



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

**Confidential<sup>1</sup>**

***Confederazione Generale Italiana del Lavoro (CGIL) v. Italy***

Complaint No. 91/2013

**REPORT TO THE COMMITTEE OF MINISTERS**

Strasbourg, 12 October 2015

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<sup>1</sup> It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 11 April 2016.

## Introduction

1. Pursuant to Article 8§2 of the Protocol providing for a system of collective complaints (“the Protocol”), the European Committee of Social Rights, a committee of independent experts of the European Social Charter (“the Committee”) transmits to the Committee of Ministers its report<sup>2</sup> on Complaint No. 91/2013. The report contains the Committee’s decision on admissibility and on the merits of the complaint (adopted on 12 October 2015).
2. The Protocol came into force on 1 July 1998. It has been ratified by Belgium, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal and Sweden. Furthermore, Bulgaria and Slovenia are also bound by this procedure pursuant to Article D of the Revised Social Charter of 1996.
3. The Committee’s procedure was based on the provisions of the Rules of 29 March 2004 which it adopted at its 201<sup>st</sup> session and last revised on 9 September 2014 at its 273<sup>rd</sup> session.
4. The report has been transmitted to the Committee of Minister on 10 December 2015. It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 11 April 2016.

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<sup>2</sup> This report may be subject to editorial revision.

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

**DECISION ON ADMISSIBILITY  
AND ON THE MERITS**

**Adoption: 12 October 2015**

**Notification: 10 December 2015**

**Publication: 11 April 2016**

***Confederazione Generale Italiana del Lavoro (CGIL) v. Italy***

Complaint No. 91/2013

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 281<sup>st</sup> session attended by:

Giuseppe PALMISANO, President  
Petros STANGOS, Vice-President  
Lauri LEPPIK, General Rapporteur  
Elena MACHULSKAYA  
Karin LUKAS  
Eliane CHEMLA  
Jozsef HAJDU  
Marcin WUJCZYK  
Krassimira SREDKOVA  
Raul CANOSA USERA  
Marit FROGNER

Assisted by Régis BRILLAT, Executive Secretary

Having deliberated on 17 March, 30 June, 7 September and 12 October 2015,

On the basis of the report presented by Karin LUKAS,

Delivers the following decision adopted on 12 October 2015:

## PROCEDURE

1. The complaint lodged by *Confederazione Generale Italiana del Lavoro* ("CGIL") was registered on 17 January 2013.
2. CGIL alleges that Section 9 of Act No. 194/1978, which governs the conscientious objection of medical practitioners and other medical personnel in relation to abortion services, is not properly applied in practice and this:
  - violates Article 11 (the right to health) of the Revised European Social Charter ("the Charter"), read alone or in conjunction with Article E (non-discrimination),
  - violates Article 1 (the right to work), as well as Article 2 (the right to just conditions of work), 3 (the right to safe and healthy working conditions) and 26 (the right to dignity at work) of the Charter, the latter Articles read either alone or in conjunction with Article E (non-discrimination).
3. In accordance with Rule 29§2 of the Rules of the Committee ("the Rules"), the Committee asked the Government of Italy ("the Government") to make written submissions on the merits in the event that the complaint is declared admissible, by 31 May 2013, at the same time as its observations on the admissibility of the complaint. The Government's submissions were registered on 30 May 2013.
4. CGIL was invited to submit a response to the Government's submissions by 3 September 2013. The response was registered on 29 July 2013.
5. On 30 September 2013 the Committee transmitted CGIL's response to the Government and invited it to submit a further response by 25 November 2013. The Government's further response was registered on 25 November 2013.
6. In a letter of 18 July 2013, the Committee invited the Parties to the Protocol providing for a system of collective complaints ("the Protocol") and the States having submitted a declaration pursuant to Article D§2 of the Charter to transmit to it, before 3 September 2013, any observations they wished to make on the merits of the complaint in the event that it is declared admissible.
7. In a letter of 18 July 2013, pursuant to Article 7§2 of the Protocol, the Committee invited the international employers' and workers' organisations mentioned in Article 27§2 of the Charter of 1961 to submit observations before 3 September 2013.

8. Observations from the European Trade Union Confederation (“the ETUC”) were registered on 2 September 2013.

9. On 22 May 2013, *Movimento italiano per la vita* asked to be invited to submit observations. In accordance with Rule 32A, on 18 June 2013, the President of the Committee invited the organisation to do so by 3 September 2013. The observations were registered on 2 September 2013.

10. On 3 June 2013, *Associazione italiana per l'educazione demografica* asked to be invited to submit observations. In accordance with Rule 32A, on 18 June 2013 the President invited the association to do so by 3 September 2013. The observations were registered on 3 September 2013.

11. On 3 June 2013, *Giuristi Per La Vita* asked to be invited to submit observations on behalf of *Associazione Medici Cattolici Italiani (AMCI)*, *Associazione Italiana Ginecologi Ostetrici Cattolici (AIGOC)*, *Confederazione Italiana dei Consulteri familiari di Ispirazione Cristiana (CFC)*, *Centro Studi per la tutela della salute della madre e del concepito dell'Università Cattolica del Sacro Cuore di Roma* and *Forum delle associazioni familiari*. In accordance with Rule 32A, on 19 June 2013 the President invited the organisation to do so by 3 September 2013. The observations were registered on 26 August 2013.

12. On 11 June 2013, *Associazione Luca Coscioni per la libertà di ricerca scientifica* asked to be invited to submit observations. In accordance with Rule 32A, on 18 June 2013, the President invited the association to do so by 3 September 2013. The observations were registered on 26 August 2013.

13. On 19 March 2015 the Committee invited the parties, should they wish, to submit any further information on recent developments in law and practice, by 11 May 2015. Information from CGIL was registered on 8 May 2015 and from the Government on 11 May 2015.

14. On 11 May 2015 the Government requested that the Committee organise a hearing in the case. The Committee, by letter dated 29 May 2015, asked the Government to indicate what further information that had not been submitted during the written procedure it wished to present to the Committee.

15. The Government responded on 30 June 2015 confirming its request. Pursuant to Article 7§4 of the Protocol and Rule 33 the Committee decided to hold a public hearing on 7 September 2015.

16. On 27 July 2015 a list of questions was sent to the parties prior to the hearing setting out the issues the Committee wished them to address.

17. On 16 June 2015, pursuant to Rule 33§4, the ETUC was invited to participate in the hearing but declined.

18. A hearing took place in public in the Human Rights Building, Strasbourg, on 7 September 2015. There appeared before the Committee:

a) *for the complainant organisation*

Benedetta Liberali, lawyer, *Counsel*;

Andrea Allamprese, advisor, legal office of CGIL, *Adviser*.

b) *for the Government*

Paola Accardo, *co-Agent of the Government before the European Court of Human Rights*;

Assuntina Morresi, professor of physical chemistry at the Department of chemistry, Biology and Biotechnology, Perugia University, Adviser to the Minister of Health, *Adviser*.

19. The Committee was addressed by B. Liberali, A. Morresi and P. Accardo.

20. Additional information was submitted to the Committee and has been taken into account in so far as it was referred to in the oral submissions or was in the public domain.

## **SUBMISSIONS OF THE PARTIES**

### **A – The complainant organisation**

21. CGIL asks the Committee to find that the inadequate implementation of Section 9§4 of Act No. 194, which regulates the conscientious objection of medical practitioners and personnel in relation to abortion services, is in violation of Article 11 of the Charter, read alone or in conjunction with the non-discrimination clause in Article E, in that it does not protect the right guaranteed to women with respect to access to abortion services.

22. CGIL also alleges a violation of Article 1, as well as Articles 2, 3 and 26 of the Charter, the latter Articles read either alone or in conjunction with the non-discrimination clause in Article E, on the grounds that the Government has failed to protect the rights of medical practitioners involved in the provision of abortion services.

23. Moreover, CGIL invites the Committee to recognise the relevance of Articles 21 (the right to information and consultation) and 22 (the right to take part in the determination and improvement of the working conditions and working environment) for the application of the relevant domestic law.

## **B – The respondent Government**

24. The Government considers the complaint to be inadmissible as CGIL failed to exhaust domestic remedies and further asks the Committee to declare the complaint unfounded in all respects.

### **OBSERVATIONS BY THE EUROPEAN TRADE UNION CONFEDERATION**

25. The ETUC considers that the situation in practice amounts to a violation of:

- Article 11§§1 and 2 of the Charter due to the non-application of Section 9 of Act No.194. The ETUC notes that despite the data provided by CGIL in support of its allegations, the Government does not refer to any measures taken to improve the implementation of Section 9 of Act No. 194/1978;

- Article E of the Charter, which does not set out an exhaustive list of prohibited grounds of discrimination, but covers also any territorial differences in the application of a law. The ETUC maintains that considerable differences exist with regard to the access to abortion between various provinces and other entities.

26. As to the employment-related rights of non-objecting medical practitioners, ETUC observes that the national situation amounts to a violation of:

- Article 1§2, due to the failure of the authorities to ensure the effective exercise of the right to work without discrimination in employment in the application of Section 9 of Act No. 194/1978. The ETUC maintains that the career development of non-objecting medical practitioners differs from that of objectors due to the excessive workload, and limitation of work mainly to the provision of abortion services;

- Article 2§1, due to the excessive working time of non-objecting medical practitioners. The ETUC refers in this regard to infringement proceedings initiated by the Commission of the European Union against Italy due to an alleged failure to implement Directive 2003/88/EC on part of doctors in general in the public sector (Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time; OJ L 299, 18 November 2003, pp. 9-19). The ETUC maintains that the situation is more problematic for non-objecting doctors and notes that in the context of the collective complaint, the Government fails to challenge the allegations made in this regard;

- Article 3§3, due to the absence of an effective labour inspection system. The ETUC refers to the previous conclusions of non-conformity in respect of Article 3§3 (Conclusions 2009, Italy); and

- Article 26§2, due to the isolation at work of non-objecting medical practitioners, who often need to carry out abortions alone as the only medical practitioners undertaking this type of work. The ETUC considers that this amounts to moral harassment.

