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COUNCIL OF EUROPE



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

4 August 2014

**Case Document No. 9**

**Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden**  
Complaint No. 99/2013

**FURTHER RESPONSE BY THE GOVERNMENT**

**Registered at the Secretariat on 7 July 2014**





REGERINGSKANSLIET

A2013/1371/IE

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**Ministry of Employment Sweden**

Régis Brillat  
Head of Department of the European  
Social Charter and the European Code of  
Social Security, Executive Secretary of the  
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**

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**Complaint no. 99/2013**  
**Federation of Catholic Family Associations in Europe**  
**V.**  
**Sweden**

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**ADDITIONAL OBSERVATIONS OF  
THE GOVERNMENT OF SWEDEN**

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Referring to our previous submission and the third party submission by the Swedish Association for Sexuality Education and the Center for Reproductive Rights, the Swedish Government would like to add the following.

1. The Swedish Government still holds that the allegations relating to conscientious objection and discrimination do not fall within the scope of Article 11 of the Charter. The allegations rather connect to Article 9.1 of the Convention of Human Rights and Fundamental Freedoms, which is not for the European Committee of Social Rights (The Committee) to interpret and apply.

2. The FAFCE refers to the decision by the Committee in the Complaint No. 87/2012 International Planned Parenthood Federation – European Network (IPPF EN) v. Italy<sup>1</sup> and incorrectly argues that the scope of Article 11 also includes conscientious objection.

3. In § 68 of the decision the Committee holds that “The Committee is called to rule on how the manner in which sexual and reproductive health care services are organized (in Italy) impacts upon the enjoyment of the right to protection of health provided for under Article 11 of the Charter. It is not called to determine whether individuals enjoy a right to obtain an abortion or whether individuals should benefit from a right to conscientious objection”. In § 69 of the decision the Committee further considers that “once States introduce statutory provisions allowing abortion in some situations, they are obliged to organize 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 legally entitled under the applicable legislation”.

4. The core issue in IPPF EN v. Italy is the right to health – not the issue of conscientious objection. Consequently, conscientious objection is only relevant under Article 11 in cases where it prevents patients to access health services which they are legally entitled to.

5. Furthermore, in § 66 of the decision the Committee recalls earlier decisions on the right to protection of health, highlighting among others the following passage, “As part of the positive obligations that arise by virtue of this fundamental right, States must provide appropriate and timely health care on a non-discriminatory basis, including services relating to sexual and reproductive health. As a result, a health care system which does not provide for the specific health needs of women will not be in conformity with Article 11, or with Article E of the Charter taken together with Article 11”.

6. The findings of the Committee in IPPF EN v. Italy clearly show that the main purpose to regulate conscientious objection in the healthcare field is to ensure that women can access the services that they are legally entitled to. Given that Swedish healthcare regulations already guarantee women access to abortion services and that minimal risk for abuse of the practice of conscientious objection in the health sphere are at hand, no specific regulation is called for in Sweden.

7. Further, the FAFCE wrongfully argues that according to the Swedish government only patients in favor of abortion have a right to access

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<sup>1</sup> European Committee of Social Rights, Decision on the merits, International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, Complaint No. 87/2012.

medical care, while other patients have no similar right<sup>2</sup>. The overall objective of the Swedish health care system is good health and care on equal terms for the whole population. Such care and services shall be provided so that the equal value of all human beings and the dignity of the individual are respected.<sup>3</sup> Consequently, care must be tailored to individual needs and circumstances of every patient. This also means that the caregiver supports the woman and her family regardless of her decision. At Karolinska University Hospital for example, an individual treatment program is prepared for patients that decide to pursue pregnancy after fetal deviation is detected, as all pregnancies are unique. The team is working closely with specialist doctors during the pregnancy in order to prepare for further treatment of the child after birth.<sup>4</sup>

8. Furthermore, the FAFCE claims that all abortion opponents in Sweden are excluded from the medical field because they are forced to assist or refer for abortion thereby denying the right to medical access of patients who desire pro-life medical staff<sup>5</sup>. The FAFCE refers to Ms Grimmark, whose case was subject to a decision by the Swedish Equality Ombudsman, DO<sup>6</sup>. Ms Grimmark worked as a nurse within Jönköping County Council while applying for job as a midwife. Accordingly, she was not prevented from working within the Swedish health care system, except within women's healthcare, where abortion is a compulsory part of the profession.

