious objection among medical personnel and other relevant health professionals to the voluntary termination of pregnancy have been present since the first years of the law's implementation".

And again, in relation to the introduction in Italy of the abortion drug (medical abortion) and the organisational choices of the Regions and health services, the Ministry of Health states that all of this "contributes to reducing the effects of the high value of conscientious objection". In this passage, furthermore, it is recognised that the problematic situation relating to the high number of conscientious objectors is not yet resolved.

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5. The conclusions of the Italian government

In both its Observations, the Italian government presents its conclusions, attributing statements to the content of collective complaint No. 87 of 2012 which are neither present, nor in any way explicit or implicit in the text.

First of all, the government maintains that IPPF EN "distorts Articles 11 and E of the Charter to the detriment of women's health and lives who IPPF EN want to be assisted only by non-objecting medical personnel who promote the voluntary termination of pregnancy of women, without checking their physical and psychological state but only their economic situation" (sect. A of the government's conclusions, in both "Observations").

Such statements do not find any reference in collective complaint No. 87 of 2012, as can be seen from a reading of the complaint itself. On the one hand, this shows a lack of consideration of the clear provisions of the law, Articles 4 and 6 of which provide specific time limits for access to the termination procedure, and on the other, it displays an ignorance of the difficulty of the choices involved in said procedure, which cannot be reduced to mere economic problems.

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Second, the government points out how "the State cannot limit the number of medical personnel raising conscientious objection while respecting the freedom of conscience" (sect. B of the government's conclusions, in both "Observations").

Once again, the content of collective complaint No. 87 of 2012 must be recalled, as it does not contain any request for limiting the number of objecting medical personnel or of impeding the exercise of the right to raise conscientious objection. The same law, Law No. 194 of 1978, while recognising in Art. 9 the right to raise conscientious objection, requires that hospitals and the Regions always ensure the right to requested procedures, without imposing on the freedom of individuals (except whereby there exists an imminent danger to the life of the woman: as has been stated, in this instance even those who have raised conscientious objection are obliged to intervene), but it places the duty on such authorities to ensure the effective exercise of the right of access to the termination of pregnancy.

In relation to this second observation (sect. B of the conclusions), the government recalls the case law of the European Court of Human Rights, without, once again, furnishing any corroboration on the merits of its argument or indicating in a precise manner which previous decisions of the European Court it is referring to (not to mention not indicating the way in which this case law could derive from the decision of the European Committee of Social Rights).

In addition, Art. 9 (*Freedom of thought, conscience and religion*) of the European Convention on Human Rights provides:

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

In this regard, it must be re-emphasised that Law No. 194 of 1978 – as defined by the Italian Constitutional Court which reads constitutionally bound content, the normative core of which cannot be watered down without compromising the constitutional rights expressed therein – regulates, in Art. 9, the exercise of the right to raise conscientious objection identifying a clear balance with due regard for the rights held by the woman (rights to life, health and self-determination).

The exercise of this right can only be denied, by express provision of the law, in the case of imminent danger to the life of the woman, whose right to life is therefore given priority over respect for the freedom of conscience.

In all other cases, the right to access procedures for the termination of pregnancy must be guaranteed (in accordance, obviously, with the stipulations of Arts. 4 and 6 of the same law), without forcing those who have raised conscientious objection to intervene, but providing that public hospitals and the Regions guarantee access to the treatment required.

In relation to the jurisprudence of the European Court of Human Rights, it is necessary to recall the decision of 30 October 2012 (case of P and S. v. Poland – Application no. 57375/08)[1], in assessing Poland's violation of, inter

[1] In relation to this case, the European Court of Human Rights recalls that: "80. The applicants submitted that the first applicant remained a victim of a breach of Article 8 of the Convention, despite ultimately, after long and protracted efforts, having undergone an abortion. The applicants had never

alia, Art. 8 of the European Convention on Human Rights in relation to the termination of pregnancy. It makes constant reference to the decision of 26 May 2011 (case of R. R. v. Poland – Application no. 27617/04), which was already referred to in collective complaint No. 87 of 2012.

In particular, the European Court of Human Rights reiterated that: "96. [...] the Court held in this context that the State's obligations include both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights, and the implementation, where appropriate, of specific measures (Tysiąc v. Poland, cited above, § 110; A, B and C v. Ireland [GC], cited above, § 245; and R.R. v. Poland, cited above, § 184)."

And again the European Court of Human Rights underlined that: "99. [...] The Court has already found [...] that once the State, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations, it must not structure its legal framework in a way which would limit real possibilities to obtain an abortion. In particular, the State is under a positive obligation to create a procedural framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion (Tysiąc v. Poland, cited above, § 116-124, R.R. v. Poland, cited above, § 200). The legal framework devised for the purposes of the determination of the conditions for lawful abortion should be 'shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately

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claimed that the first applicant's rights had been violated because she had not been allowed access to an abortion. The core of her complaint was that the State's actions and systemic failures in connection with the circumstances concerning the determination of her access to abortion, seen as a whole, as well as the clandestine nature of the abortion, had resulted in a violation of Article 8. 81. The unwillingness of numerous doctors to provide a referral for abortion or to carry out the lawful abortion as such constituted evidence of the State's failure to enforce its own laws and to regulate the practice of conscientious objection. Both applicants had been misled by the doctors and the authorities as to the applicable procedure and requirements for lawful abortion. The first applicant had been given unwanted counselling by a priest, was harassed by doctors and bullied by persons informed of her situation by the doctors and the priest. She had also been unlawfully torn from her mother's custody and put into detention. When she had finally been allowed to obtain the abortion that she lawfully sought, that abortion was performed in a clandestine manner, in a hospital five hundred kilometres from her home town.

82. The State had failed to take appropriate measures to address the systemic and deliberate violations which had breached the applicants' right to respect for their private life. The set of circumstances surrounding the applicants' efforts to secure a lawful abortion for the first applicant had not been remedied by the fact that she had ultimately obtained it. The first applicant had not lost her victim status because the State had not acknowledged any of the alleged violations, nor had it provided redress."

and in accordance with the obligations deriving from the Convention' (A, B and C v. Ireland [GC], cited above, § 249)."

In relation to conscientious objection and thus Art. 9 of the European Convention on Human Rights, the Court ruled that "106. In so far as the Government referred in their submissions to the right of physicians to refuse certain services on grounds of conscience, relying on Article 9 of the Convention, the Court reiterates that the word 'practice' used in Article 9 § 1 does not denote each and every act or form of behaviour motivated or inspired by a religion or a belief (see, among many other authorities, Pichon and Sajous v. France (dec.), no. 49853/99, ECHR 2001-X). For the Court, States are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation (see R.R. v. Poland, cited above, no. 27617/04, § 206)."

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Conclusions.

All things considered, IPPF EN, assisted by Prof. Marilisa D'Amico and Benedetta Liberali of the Milan Bar, recalling all the wider considerations set out in collective complaint No. 87 of 2012, requests that the European Committee of Social Rights declare Italy in violation of Art. 11 of the European Social Charter, read alone or in conjunction with Art. E, on the basis of the inadequate wording of Art. 9 of Law No. 194 of 1978, which does not guarantee women the right of access to termination procedures, provided by the same Law No. 194, as demonstrated by the facts relating to its concrete implementation in practice.

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Declaration and Signature.

I hereby declare that, to the best of my knowledge and belief, the information given in the present application form is correct.

16/01/2013.

Marie-Rose Claeys

Regional Director, International Planned Parenthood Federation European Network.

IPPF European Network
Vicky Claeys
Regional Director