## **OTHER OBSERVATIONS**

### **A. *Associazione Luca Coscioni per la libertà di ricerca scientifica***

27. *Associazione Luca Coscioni per la libertà di ricerca scientifica* is a non-governmental organisation that promotes, *inter alia*, the freedom of scientific research, as well as human rights for sick persons and persons with disabilities. It also provides assistance to women who are unable to access abortion services.

28. According to the association, a very high number of medical practitioners have objected to abortion on conscientious grounds pursuant to Act No. 194/1978, which leads to situations, witnessed by its members in its field work, where many women are unable to access abortion services as provided by law.

29. The association maintains that there is a significant regional disparity in the provision of abortion services due to the lack of non-objecting medical practitioners, which means that women need to rely on private service providers or have an abortion in other geographical areas.

30. The association also maintains that the work-related rights of the non-objecting medical practitioners are violated and refers to situations where, according to its observations from the field, their work has been limited to performing abortions or the personnel has been required to work overtime, to work in isolation, as well as without replacement or assistant personnel.

### **B. *Movimento italiano per la vita***

31. *Movimento italiano per la vita* is a national federation of more than six hundred local groups, service centres promoting the right to life (centri di servizi di aiuto alla vita) and care homes (case di accoglienza). Its aim is to promote and defend the right to life and dignity for all. In the organisation's view human dignity is intrinsically linked to the right to life, which is why abortion is only permitted in exceptional circumstances in Italy.

32. *Movimento italiano per la vita* argues that human life begins at conception and refers in this respect to several texts, such as Recommendations 874(1979), 1046(1986), and 1100(1989) of the Parliamentary Assembly of the Council of Europe, as well as to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine. It highlights that the European Court of Human Rights has in several decisions been called upon to rule whether an unborn child is covered by Article 2 of the European Convention on



Human Rights, and has consistently held that States have a margin of appreciation in this respect.

33. *Movimento italiano per la vita* argues that the right of a doctor to refuse to carry out abortions on the grounds of conscience is widely recognised as a fundamental right. On the contrary, abortions can only be carried out in cases of necessity, as defined in the domestic legislation and by the decisions of the domestic courts.

34. *Movimento italiano per la vita* maintains that it has not been proven that women are obliged to travel abroad for abortion as a result of the high numbers of conscientious objectors. This is rather due to the fact that in some countries the law is less restrictive.

35. *Movimento italiano per la vita* lastly argues that all annual ministerial reports indicate that the diminution of abortions in Italy is due to the effective functioning of Act No. 194/1978, and not to conscientious objection.

### **C. *Associazione italiana per l'educazione demografica***

36. *Associazione italiana per l'educazione demografica* is a non-governmental organisation which seeks to, *inter alia*, promote free and responsible procreation; support initiatives for the improvement of the quality of life and safeguarding human health; as well as ensuring due enforcement of abortion legislation.

37. *Associazione italiana per l'educazione demografica* observes that in 2012, on average seven out of ten gynaecologists refused to carry out abortions on conscientious grounds. Significant regional disparities exist, with certain regions having a higher number of doctors objecting to abortions, for example in the south. In this respect, it refers to recent information indicating that the percentage of conscientious objectors may in some regions be considerably larger than that registered by the Italian Ministry of Health.

38. *Associazione italiana per l'educazione demografica* further maintains that the number of illegal abortions is on the increase in Italy and the figures published by the Ministry of Health in 2008 – 20,000 clandestine abortions – may underestimate the problem as they do not include foreign women. In addition, *Associazione italiana per l'educazione demografica* observes an increase in “spontaneous abortions”, which – according to the above figures – amount to some 73,000 per year, compared to some 50,000 in the 1980s. It suggests that these figures may also include women who, having tried to terminate their pregnancy by themselves, go to the hospital to complete the abortion process and have the abortion recorded as “spontaneous”.

#### **D. *Giuristi Per La Vita***

39. *Giuristi Per La Vita* is a non-governmental organisation which aims to promote and protect the right to life. It submits its observations on behalf of *Associazione Medici Cattolici Italiani (AMCI)*, *Associazione Italiana Ginecologi Ostetrici Cattolici (AIGOC)*, *Confederazione Italiana dei Consulenti familiari di Ispirazione Cristiana (CFC)*, *Centro Studi per la tutela della salute della madre e del concepito dell'Università Cattolica del Sacro Cuore di Roma* and *Forum delle associazioni familiari*.

40. *Associazione Italiana Ginecologi Ostetrici Cattolici* has over 100 members all over the country. Its purpose is to work nationwide for the improvement of life and health of mothers and children. The association offers various services, training, research and advocacy designed to propose to the mothers other solutions than abortion, to prevent maternal and perinatal mortality.

41. *Associazione Medici Cattolici Italiani* has over 4,000 members and 4,000 followers and is present in 17 Regions and has 130 sections. The main activities of the association consist in permanent training of physicians, protection of doctors and patient's rights, actions to address a dignified practice of medicine, health promotion, conscientious objection, environmental protection and the ecumenical dialogue with the representatives of the other religious denominations.

42. *Centro Studi per la tutela della salute della madre e del concepito dell'Università Cattolica del Sacro Cuore di Roma* is a non-profit body of the Catholic University of the Sacred Heart in Rome. The Centre promotes research and activities on reproduction and motherhood.

43. *Confederazione Italiana dei Consulenti familiari di Ispirazione Cristiana* brings together 200 advisory centres in Italy. It aims to promote the development and the coordination of counselling centres in the light of the Christian principles.

44. *Forum delle associazioni familiari* is a network of 50 national and 400 local associations grouped into 20 regional forums and various local forums. Representing three millions of families, its purpose is to support the family in all its aspects, recognizing its irreplaceable values as the cornerstone of any civilised society.

45. *Giuristi Per La Vita* maintains that the right to conscientious objection cannot be limited in any circumstances and refers to various international sources in support of this position.

46. *Giuristi Per La Vita* observes that Act No. 194/1978 does not oblige objecting medical practitioners to guarantee the provision of abortion. They must nevertheless provide care both before and after abortions and cannot be exempted from assisting with the procedure when the life of the woman is in imminent danger.

47. *Giuristi Per La Vita* does not consider the domestic situation to violate the right to health. It refers to data from the 2012 report on the implementation of Act No. 194/1978 and notes that approximately 95% of abortions are carried out within four weeks from the statutory certification date. There is moreover no record of any kind on requested abortions not having been carried out. Also the complications rate is low and the hospitalisation time short.

48. *Giuristi Per La Vita* does not consider that the national situation amounts to prohibited discrimination under Article E, as women are able to move about easily and because no fully isolated rural areas exist in Italy. Pursuant to the statistics, more than 20% of elective abortions are performed outside the woman's province or region of residence.

49. *Giuristi Per La Vita* lastly considers that the alleged violations of the work-related rights of the Charter have not been substantiated. There is no evidence that those who carry out or assist in abortions have additional work, work longer or suffer from an increased number of work-related injuries than their objecting colleagues. It further maintains that the objecting and non-objecting medical practitioners have different work tasks and are thus not in a comparable position for the purposes of the complaint.

## **RELEVANT DOMESTIC LAW AND PRACTICE**

50. The Constitution provides that:

### **Section 1**

"Italy is a Democratic Republic, founded on work.

Sovereignty belongs to the people and is exercised by the people in the forms and within the limits of the Constitution. "

### **Section 2**

"The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled".

### **Section 3**

"All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.

It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country”.

#### **Section 4**

“The Republic recognises the right of all citizens to work and shall promote such conditions as will make this right effective.

Every citizen has the duty, according to capability and choice, to perform an activity or function that contributes to the material or spiritual progress of society.”

#### **Section 19**

“All persons have the right to profess freely their own religious faith in any form, individually or in association, to disseminate it and to worship in private or public, provided that the religious rites are not contrary to public morality”.

#### **Section 21**

“All persons have the right to express freely their ideas by word, in writing and by all other means of communication. (...)”.

#### **Section 32**

“The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent.

No one may be obliged to undergo any health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person”.

#### **Section 35**

“The Republic shall protect work in all its forms and practices.

It shall provide for the professional or vocational training and advancement of workers.

It shall promote and encourage international agreements and organisations which have the aim of establishing and regulating labour rights.

It shall recognise the freedom to emigrate, subject to the obligations set out by law in the general interest, and shall protect Italian workers abroad. “

#### **Section 36**

“Workers have the right to a remuneration commensurate to the quantity and quality of their work and in all cases to an adequate remuneration ensuring them and their families a free and dignified existence.

Maximum daily working hours are established by law.

Workers have the right to a weekly rest day and paid annual holidays. They cannot waive this right.”

51. Act No. 194/1978 “Norms on the social protection of motherhood and the voluntary termination of pregnancy” (*Norme per la tutela sociale della maternità e sull'interruzione volontaria della gravidanza* (Official Journal No. 140 of 22 May 1978)

reads as follows:

#### **Section 4**

“In order to undergo termination of pregnancy during the first 90 days, women whose situation is such that continuation of pregnancy, childbirth or motherhood would seriously endanger their physical or mental health, in view of their state of health, their economic, social or family circumstances, the circumstances in which conception occurred or the probability that the child would be borne with abnormalities or malformations, shall apply to a public counselling centre [...] or to a fully authorised medical social agency in the region or to a physician of her choice.”

#### **Section 5**

“In all cases, in addition to guaranteeing the necessary medical examinations, counselling centres and socio-medical agencies shall be required, especially when the request for termination of pregnancy is motivated by the impact of economic, social or family circumstances upon the pregnant woman’s health, to examine possible solutions to the problems in consultation with the woman and, where the woman consents, with the father of the *conceptus*, with due respect for the dignity and personal feelings of the woman and the person named as the father of the *conceptus*, to help her to overcome the factors which would lead her to have her pregnancy terminated, to enable her to take advantage of her rights as a working woman and a mother, and to encourage any suitable measures designed to support the woman by providing her with all necessary assistance both during her pregnancy and after the delivery. Where the woman applied to a physician of her choice, he shall: carry out the necessary medical examinations, with due respect for the woman’s dignity and freedom; assess, in conjunction with the woman and, where the woman consents, with the father of the *conceptus*, with due respect for the dignity and personal feelings of the woman and of the person named as the father of the *conceptus*, if so desired taking account of the result of the examinations referred to above, the circumstances leading her to request that her pregnancy be terminated; and inform her of her rights and of the social welfare services available to her, as well as regarding the counselling centres and the socio-medical agencies. Where the physician at the counselling centre or socio-medical agency, or the physician of the woman’s choice, finds that in view of the circumstances termination is urgently required, he shall immediately issue the woman a certificate attesting to the urgency of the case. Once she has been issued this certificate, the woman may report to one of the establishments authorised to perform pregnancy terminations.