9. Additionally, the FAFCE incorrectly states that Ms Grimmark lost her job due to her conscientious objection to participate in abortions. Ms Grimmark was never employed by the mentioned hospitals; she applied for the jobs but was not offered any of the positions.

10. In order to conclude whether a person has been discriminated against, it is necessary to examine whether the person was in a comparable situation to another person. DO therefore, when considering direct discrimination, examined whether Ms Grimmark could be considered to be in a comparable situation to another job applicant. DO's conclusion was that since Ms Grimmark was not prepared to carry out abortions, a task that according to the National Board of Health and Welfare is one of the duties as a midwife, she could not be considered to be in a comparable situation to a midwife who would have been able to carry out all duties. Therefore she had not been

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<sup>2</sup>FAFCE v. Sweden – (99/2013) – Reply to the Written Submission of the Swedish Government on the Merits of the Complaint, p. 4, 10-11.

<sup>3</sup> Section 2 in the Health and Medical Services Act (1982:763)

<sup>4</sup> <http://www.karolinska.se/Verksamheternas/Kliniker--enheter/Kvinnokliniken/Ultraljud-och-fosterdiagnostik-CFM/Omhandertagande-vid-fosteravvikelse/>

<sup>5</sup> FAFCE v. Sweden – (99/2013) – Reply to the Written Submission of the Swedish Government on the Merits of the Complaint, p. 11.

<sup>6</sup> Diskrimineringsombudsmannen, Beslut i ärende rörande anmälan om diskriminering som har samband med religion (Ärende ANM 2014/12, 2014/226, 2014/227).

subject to direct discrimination. According to DO there are no indications that the hospitals paid heed to her religious belief. This since the investigation showed that another job applicant who refuses to assist in carrying out an abortion for another reason than religious belief, would also have been denied employment on equal terms.

11. It is correct that DO initially, when considering indirect discrimination, held that the decision not to offer Ms Grimmark employment constituted an interference with her right to religious freedom. However, DO concludes that this interference was justified in order to protect the rights and freedoms of other persons, i.e the protection of health and effective access to abortion. In this context DO referred to several decisions by the European Court of Human Rights including *Eweida and others v. the United Kingdom* (applications nos. 48420/10, 59842/10, 51671/10 and 36516/10), *R.R. v. Poland* (application no. 27617/04) and *S. v. Poland* (application no. 57375/08).

12. Article 9 of the European Convention on Human Rights does not explicitly refer to a right to conscientious objection. However, the European Court of Human Rights considers that opposition to military service in some cases attracts the guarantees of Article 9. The jurisprudence of the European Court of Human Rights has thus not held that article 9 extends as far as to guarantee the right to conscientious objection in cases similar to this complaint.

13. Furthermore, the FAFCE refers to paragraph 8.25 of the ICPD Programme of Action and incorrectly claims that the document calls upon governments to have an obligation to eliminate and reduce abortions and to help women avoid repeated abortions. Thereby, suggesting that abortion is something that the international community wants to eliminate. The correct wording of paragraph 8.25 is that “Prevention of unwanted pregnancies must always be given the highest priority and every attempt should be made to eliminate the need for abortion”, which is substantially different in content. Further, the same article holds that governments should provide safe abortions as part of their commitment to strengthen women’s health.

14. Finally, the FAFCE claims that according to the Swedish Government, viability can only be determined at the moment of birth. The Swedish Government would like to emphasize that it is made clear in the Abortion Act that permission to carry out an abortion may not be granted if there is reason to assume that the foetus is viable outside the womb<sup>7</sup>. However, if a woman’s life or health is in danger, permission to terminate the pregnancy may be granted. It is imperative to make a difference between abortion and the right to terminate a pregnancy if a

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<sup>7</sup> § 3 Abortion Act (1974:595).

woman's life or health is in danger. In the latter case, all measures are taken for saving the lives of both the child and the mother.

A handwritten signature in blue ink, appearing to read "Monica Rodrigo". The signature is fluid and cursive, with the first name "Monica" and the last name "Rodrigo" clearly distinguishable.

Monica Rodrigo  
Director-General for Administrative and Legal Affairs