If termination is not found to be urgently required, the physician at the counselling centre or the socio-medical agency, or the physician of the woman’s choice, shall at the end of the consultation, if the woman requests that her pregnancy be terminated on account of circumstances referred to in Section 4, issue her a copy of a document signed by himself and the woman attesting that the woman is pregnant and that the request has been made, and shall request her to reflect for seven days. After seven days have elapsed, the woman may take the document issued to her under the terms of this paragraph and report to one of the authorised establishments in order for her pregnancy to be terminated.”

#### **Section 6**

“The voluntary termination of pregnancy may be performed after the first 90 days:  
a) where the pregnancy or childbirth entails a serious threat to the women’s life;  
b) where the pathological processes constituting a serious threat to a women’s physical or mental health, such as those associated with serious abnormalities or malformations of the foetus, have been diagnosed.”

#### **Section 7**

“The pathological process referred to in the preceding Section shall be diagnosed and certified by a physician on the staff of the department of obstetrics and gynaecology of the hospital establishment in which the termination is to be performed. The physician may call upon the assistance of specialists. The physician shall be required to forward the documentation on the

case as well as his certificate to the medical director of the hospital in order for the termination to be performed immediately. Where the termination of pregnancy is necessary in view of an imminent threat to the woman's life, it may be performed without observing the procedures referred to in the preceding paragraph and in a place other than those referred to in Section 8. In such cases, the physician shall be required to notify the provincial medical officer." (...).

### **Section 8**

"Pregnancy terminations shall be performed by a physician on the staff of the obstetrics and gynaecology department of a general hospital as referred to in Section 20 of Law No. 132 of 12 February 1968; this physician must also confirm that there are no medical contraindications.

Pregnancy terminations may likewise be carried out in specialized public hospitals, the institutes and establishments referred to in the penultimate paragraph of Section 1 of Law No. 132 of 12 February 1968, and the institutions referred to in Law No. 817 of 26 November 1973 and Decree No. 754 of 18 June 1958 of the President of the Republic, wherever the competent administrative agencies so request.

During the first 90 days, pregnancy terminations may also be performed in nursing homes that are authorized by the regions and have the requisite medical equipment and adequate obstetric and gynaecological services.

The Minister of Health shall issue a decree restricting the capacity of authorized nursing homes to carry out terminations of pregnancy, by establishing:

1. the percentage of pregnancy terminations that may be performed relative to the total number of surgical operations performed during the preceding year at the particular nursing home;
  2. the percentage of patient-days allowed for pregnancy-termination cases in relation to the total number of patient-days in the preceding year under conventions with the regions.
- The percentages referred to in items 1 and 2 shall not be less than 20% and shall be the same for all nursing homes (cf. ministerial decree of 20/10/1978).

Nursing homes may select the criterion which they will observe from the two set out above.

During the first 90 days, pregnancy terminations may likewise be performed, following the establishment of local socio-medical units, at adequately equipped public outpatient clinics, operating under the hospitals and licensed by the regions.

The certificate issued under the third paragraph of Section 5 and, after seven days have elapsed, the document delivered to the woman under the fourth paragraph of the same Section shall entitle her to obtain, on an emergency basis, the termination and, where necessary, hospitalization".

### **Section 9**

"Medical practitioners and other health personnel shall not be required to assist in the procedures referred to in Sections 5 and 7 or in pregnancy terminations if they raise a conscientious objection, declared in advance. Such declaration must be forwarded to the provincial medical officer and, in the case of personnel on the staff of the hospital or nursing home, to the medical director, not later than one month following the entry into force of this Law, or the date of qualification, or the date of commencement of employment at an establishment required to provide services for the termination of pregnancy, or the date of the drawing up of an agreement with insurance agencies entailing the provision of such services.

The objection may be withdrawn at any time, or may be submitted after the periods prescribed in the preceding paragraph, in which case the declaration shall take effect one month after it has been submitted to the provincial medical officer.

Conscientious objection shall exempt health personnel and other health personnel from carrying out procedures and activities specifically and necessarily designed to bring about the termination of pregnancy, and shall not exempt them from providing care prior to and following terminations.

In all cases, hospital establishments and authorised nursing homes shall be required to ensure that the procedures referred to in Section 7 are carried out and pregnancy terminations requested in accordance with the procedures referred to in Sections 5, 7 and 8 are performed. The region shall supervise and ensure implementation of this requirement, if necessary, also by the movement of personnel.

Conscientious objection may not be invoked by medical practitioners or other health personnel if, under the particular circumstances, their personal intervention is essential in order to save the life of a woman in imminent danger.

Conscientious objection shall be deemed to have been withdrawn with immediate effect if the objector assists in procedures or pregnancy terminations provided for under this Law, in cases other than those referred to in the preceding paragraph.”

## **National case law**

52. In its judgment No. 27 of 1975, the Constitutional Court (*Corte costituzionale*) stated that:

“(…) No equivalence exists at this time between the right, not only to life but also to health, of the one who is already a person, as the mother, and safeguarding of the embryo who has yet to become a person”.

53. In its judgment No. 35 of 1997, the Constitutional Court has defined Act No. 194/1978 as a law with “constitutionally guaranteed content”. On this basis, it declared inadmissible a *referendum* aimed at removing the existing legislation concerning access to abortion procedures during the first 90 days of pregnancy. The Court pointed out that the normative *nucleus* of laws with constitutionally guaranteed content cannot be altered or rendered ineffective on the ground that this would compromise the corresponding specific provisions of the Constitution or of other constitutional acts (cf. also judgment No. 16 of 1978).

54. In its judgment No. 467 of 1991, the Constitutional Court held that:

“(…) even if this occurred following a delicate operation carried out by the Parliament, aimed at balancing [the sphere of legal potentialities of individual conscience] with conflicting duties or constitutionally protected assets and to guarantee its exercise in a gradual manner to ensure the good functioning of organisational structures and services of national interest, the [above-mentioned] sphere (…) represents, with respect to the specific expressive contents of its essential nucleus, a particularly high constitutional value which justifies a number of (privileged) exemptions as regards the fulfillment of public duties, [and this,] also when the latter are considered as inderogable by the Constitution”.

55. In its judgment No. 43 of 1997, the Constitutional Court stated that the protection accorded to the freedom of conscience:

“[c]annot be considered unlimited and unconditional. It rests primarily with the legislature to establish a balance between individual conscience and ensuing rights, on the one hand, and the overall, mandatory duties of political, economic and social solidarity that the Constitution (Art. 2) requires, on the other, so that the public order is safeguarded and consequent burdens are shared by all, without privileges”.

56. In its judgment No. 151 of 2009, the Constitutional Court declared unconstitutional the third paragraph of Article 14 of Law No. 40 of 2004 which provides that:

"Where the transfer of embryos to the uterus is not possible due to serious and documented circumstances of the woman's state of health, which were not foreseeable at the time of fertilization, embryo cryopreservation is permitted up to the date of transfer, to be implemented as soon as possible."

This decision is based on the principle that the above-mentioned provision does not provide that the transfer of embryos must be carried out without prejudice to the health of women.

57. In its judgment No. 3477 of 2010, the Regional Administrative Tribunal of Apulia (*Tribunale amministrativo regionale della Puglia*) stated that according to Article 9 of Act No. 194/1978, objecting doctors must in any case assist women wishing to terminate their pregnancy, and this, prior and after the abortion. In this respect, it pointed out that the responsible medical personnel must provide all the necessary information and advice services, as well as assist the women concerned both from the physical and psychological point of view. These indications were provided by the tribunal with regard to the allegations put forward by the Government of Apulia, that not all gynaecologists working in the advice centres for families (*consultori*) provide the aforementioned services and assistance. The Regional Administrative Tribunal of Apulia said that the exclusion of objecting medical practitioners from the competitions aimed at fulfilling vacant posts within the *consultori* constitute a violation Article 3 of the Constitution. It observed that an alternative solution to compensate the limited number of non-objecting medical personnel working in the *consultori* could be the organisation of recruitment competitions aimed at drawing up reserve lists including 50% of objecting doctors and 50% of non-objecting doctors.

58. In its judgment No. 14979 of 2013, the Supreme Court (*Corte di Cassazione*), with regard to the actual care provided prior to and following an abortion, sentenced a doctor who was a conscientious objector to a year in jail after he refused to aid a woman who had already undergone an abortion and had started hemorrhaging seriously.

### **Other sources**

59. In June 2013, both the Senate and the Chamber of Deputies of the Parliament adopted policy directives in the form of parliamentary motions (*mozioni*) addressed to the Government concerning *inter alia* the implementation of Act No. 194/1978. In particular, on 6 June 2013, at its 37<sup>th</sup> Session, the Senate approved Motion No. 1-



00059; on 11 June 2013, at its 31th Session, the Chamber of Deputies approved the following motions: Nos. 1-00045, 1-00074, 1-00078, 1-00079, 1-00080, 1-00081, 1-00082, 1-00087 and 1-00089. These motions specifically refer to the implementation of Section 9§4 of the above-mentioned Act and some of the allegations put forward by CGIL, i.e.:

- "At national level the main consequence of such a high number of conscientious objectors is that the very application of Law No. 194 is becoming increasingly difficult, with serious negative implications for the functioning of the various hospitals (and accordingly for the national health system), which have an impact on women obliged to seek an abortion (often resulting in tragically late abortions on account of the long waiting times)";

- "Given this state of "emergency" women are often obliged to travel to another region or even abroad, while there is a re-emergence of clandestine abortions (above all among immigrant women) and of the related criminal activities, a plague that had been wiped out only by the due application of Law No. 194";

(cf. Senate, Motion No. 1-00059 of 6 June 2013)

- "(...) The high proportion of medical practitioners who are objectors would also seem to be affecting the operability and effectiveness of prevention and support services for women at the pre-termination stage. The (...) report by the Minister of Health shows that, in many cases, the effectiveness and the role of those providing such advisory services is undermined by a shortage of suitably qualified persons available to sign the documents and the approvals necessary for the performance of an abortion, above all in southern Italy. This is a factor that distances women from these structures and from the essential information, prevention and support services they provide (...)";

- "(...) At present there are no effective monitoring, reward or sanction systems, with a view to verifying, encouraging and supporting the effective functioning of the structures required to implement Law No. 194, and also no means of conducting a proper analysis of the manner in which conscientious objection affects their functioning (...)".

(cf. Chamber of Deputies, Motion No. 1-00082 of 11 June 2013)

- "(...) The growth in the number of medical practitioners objectors in recent years has led to the closure of services, leaving some hospitals devoid of any department performing abortions because virtually all the gynaecologists, anaesthetists and paramedical staff have chosen conscientious objection, (...)".

(cf. Chamber of Deputies, Motion No. 1-00078 of 11 June 2013)

60. The Committee notes that with respect to the difficulties encountered in the implementation of Act No. 194/1978, some motions ask the Government to:

- "Implement in full Law No. 194 of 1978, while respecting the individual right of conscientious objection";

- "Take all the necessary measures, within the limits of its competence, to guarantee the implementation, as regards the organisation of the regional health systems, of the fourth paragraph of Article 9 of Law No. 194 of 1978, in so far as it institutes an obligation to

supervise and guarantee the application of women's right to informed freedom of choice, also through a change of management methods and staff mobility, guaranteeing the presence of a sufficient network of services in every region across the country" (...).

(cf. Chamber of Deputies, Motion No. 1-00074 of 11 June 2013)

- "(...) Ensure the timely adoption of regulatory measures, as also called for by the European Union, so as to allow proper planning of health care activities, embracing not only the legitimacy of conscientious objection but also access to treatment and health protection, in such a way as to avoid a potential conflict detrimental to the right to health" (...).

(cf. Chamber of Deputies, Motion No. 1-00087 of 11 June 2013)

- "Conduct an in-depth analysis of the impact of conscientious objection on the implementation of Law No. 194 through a study carried out at the level of each hospital and based on sufficiently detailed data and indicators to deal with the problem of the link between the presence of staff who are non-objectors and the length of waiting lists";

- "Take all the necessary measures, within its sphere of competence, so as to guarantee compliance with and the full application of Law No. 194 of 1978 in all hospitals throughout Italy, by implementing, where necessary, a revised organisation of tasks and recruitment drawing on the tools of staff mobility provided for in the law, which institutes forms of differentiated recruitment with a view to balancing, according to the available data, the number of objectors and the number of non-objectors, as recommended by the National Bioethics Committee";

(cf. Chamber of Deputies, Motion No. 1-00082 of 11 June 2013)

- "Guarantee a rebalancing of medical and nursing staff, as moreover provided for in Article 9 of Law No. 194, through staff mobility, aimed at ensuring minimum numbers and regional programming, with the aim of having at least 50% of staff who are non-objectors" (...).

(cf. Senate, Motion No. 1-00059 of 6 June 2013)

61. The Committee also notes that on 11 June 2013, during the debate at the Chamber of Deputies relating to the above-mentioned motions, the Minister of Health declared that:

"We have seen that, fortunately, during these years the number of voluntary terminations of pregnancy decreased due to the prevention activities and the greater conscience of the persons [involved]. This was one of the objectives of the legislation which – we should remind it – provides a free of charge service for all users. We have also seen that often, where there has been an increase or a decrease of the objectors, this has not always led to a problems-free situation in the access to local services. Here we come, unfortunately, to what is the theme of governance of territories and therefore more connected to the theme of regions, but surely cannot avoid dealing with [this theme] as Minister of Health, because we find ourselves in the wider complex of issues that affect the protection of the right to health in the national territory".

62. In this connection, the Minister expressed the hope that she will be able to come before Parliament with "all the data required for a general debate, so as to be able to verify the state of implementation of the legislation throughout national territory, since we realise that some of the data presented here today can give rise to multiple interpretations."

63. In particular she has stated that she intends "to take action to enable the establishment of a technical board of the regional ministers, so as to obtain, and present to Parliament, information on the state of implementation of the law as regards non-discrimination between objectors and non-objectors at regional level."

64. In the framework of the same debate, in reply to the requests addressed to the Government within the aforesaid motions, the Minister of Health has made the following statements:

- "(...) I believe that the intention of all is to verify, in the territories and the individual health facilities, whether the principles of the law are effectively applied (...);

- "(...) this issue of conscientious objection, which has been raised by some of the groups that submitted the motions, is an issue that we feel we must take into account, especially in so far as it calls upon the Government and myself to monitor carefully – as required in different motions - the enforcement of the law in this area as well (...)."

(NB: The full text of the intervention of the Minister of Health, Mrs Beatrice Lorenzin, in the occasion of the debate is available at the following website of the Chamber of Deputies:

<http://documenti.camera.it/leg17/resoconti/assemblea/html/sed0031/pdfel.htm>)

65. The Resolution of the Commission of Social Affairs of the Chamber of Deputies adopted 6 march 2014 on the "Report on the state of implementation of Law No. 194 of 1978 governing the social protection of motherhood and voluntary terminations of pregnancy, containing preliminary data for 2012 and final data for 2011" states that:

"The monitoring activity initiated by the Government was rightly decided in order to verify the possible problems of implementation of Law No. 194, with particular reference to the issue of conscientious objection; in this perspective, in 2013, a "technical panel" was created within the Ministry of Health, with the participation of all relevant regional ministers."

It calls on the Government:

"... to report to the competent parliamentary committees on the initiatives taken by the ministry itself in application of the commitments it entered into on 11 June 2013 before the Chamber of Deputies, as set out in the motions adopted on this subject, and to take all the necessary measures to ensure the implementation of Article 9§4 of Law no 194, in all regional health systems, especially as regards the obligation to monitor and ensure the right of a woman to a free and conscious choice, and this even using a different staff mobility and ensuring the presence of a suitable network services in the territory of each region."

## RELEVANT INTERNATIONAL MATERIALS

### I. Council of Europe

66. The European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”) includes the following provisions:

#### **Article 8 - Right to respect for private and family life**

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### **Article 9 - Freedom of thought, conscience and religion**

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

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.”

### a. Relevant judgments of the European Court of Human Rights

- In *Tysi c v. Poland*, Application No. 5410/03, judgment of 20 March 2007; the Court stated that:

“118. (...) the very nature of the issues involved in decisions to terminate a pregnancy is such that the time factor is of critical importance. The procedures in place should therefore ensure that such decisions are timely so as to limit or prevent damage to a woman’s health which might be occasioned by a late abortion (...).”

- In *A., B., C. v. Ireland*, Application No. 25579/05, judgment of 16 December 2010, the Court stated that:

“212. (...) the notion of “private life” within the meaning of Article 8 of the Convention is a broad concept which encompasses, *inter alia*, the right to personal autonomy and personal development (...). It concerns subjects such as gender identification, sexual orientation and sexual life (...), a person’s physical and psychological integrity (*Tysi c v. Poland*, judgment, cited [below]) as well as decisions both to have and not to have a child or to become genetic parents (...).”

“249 (...) the State enjoys a certain margin of appreciation (see, among other authorities, *Keegan v. Ireland*, judgment of 26 May 1994, Series A No. 290, §49). While a broad margin of appreciation is accorded to the State as to the decision about the circumstances in which an abortion will be permitted in a State (...), once that decision is taken the legal framework devised for this purpose should be “shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the

obligations deriving from the Convention” (*S.H. and Others v. Austria*, No. 57813/00, §74, 1 April 2010)”.

- In *R.R. v. Poland*, Application No. 27617/04, judgment of 20 November 2011, the Court stated that:

“187. While a broad margin of appreciation is accorded to the State as regards the circumstances in which an abortion will be permitted in a State, once that decision is taken the legal framework devised for this purpose should be ‘shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention’ (*A., B. and C. v. Ireland* [GC], (...) §249 [16 December 2010])”.

“200. (...) once the State, acting within the limits of the margin 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 it. In particular, the State is under a positive obligation to create a procedural framework enabling a pregnant woman to exercise her right of access to lawful abortion (*Tysi c v. Poland*, No. 5410/03, §§116-124, ECHR 2007-IV) (...)”.

“206. (...) States are obliged to organise the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation”.

- In *P. and S. v. Poland*, Application No. 57375/08, judgment of 20 October 2012, the Court stated that:

“99. (...) 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 (*Tysi c 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 and in accordance with the obligations deriving from the Convention” ( ... *A., B. and C. v. Ireland* [GC], (...) §249 [16 December 2010])”.

“106. (...) 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 (...)”.

## **b. Other materials**

67. The Parliamentary Assembly of the Council of Europe has adopted the following text:

### **Resolution 1763 (2010) on the right to conscientious objection in lawful medical care**

“1. 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.

2. The Parliamentary Assembly emphasises the need to affirm the right of conscientious objection together with the responsibility of the state to ensure that patients are able to access lawful medical care in a timely manner. The Assembly is concerned that the unregulated use of conscientious objection may disproportionately affect women, notably those with low incomes or living in rural areas.

3. In the vast majority of Council of Europe member states, the practice of conscientious objection is adequately regulated. There is a comprehensive and clear legal and policy framework governing the practice of conscientious objection by health-care providers ensuring that the interests and rights of individuals seeking legal medical services are respected, protected and fulfilled.

4. In view of member states' obligation to ensure access to lawful medical care and to protect the right to health, as well as the obligation to ensure respect for the right of freedom of thought, conscience and religion of health-care providers, the Assembly invites Council of Europe member states to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, and which:

4.1. guarantee the right to conscientious objection in relation to participation in the medical procedure in question;

4.2. ensure that patients are informed of any conscientious objection in a timely manner and referred to another health-care provider;

4.3. ensure that patients receive appropriate treatment, in particular in cases of emergency.”

## **II. United Nations**

68. The International Covenant on Economic, Social and Cultural Rights of 16 December 1966 includes the following provisions:

### **Article 12**

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

69. The General Comment No. 14 (2000) on the right to the highest attainable standard of health (article 12), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-second session, Geneva, 25 April-12 May 2000 – provides that:

“11. The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health...”

“12. The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party:

(a) *Availability*. Functioning public health and health-care facilities, goods and services, as well as programmes), have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party’s developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.

(b) *Accessibility*. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

(ii) Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

(iii) Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

(iv) Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

“11. The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.”

70. The International Covenant on Civil and Political Rights of 16 December 1966 includes the following provisions:

**Article 18**

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

(...)

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

71. The Convention on the Elimination of All Forms of Discrimination Against Women of 18 December 1979 includes the following provisions:

**Article 12:**

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

72. The General Recommendation on Women and Health, No. 24, adopted in 1999 by the Committee on the Elimination of Discrimination against Women, at its 20th Session, provides that:

“11. Measures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women. It is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.”

### **III. European Union**

73. The Charter of Fundamental Rights of the European Union of 7 December 2000 provides that :

**Article 10 - Freedom of thought, conscience and religion**

“1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right”.

**Article 35 - Health care**

“Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities”.



#### **IV. Other materials**

74. The World Health Organization (WHO) - Department of Reproductive Health and Research publication "Safe Abortion: technical and policy guidance for health systems" (second edition, 2012) indicates that:

"Health-care professionals sometimes exempt themselves from abortion care on the basis of conscientious objection to the procedure, while not referring the woman to an abortion provider. Individual health-care providers have a right to conscientious objection to providing abortion, but that right does not entitle them to impede or deny access to lawful abortion services because it delays care for women, putting their health and life at risk. In such cases, health-care providers must refer the woman to a willing and trained provider in the same, or another easily accessible health-care facility, in accordance with national law. Where referral is not possible, the health-care professional who objects, must provide safe abortion to save the woman's life and to prevent serious injury to her health. Women who present with complications from an unsafe or illegal abortion must be treated urgently and respectfully, as any other emergency patient, without punitive, prejudiced or biased behaviours (see also Chapter 4)."

(cf. Chapter 3.3.6 - Conscientious objection by health-care providers).

## **THE LAW**

### **ADMISSIBILITY**

*As to the admissibility conditions laid down by the Protocol and the Committee's Rules*

75. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Italy on 3 November 1997 and entered into force with respect to this State on 1 July 1998, the complaint has been submitted in writing and concerns Articles 1, 2, 3, 11, 26 and Article E of the Charter, provisions accepted by Italy when it ratified this treaty on 5 July 1999 and to which it is bound since the entry into force of the Charter in its respect on 1 September 1999.

76. Moreover, the grounds for the complaint are indicated.

77. The Committee notes that CGIL invites it to determine whether Articles 21 and 22 of the Charter are of relevance to the circumstances of the complaint. It argues that the principles embodied by them should be implemented also in the public sector, insofar as they provide for the timely consultation of workers.

78. The Committee recalls that Article 21 guarantees the right of workers to be informed and consulted within the undertaking, and Article 22 their right to take part in the determination and improvement of their working conditions and working environment.

79. The Committee further recalls that pursuant to Part II of the Appendix to the Charter, the term “undertaking” is, in connection with the application of Articles 21 and 22, understood as referring to a mechanism “with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy”.

80. The Committee consequently stresses that even though Articles 21 and 22 may apply to workers in state-owned enterprises, public employees are as a whole not covered by these provisions (Conclusions XIII-5 (1997), Norway, p. 288, Additional Protocol, Article 2; European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 40/2007, decision on the merits of 23 September 2008, §42; European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 60/2010, decision on the merits of 17 October 2011, §36).

81. The above reasons lead the Committee to conclude that the participation of doctors working in the public sector in the determination and improvement of their working conditions and working environment does not fall within the scope of Articles 21 or 22 of the Charter. In any event CGIL has not alleged that Articles 21 and 22 have been violated. Therefore the Committee considers that, the complaint does not extend to Articles 21 and 22.

82. The Committee observes that CGIL is a national trade union organisation representing, *inter alia*, workers in the public sector. It has approximately 6 million members. On the basis of the information at its disposal, the Committee finds that in accordance with Article 1 c) of the Protocol, CGIL is a representative national trade union for the purposes of the collective complaints procedure.

83. The complaint is signed by Susanna Camusso, Secretary General of CGIL, who, in accordance with its Statutes, is entitled to represent the complainant organisation. The Committee, therefore, considers that the condition set out in Rule 23 is fulfilled.

*As to the objection of inadmissibility raised by the Government*

84. As to the Government’s argument that the domestic remedies have not been exhausted with regard to the complaint relating to employment rights, the Committee recalls that neither the Protocol nor the Rules require the exhaustion of domestic remedies as a prerequisite to lodging a collective complaint. It accordingly dismisses this objection to admissibility (*Syndicat des Agrégés de l’Enseignement Supérieur* (SAGES) v. France, Complaint No. 26/2004, decision on admissibility of 12 July 2004, §12; *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 31/2005, decision on admissibility of 10 October 2005, §10).

85. On these grounds, the Committee declares the complaint admissible.

## MERITS

### PART I: ALLEGED VIOLATION OF ARTICLE 11§1 OF THE CHARTER

86. Article 11 of the Charter reads as follows:

#### **Article 11 - The right to protection of health**

Part I: "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."

Part II: "With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;

[...]."

87. Article G of the Charter reads as follows:

#### **Article G – Restrictions**

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

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

### **A – Arguments of the parties**

88. The parties' arguments are presented here in the order in which the relevant case documents were registered.

#### **1. Arguments put forward in the complaint**

89. CGIL considers in general that Act No. 194/1978 establishes "a balance between women's rights (primarily the right to life, the right to health and the right to self-determination as regards their reproductive choices in matters of termination of pregnancy) and those of medical staff (the right to raise a conscientious objection in the manner and according to the time-limits laid down in Article 9 of the [above-mentioned] law) ensuring that neither set of rights is ever sacrificed, except in cases where there is an imminent danger to a woman's life ...".

90. Concerning conscientious objection, CGIL indicates that "Article 9 ... is of particular importance, since its aim is to grant medical practitioners and staff performing auxiliary activities the possibility of raising a conscientious objection ...

An instrument for the protection of practitioners' freedom of conscience has thus been established." Concerning the protection of health, it underlines that "Women's right of access to pregnancy termination procedures can be exercised solely in hospitals where non-objecting doctors are present in sufficient number to deal with the demand for such terminations."

91. In this connection, CGIL points out that, pursuant to Article 9§4, hospitals and authorised nursing homes are required to guarantee that all requests for abortions requested in accordance with the procedures (set out in Articles 5, 7 and 8 of the law) will be carried out. It also points out that the regions must supervise and guarantee the implementation of this requirement, including through staff mobility measures.

92. CGIL highlights the fact that the Constitutional Court has deemed that Act No. 194/1978 is of "constitutionally required substance" (see judgments Nos. 26 and 35 of 1997) and its "core provisions cannot be amended or rendered ineffective without breaching the corresponding specific provisions of the Constitution (or other constitutional laws)" (cf. judgment No. 16 of 1978).

93. CGIL considers that, while providing for a spectrum of measures aimed at guaranteeing access to abortion services, Article 9§4 is not appropriately worded since it does not specify the tangible means whereby such measures are to be put in place. The organisation states that "in practice, the high number of doctors who are objectors prevents the full implementation of the legislation, [for lack of] tangible means of ensuring that there is a sufficient number of non-objecting doctors within each hospital."

94. In view of the above, CGIL maintains that, on account of the legislation's deficiencies, the measures put in place by the hospitals concerned and the initiatives taken by the regional authorities "are insufficient and unsuitable to guarantee the achievement of the objectives of Act No. 194 regarding terminations of pregnancy". CGIL is of the opinion that "the solutions [implemented by the competent authorities] have proved insufficient and unsuitable to guarantee the implementation of Act No. 194 and hence to ensure the effective protection of the rights of women wishing to seek a termination of pregnancy."

95. On this subject, it is specified that in many cases hospitals have called on external non-objecting staff. For CGIL, this solution, which appears to guarantee the required service, namely a termination of pregnancy, "can be seen to have obvious limits linked to the failure to guarantee the continuity of care provision." Mention is made of the fact that, in other cases, hospitals have reached agreements with nursing homes. CGIL considers that "the conclusion of agreements with private establishments undermines the public sector foundations of Act No. 194" and that "rather than solving the problem of the shortage of staff, it is being circumvented."

96. On this basis, CGIL concludes that Article 11 of the Charter is not being implemented in a satisfactory manner, since the deficiencies in applying Article 9§4 do not make it possible to guarantee the effective exercise of women's right of access to abortion services.

97. According to CGIL, this conclusion is primarily based on the statistical data which show that the public hospitals have insufficient non-objecting medical staff. It indicates that these data can be found in the official reports on the implementation of the law, which the Ministry of Health submits to Parliament each year. In this connection, it refers to the information given in the reports published by the Ministry between 2005 and 2011, relating to the years 2003 to 2009.

98. Upon comparing the data contained in these reports, CGIL notes an increase in the number of conscientious objectors in three professional categories (see the following table):

	<b>GYNAECOLOGIST</b>	<b>ANAESTHETISTS</b>	<b>NON-MEDICAL PERSONNEL</b>
Ministerial Report 2011(data 2009)	70.7%	51.7%	44.4%
Ministerial Report 2010(data 2008)	71.5%	52.6%	43.3%
Ministerial Report 2009 (data 2007)	70.5%	52.3%	40.9%
Ministerial Report 2008 (data 2006)	69.2%	50.4%	42.6%
Ministerial Report 2007 (data 2005)	58.7%	45.7%	38.6%
Ministerial Report 2006 (data 2004)	59.5%	46.3%	39.1%
Ministerial Report 2005 (data 2003)	57.8%	45.7%	38.1%

99. As concerns the 2011 report, CGIL cites the following information:

“In 2009, there was a stabilisation of conscientious objection among gynaecologists and anaesthetists, after a considerable increase in previous years. At the national level, the percentage of objecting gynaecologists increased from 58.7% in 2005 to 69.2% in 2006, to 70.5% in 2007, to 71.5% in 2008 and to 70.7% in 2009; the percentage of anaesthetists in these years increased from 45.7% to 51.7%; the percentage of non-medical staff saw a further increase, from 38.6% in 2005 to 44.4% in 2009. In Southern Italy, there is a rate of more than 80% registered gynaecologists: 85.2% in Basilicata, 83.9% in Campania, 82.8% in Molise, 81.7% in Sicily and 81.3% in Bolzano; the highest percentages of [anaesthetists] are registered in Molise and Campania at more than 77% and in Sicily at 75.6%, and the lowest percentage is in Tuscany at 27.7% and Trento at 31.8%; for non-medical personnel the numbers are lower, with a maximum of 87% in Sicily and 82% in Molise. (...)”.

100. CGIL also provides tables containing data for the three professional categories concerned (gynaecologists, anaesthetists and non-medical staff) analysed by region and by geographical zone.

101. So as to provide evidence of the difficulties with which many hospitals have to contend in satisfying requests for abortion, given the high number of conscientious objectors, CGIL refers to the situations of a number of hospitals in the following regions: Lombardy, Marche, Sicily, Abruzzo and Puglia. Most of this information is reiterated and expanded upon in CGIL's reply to the Government's submissions on the merits of the complaint, as set out below.

## **2. Arguments put forward by the respondent Government in the section of its submissions relating to the merits**

102. According to the Government, CGIL's interpretation of the situation in respect of Articles 11 and E of the Charter "... distorts their meaning, threatens women's health and lives because it wants them to be assisted solely by non-objecting medical staff, who facilitate voluntary terminations of pregnancy without verifying women's physical and psychological state".

103. The Government contends that the situation is not incompatible with the Charter for the following reasons:

a) the State has introduced every practical and legislative measure to apply Act No. 194/1978 for the benefit of women and in support of their rights to abortion;

b) the State cannot restrict the number of medical staff who declare that they are conscientious objectors while respecting freedom of conscience and opinion, as is also recognised by the European Court of Human Rights in accordance with Article 9 of the European Convention on Human Rights and other international instruments (in this connection the Government refers to the following documents: Resolution 1763(2010) and Recommendation 1518/2002 of the Parliamentary Assembly of the Council of Europe; Article 10§2 of the Charter of Fundamental Rights of the European Union; and Article 18 of the International Covenant on Civil and Political Rights);

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

104. In general, the Government considers that Act No. 194/1978 "strikes a proper and necessary balance between women's right to life and health and the freedom of conscience of medical or paramedical personnel vis-à-vis voluntary termination of pregnancy."

105. The Government further notes that Act No. 194/1978 "which sets out the arrangements and measures to secure women's right to health in the event of voluntary termination of pregnancy" was adopted in accordance with the "margin of appreciation" provided for by Article G of the Charter.

106. Concerning the arguments advanced by CGIL, the Government considers that the decline in the number and the rate of abortions shows the quality of the work being done by the health services to prevent abortions; according to the Government it also shows a positive attitude among women towards birth control and the results of measures aimed at making women more aware and responsible. In this connection, the Government indicates that ad hoc abortion prevention projects aimed at women of foreign origin have been set up, involving specific initiatives focusing on cultural mediation, facilitation of access to services and staff training.

107. The Government states that the stabilisation of the number of urgent procedures (procedures carried out without waiting for seven days after certification) and the reduced waiting period between certification and surgery testify to the services' efficiency; it considers that the increase in the number of procedures performed on an outpatient basis and in hospitalisations lasting less than one day shows that women are encountering fewer difficulties in accessing these services and that human resources are better managed; it maintains that the high percentage of women who undergo an abortion at a gestation of 10 weeks or less and the low rate of complications – no deaths or serious complications following abortions carried out in accordance with Act No. 194/1978 have been recorded – constitute proof that abortion now poses no threat to women's health.

108. Regarding conscientious objection and abortion services, the Government states that the number of conscientious objectors observed in Italy – which is partly offset by staff mobility and agreements with specialist obstetrics and gynaecology departments – has no practical direct impact on recourse to abortion services and therefore does not affect women's rights.

109. The Government indicates that the reduction in the number of women resorting to abortion has been considerably more significant than the increase in the number of conscientious objectors among health care professionals and medical staff. From this standpoint, it considers that, in recent years, the services have become more efficient in terms of both prevention and access to abortion services, and that operations are carried out with no danger for women's health.

110. The Government also indicates that Act No. 194/1978 has resulted in a reduction in clandestine abortions.

### **3. Arguments contained in the response of the complainant organisation to the submission of the Government regarding the merits**

111. As regards the arguments of the Government concerning the unsatisfactory implementation of Section 9§4 of Act No. 194/1978, CGIL put forward the following considerations:

a) the decrease in the number of abortions cannot be considered a sign that there are no problems in implementing the abovementioned provision. CGIL is of the view that “this could instead signify that the number of abortions is falling due to the very fact that women cannot access the service and have to fall back on other solutions, such as travelling abroad or undergoing a clandestine abortion”;

b) even though the Ministry of Health estimates the number of illegal abortions at about 20,000, the real figure for the number of clandestine abortions could be as high as 50,000. In this regard, it is pointed out that official figures have not been updated since 2008 and the ministry itself recognises that they are understated. CGIL underlines how difficult it is to quantify a phenomenon which, by its very nature, escapes any kind of monitoring. With this in mind, CGIL considers that “the clandestine abortion phenomenon, where women are inevitably risking their own lives and health, apart from being obliged to pay for a service which should usually be free of charge, as provided for by Act No. 194/1978, is closely related to the question of the link between the decrease in the number of abortions and the alleged lack of problems due to the number of practitioners who are conscientious objectors”;

c) the positions expressed in the Government's submission are in contradiction with the declarations made by the Government itself, in the person of the Minister for Health, Beatrice Lorenzin, following the tabling in the Chamber of Deputies of nine motions on the right of conscientious objection in medical and health matters; in this framework, the Minister stated that “where there has been an increase or a decrease of the objectors, this has not always led to a problems-free situation in the access to local services” (see paragraph 61). Moreover, CGIL considers that the Minister's declarations are pointless “since they are based on the simple idea that it is enough to monitor the application of Act No. 194/1978 and therefore they cannot be regarded as effective stances likely to bring about a change in the situation regarding application of the relevant law”.

112. Following these considerations, with respect to other assertions contained in the Government's submission, CGIL provides detailed information on the difficulties of implementation of Act No. 194/1978 and the negative consequences for the protection of health of the women concerned. This information is based on a number of documents appended to its response. CGIL specifies that the information provided does not represent a full review of covering each and every hospital, care home or counselling centre throughout Italy.



113. In this respect, it points out that:

- a) the annual reports by the Ministry of Health on the implementation of the abovementioned act contain no specific information on the number of requests for abortions per hospital;
- b) the request of *Libera Associazione Italiana Ginecologi per l'Attuazione della legge 194* (LAIGA) that the Italian National Institute of Statistics (ISTAT) provide a list of all the establishments was refused and it was therefore not possible to carry out any survey on the link between requests for abortion and the number of non-objecting practitioners called upon to perform this type of intervention;
- c) in any case, the number of requests cannot be taken into account since they are not registered in cases where the woman is obliged to find another hospital or seek a different solution in view of the difficulty of accessing such treatment.

114. CGIL also considers that the cases of women who are obliged to turn to other establishments necessarily escape this type of survey, since there is no trace of their requests when they are not given adequate assistance. It also mentions that, as referred to one of the motions adopted by the Italian Parliament in June 2013, in the current situation it is virtually impossible to verify, that women who withdraw from a waiting list do so because they have indeed changed their minds or because, as the wait grows longer, they decide to have recourse to a clandestine abortion.

115. CGIL refers to the information provided in the report on cases of unsatisfactory implementation of Act No. 194/1978 drafted in 2013 by Mrs Silvana Agatone, President of LAIGA. This document, which is also appended to CGIL's response to the Government submission, contains the following statement:

“(...) [T]he law [194/1978] is widely disregarded and (...) in many hospitals it is impossible to have an abortion. (...) There are no reliable, easily available, official sources providing up-to-date lists of hospitals where legally authorised abortions can be performed nor a list of gynecology units where they are provided. In short, it is impossible to check where abortions are available. (...) [LAIGA] consequently began to enquire (...), hospital by hospital, using information found on certain non-official websites (...), in order to find an answer to our question: is Article 9 of Law 194 being applied in practice? (...) The results of our investigation are summarised in the table below. Given the enormous difficulty in obtaining official data, it should be noted that this information is not exhaustive but gives some idea of the problem.”

116. The abovementioned report indicates that “(...) not all hospitals provide terminations of pregnancy, thereby breaching Article 9 of Law 194 (...)”. A list of 45 hospitals where, even if a gynecology unit exists, terminations of pregnancy cannot be performed, is provided by the President of LAIGA (regions concerned: Lazio, Piedmont, Venetia, Friuli Venetia Giulia, Marche, Lombardy, Emilia Romagna, Tuscany, Sicily, Sardinia, Apulia), i.e.:

*Azienda Ospedaliera Universitaria S. Andrea, Policlinico Universitario Tor Vergata (Rome), Ospedale Acquapendente (Viterbo), Ospedale Andosilla (Civitacastellana), Ospedale Belcolle (Viterbo), Ospedale S. Camillo De Lellis (Rieti), Ospedale Umberto 1° (Frosinone), Ospedale S. Benedetto (Alatri), Ospedale di Velletri, Ospedale Maggiore della Carità (Novara), Ospedali Riuniti S. Lorenzo Varmagnola, Ospedale di Camposampiero (Turin), Ospedale Castelli (Verbania), Ospedale Portogruaro (Verona), Ospedale di Belluno, Ospedale di Bassano, Ospedale di Gorizia, Ospedale di Jesi, Ospedale di Fano, Ospedale di Fermo, Ospedali Civili di Brescia, Ospedale S. Maria delle Stelle Melzo, Ospedale di Cernusco, Ospedale di Carate, Ospedale di Gallarate, Ospedale di Gorgonzola, Ospedale di Angera, Ospedale di Treviglio e Caravaggio, Ospedale di Como, Ospedale di Cantu', Ospedale di Monza, Ospedale di Melzo S. Maria delle Stella, Ospedale di Sassuolo, Ospedale Franchini-Montecchio Reggio Emilia, Ospedale di Ponte Annicari, Ospedale di Lipari, Ospedale Muscatello (Augusta), Ospedale di Bosa, Ospedale di Ozieri, Regione, Ospedale San Paolo (Bari), Ospedale Perrino (Brindisi), Ospedale di Venere, Ospedale di Bitonto, Ospedale di Bisceglie, Ospedale di Fasano.*

117. As concerns the situation of medical personnel carrying out abortions procedures, CGIL considers that the report by President of LAIGA provides "complete data" with respect to the Region of Lazio. In this respect, the President of LAIGA states that: "In this region, out of a total of 391 gynecologists attached to hospital units, only 33 are non-objectors and perform abortions; thus 91.3% of gynecologists in Lazio are conscientious objectors". As regards other regions (Piedmont, Lombardy, Trentino Alto Adige, Abruzzo, Campania, Basilicata, Apulia, Calabria, Sicily, Sardinia), the report provides data indicating that in at least 38 hospitals there are no non-objecting gynecologists, or there is just one. According to the information provided, the hospitals in this situation are as follows:

*Ospedali Riuniti (Borgomanero), Broni hospital (Stradella), Ospedale Civile (Sondrio), Ospedale Civile (Cavalese), Ospedale Civile (Bassano), Ospedale S. Spirito, Policlinico Umberto I, A.O.S. Andrea (Rome), San Paolo hospital (Civitavecchia), Paro di Delfino hospital (Colleferro), Gonfalone hospital (Monterotondo), Coniugi Bernardini hospital (Palestrina), Paolo Colombo hospital (Velletri), S. Maria Goretti hospital (Latina), Ospedale Civile (Formia), Ospedale Civile (Frosinone), SS Trinità hospital (Sora), S. Benedetto hospital (Alatri), S. Scolastica hospital (Cassino), Belcolle hospital (Viterbo), Ospedale Civile (Tarquinia), spedale Civile S. Anna (Ronciglione), Ospedale Civile (Rieti), ASL 2 Chieti (Ortona), ASL 3 Chieti (Chieti), ASL SA (Eboli), Potenza hospital (Chiaromonte), Ospedale Civile Locri, ASP Catanzaro, Ospedale Civile Cosenza, ASP (Locri), Ospedale Civile (Cetraro), ASP 9 (Trapani), Microcitemico hospital (Cagliari), Ospedale Civile (Bosa), Ospedale Civile (Ozieri), Ospedale Civile (Businco).*

118. In this connection, in her report, the President of LAIGA declares:

"In the majority of hospitals there is an imbalance between the total number of gynecologists and the total number of non-objectors doctors, since there is a very high percentage of objectors. Many facilities do not provide the service because they have no staff. But even when there is just one non-objector there are huge problems, entailing:

- longer waiting times, with greater risks attaching to the procedure. There are numerous cases of terminations performed at the legal time-limit, that is at around 12 weeks;
- greater occupational risks for non-objecting gynecologists: extended waiting times (in many cases over 3-4 weeks from issue of the certificate to actual performance of the abortion) force doctors to adopt poor clinical practice;

- reduction of the time available for each patient during the abortion procedure, at the expense of patient protection, information and social care;
- travel by patients to other provinces or regions, or even other countries (many terminations of pregnancy beyond the ninetieth day on account of foetal disease are absorbed by hospitals in neighbouring countries, in France, Spain and the UK);
- if non-objecting staff are on holiday, the abortion service is suspended (for example, in Bari when the only non-objecting gynecologist goes on holiday, prescription of the RU-486 abortion drug is interrupted, and the free telephone number for information and appointments ceases to operate);
- if non-objecting doctors are sick, the service is suspended. For example, in Monterotondo, the only non-objecting gynecologist had a car accident: he is still on sick leave, and ever since his accident (in November 2012) the service has been suspended. In Frosinone, when the gynecologist is on sick leave, the service is similarly interrupted;
- if the only non-objector takes retirement, the unit closes – as happened, for example, in Jesi;
- if non-objectors doctors die, the service is suspended: in Naples the only non-objecting gynecologist died, but the subsequent suspension of the service led to popular protest which made it necessary to recruit a gynecologist for that purpose.”

Further to the data and considerations mentioned in the abovementioned report, CGIL provides specific information on the difficulties of implementation of Act No. 194/1978 at regional level. The latter are based on different sources, i.e. first hand testimonies, data provided by CGIL's regional agencies, press articles, books, blogs, fora, etc. This information refers to the state of enforcement of Section 9§4 of Act No. 194/1978 with respect to different hospitals, nursing homes and advice centres. It corresponds to the information provided by the complainant organisation concerned in IPPF EN v. Italy (International Planned Parenthood Federation European Network (IPPF EN) v. Italy, Complaint N° 87/2012, decision on the merits of 10 September 2013, §§112-151). The relevant documents are appended to the response to the Government's submission.

119. Having regard to the data gathered in the document provided by LAIGA, CGIL refers to cases of foreign medical centres in France, Switzerland, United-Kingdom and Slovenia, which, in the period 2010-2012, agreed to provide abortion-related services to women who could not access abortion procedures in Italy, and also notes the phenomenon of women 'migrating' from one hospital to another as well as between regions in Italy in order to obtain an abortion.

#### **4. Arguments put forward by the respondent Government in its further response**

120. The Government rejects all the arguments made by CGIL concerning the points raised in its submissions on the merits of the complaint. It considers that these arguments are nothing new, are ill-founded and devoid of justification and, with regard to the data on the application of Act No. 194/1978, fail to take account of the analyses supplied.

121. The Government underlines that the complaint merely sets out to show the limited number, or even the complete lack, of non-objecting doctors in healthcare facilities, which allegedly prevents women from having access to abortion services.

122. The Government appends to its further observations the report published by the Ministry of Health in October 2013 concerning the implementation of the above law.

#### **B – Additional information provided by the parties at the Committee's request**

##### **1. The respondent Government**

123. Concerning the merits of the complaint, after reiterating a number of points already raised in its submissions, the Government refers to "the measures currently being adopted in Italy on the subject at issue".

124. In this connection, it indicates that in June 2013 the Ministry of Health convened a "Technical Panel for the full application of Law No. 194/1978", with the participation of the regions and the National Health Institute (*Istituto Superiore di Sanità*).

125. The Government explains that this "panel" is charged with performing monitoring at national level of abortion activities and the extent to which the right to conscientious objection is exercised by gynaecologists working in private and public facilities and family counseling centres.

126. It states that the monitoring activities have revealed "no conflicts between voluntary termination services and the services dealing with childbirth (*punti nascita*)". In this connection, it refers to the relevant chapter of the Ministry of Health's report on the implementation of Act No. 194/1978, as submitted to Parliament in October 2014 (pages 43-48). This document is appended to the document setting out the additional information.

127. The Government specifies that the above-mentioned "panel" met on 14 January 2015 "to continue its monitoring work, whose aim is to provide a degree of co-ordination and comparison at national level for the full application of Law No. 194/1978". It also states that, for this purpose, the Ministry of Health has financed a project aimed *inter alia* at organising a training course, in October 2015, for regional officials in charge of monitoring any critical situations arising in relation to abortion and conscientious objection.

128. Lastly, the Government declares that it is "keeping track of every situation relating to the question put by CGIL in the interest of the persons concerned, namely the women and doctors, but above all the unborn children, with a view to the protection of their rights."

## **2. The complainant organisation**

129. In its response to the Committee's request, CGIL firstly refers to the decision on the merits of 10 September 2013, International Planned Parenthood Federation European Network (IPPF EN) v. Italy, complaint No. 87/2012.

130. CGIL notes that, in this decision, the Committee considered that the information submitted by IPPF EN and the documents approved by the Senate and Chamber of Deputies established the existence of serious problems.

131. Concerning the violation of the above mentioned article, CGIL asks the Committee to confirm the analysis and the conclusion contained in the above-mentioned decision.

132. CGIL also notes that, with regard to that decision, on 30 April 2014 the Committee of Ministers of the Council of Europe adopted a specific resolution [Resolution CM/ResChS(2014)6] in which the Committee of Ministers:

- takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights and welcomes its commitment to bring the situation into conformity with the Charter (see appendix to the resolution);
- looks forward to Italy reporting, at the time of the submission of the next report concerning the relevant provisions of the Revised European Social Charter, that the situation has been brought into full conformity.

133. CGIL notes that in the abovementioned declaration, published in appendix to the resolution of the Committee of Ministers, the Government after having indicated that it had taken note of the Decision of the Committee, stated that it considered it:

"(A)s a stimulus to better the application of Act No. 194/1978."

134. Concerning the initiatives taken in order to assess the impact of conscientious objection, CGIL notes that the Government informed the Committee of Ministers that:

" (...) In June 2013, the Ministry of Health opened a "Technical table" calling Regional Assessors, appointed to supervise Health Management in the Regional Governing Bodies, to gather data in order to assess the impact of conscientious objectors at local level."

135. With reference to these initiatives, CGIL indicates that no positive steps have been taken by the Government to address the problems with the application of Article 9§4 of Act No. 194/1978.

136. In this context, CGIL notes that the report on the implementation of the above law published in October 2014 makes no reference to the Committee's decision in IPPF EN v. Italy; nor to the Committee of Ministers' related resolution; nor to any measures taken by the ministry to remedy the deficient application of Article 9§4, as noted by the Committee in its above-mentioned decision.

137. Concerning the part of the report of the Ministry of Health devoted to conscientious objection, while supplementing the information provided in its complaint (covering the period 2003-2009), CGIL refers to the data on the levels of objection among medical and non-medical staff for the period 2010-2012.

138. In this connection, it notes that for gynaecologists the percentage of objectors rose from 69.3% in 2010 to 69.6% in 2012, whereas for anaesthetists the figure fell from 50.8% in 2010 to 47% in 2012; for non-medical staff it rose from 38.6% in 2005 to 45% in 2012. CGIL also notes significant differences between the regions: among gynaecologists percentages in excess of 80% are to be found in the following regions: Molise (90.3%), Basilicata (89.4%), the Autonomous Province of Bolzano (87.3%), Sicily (84.5%) Lazio (81.9%), Campania (81.8%) and Abruzzo (81.5%). Among the anaesthetists the highest figures are recorded in Molise (78.3%), Sicily (77.4%), Lazio (71.5%) and Calabria (71.3%). Among non-medical staff peaks can be observed in Molise (90.1%) and Sicily (80.9%).

139. After having noted these data, CGIL refers to the chapter of the report concerning the results of the ad hoc monitoring of abortions and conscientious objection.

140. CGIL observes that this chapter refers to the results of the monitoring activities regarding the impact of conscientious objection on abortion services performed by gynaecologists, carried out by the Ministry of Health in the regions between December 2013 and June 2014. CGIL points out that these activities were implemented further to the commitments entered into by the Government, in response to the motions adopted by the Chamber of Deputies and the Senate in June 2013, with a view to identifying potential deficiencies.

141. Concerning the reasons for the ministerial monitoring activities, CGIL also refers to the considerations on this issue set out in a resolution adopted by the Committee on Social Affairs of the Chamber of Deputies on 6 March 2014 (this document is appended to CGIL's reply to the Committee).

142. Concerning the data resulting from the monitoring activities, CGIL points out that, as acknowledged by the Government, the figures provided are sometimes incomplete. In this connection, CGIL notes that the number of non-objecting staff may be under-estimated (according to CGIL the number of objectors is far higher); to corroborate this statement, CGIL refers to the considerations set out in the above-mentioned resolution of the Chamber of Deputies' committee:

“According to the ministerial Report, the total number of non- objecting personnel is considered sufficient in relation to the total number of abortion procedures, the eventual difficulties in accessing such procedures appear to result from an inadequate distribution of personnel between the health facilities in the regions.

A verification is necessary since the statistics on the number of non- objectors may be overestimated, as, given that there is no obligation to inform the competent health authority of a decision to raise a conscientious objection, all the gynaecologists that have never raised an objection simply because their institutional role does not entail the performance of voluntary terminations of pregnancy could be considered as non-objectors.”

143. As to the observations made by the Ministry in this chapter, CGIL advances the following arguments:

a) It is necessary to reject the conclusion that coverage of national territory by establishments providing abortion services (hereafter "termination centres") is more than sufficient on the ground that the number of such establishments represents less than 30% of the total number of hospitals with an obstetrics and gynaecology department in only two small regions. CGIL considers that in reaching this conclusion the ministry has failed to verify whether the number of termination centres is in practice sufficient in relation to the demand for abortion. In this connection, CGIL points out that the hospitals concerned do not register requests for abortion which cannot be satisfied on account of a shortage of non-objecting staff;

b) It also calls for rejection of the Ministry's conclusion that the number of termination centres is more than sufficient as compared with the number of abortions carried out, given that, in 2012 and at national level, firstly, the ratio of births to terminations stood at 4.9 /1 and that of birth centres to termination centres at 1.3 /1 and, secondly, for every 100,000 women of fertile age (15-49) the number of birth centres as compared with the number of termination centres resulted in a ratio of 1.3 /1. CGIL considers it evident that the number of termination centres is more than sufficient as compared with the number of abortions carried out as, if that were not the case, the abortions in question would simply not have been performed. It contends that the conclusion reached in this chapter fails to take account of the fact that the alleged violation of Article 11 of the Charter concerns abortions which cannot be carried out under the conditions provided for in Act No. 194/1978 due to the difficulties in applying Article 9§4 thereof. In this context, CGIL refers to the observations made in its complaint concerning illegal abortions and the fact that the lack of non-objecting staff obliges certain women who have decided to seek an abortion under the conditions provided for by the law to travel to other regions where they can, if they can afford it, pay to have the procedure in a private establishment.

## **C - Information provided by the parties at the hearing held on 7 September 2015**

### **1. The respondent Government**

144. The Government recalls some of the information already provided. In this context, it recalls that since 1982 abortions have virtually halved, having dropped by 45%, both in absolute terms and with respect to the indicators calculated in relation to the female population of reproductive age (abortion rates and ratios), while illegal abortions and the ensuing very high maternal death-rate have been eradicated. According to the Government the number of gynaecologists performing abortions is constant and the number of abortions per week has been halved.

145. However, the Government indicates that despite these positive developments, by way of follow-up to the commitments taken on by the Minister of Health during the debate of Parliament concerning the application of Act No. 194/1978, the Minister of Health, set up a Technical Panel for the full application of Act No. 194/1978 (cf. paragraph 63 above). It recalls that the goal of this body is the monitoring of the abovementioned act across the national territory, through an ad hoc survey including the exercise of the right to conscientious objection by gynaecologists both in individual facilities and in the family planning clinics.

146. The Government indicates that “the final results” of these monitoring activities were published in the Report of the Ministry of Health presented to the Parliament on 15 October 2014. In this connection, it is stated that “as emerges from the report, the aggregate data on a regional basis do not show up any critical problems in the application of the Act No. 194 especially with reference to conscientious objection and access to services”. It is indicated that “in order to continue to ensure coordination and discussion at national level of the full application of Act No. 194, and in order to monitor any problems that might emerge at the local level, the Ministry of Health has decided to maintain the Technical Task Panel”.

147. To summarise the monitoring data surveyed in individual hospitals, the Government refers to the relevant chapter of the abovementioned report. In this framework, it recalls the identified parameters; parameter 1 is related to the provision of abortion services versus the absolute number of available facilities: in this respect, the Government concludes that according to the data, abortions are performed in 64% of available facilities with satisfactory coverage, with the exception of two very small regions; parameter 2 is related to the provision of abortion services versus the female population of reproductive age and versus birth facilities: in this respect, the Government indicates that while the number of abortions is equal to 20% of births, the number of abortion facilities is 74% of the number of birth facilities, that is to say it is greater than what it would otherwise be if the proportions between number of abortions and number of births were considered; parameter 3 is related to the average weekly number of abortions by gynaecologists: in this respect, the Government considers that the figures show that at the national level each gynecologist performs 1.4 abortions per week, an average between a minimum of 0.4



in Valle d'Aosta and a maximum of 4.2 in Lazio; that also means in the worst situation in Lazio a non-objecting doctor performs less than 5 abortions per week; the conclusion of the Government is that the number of non-objecting doctors in hospitals is therefore satisfactory.

148. The Government recalls that in order to improve the quality of the data gathered by the monitoring action that could help ensure the proper implementation of Act No. 194/1978, the Ministry of Health has provided funds of €10,000 to run a twelve-month project coordinated by the Higher Institute for Health (see paragraph 129 above). The Government considers that this project will be an opportunity to assess the potential problems present at the local level regarding *inter alia* the application of Act No. 194/1978.

149. The Government recalls that on the basis of Section 9§4, the Regions are responsible for ensuring that Act No. 194/1978 is implemented properly and adds that the Constitution attributes the task of organising healthcare services at the local level exclusively to the Regions, and therefore it is up to the Regions to mobilise health personnel where it was inadequately distributed at local and sub-regional levels. It is pointed out that the Health Minister may intervene in specific cases where problems have been invoked through ad hoc reporting. In this connection, the Government informs the Committee that in March 2015 the Health Minister signed a decree establishing a permanent crisis unit for the coordination of emergency measures in case of major problems occurring in the delivery of services by the National Health Service.

150. As regards the waiting time between the request for an abortion and the performance of the procedure, the Government indicates that the last Ministerial report confirms that the waiting time between the issuing of a certificate and the procedure is decreasing. 61.5% of women have an abortion within one week from requesting the procedure and there is a decrease in the number of those who wait for more than two weeks from the request for the procedure. The Government considers that this figure confirms the time trend according to which the waiting time for the procedure is constantly declining, and this is a further indication of the improvement in access to abortion services.

151. The Government indicates that the number of conscientious objectors has increased a little from 69.2% to 69.6%, but waiting time has decreased at national level. According to the Government, specific regional situations demonstrate different trends: for example in Lazio, the number of conscientious objectors in the last six years has increased but the waiting time for abortion has decreased, similar trend is shown in Piedmont. On the other hand in Lombardy, the number of objectors has decreased but waiting time has increased, similar trends can be seen in Umbria, Tuscany and Marche. In Emilia Romagna the picture is different still: the number of objectors has decreased but also has the waiting time. The Government concludes that "there is no correlation between the number of conscientious objectors and the application of the law: The way in which the law is applied depends substantially on regional organisation which is the result of a number of contributing factors that of course vary from one Region to another, and probably even within the same Region".

152. The Government states that in December 2014 “certain representatives of the Ministry of Health met with the representatives of LAIGA”. According to the Government “the representatives of LAIGA were asked to file reports on failures to apply the law and on any specific problems identified at the sub-regional level”. In this respect, it is pointed out that “no specific report has been filed with the Ministry by LAIGA”.

## **2. The complainant organisation**

153. CGIL states that the state of violation as depicted by the Committee in IPPF-EN v. Italy, Complaint 87/2012, decision on the merits of 10 September 2013 has remained completely unchanged, “if not actually deteriorated”. In particular, the complainant organisation argues that no discernible measures were taken by the Government for resolving all the cases which it has duly brought to the attention of the Committee in the framework of the written procedure.

154. CGIL argues that the Government, in all official acts following the above mentioned decision, “has never made reference to the above mentioned decision” and “has consistently denied any kind of problem”. In this context, the following documents are mentioned:

- a) documents lodged by the Government during the current complaint;
- b) first declaration by the Government published as an appendix to the Committee of Ministers Resolution of 30 April 2014 concerning the Committee’s decision on IPPF EN v. Italy;
- c) report presented on 15 October 2014 by the Ministry of Health to the Italian Parliament on the state of application of Act No. 194/1978.

155. As regards the Technical Task Panel and the organisation of a training course for the operators mentioned by the Government (see paragraphs 126 and 129 above), CGIL observes that these measures are not fit to overcome the material problems already established by the Committee, but represent at best a procedure for ordinary implementation of Act No. 194/1978. Furthermore, CGIL brings to the Committee’s attention thirty new questions tabled in the Parliament in the period 2013-2015 which have not been answered by the Government.

156. With reference to one of the grounds adduced by the Government to justify the request for the hearing, CGIL indicates that the President of LAIGA has released written declarations stating that during the meeting held in Rome with representatives of the Ministry of Health “the problems concerning non-objecting doctors was not raised”. The object of the meeting, in the opinion of the President of LAIGA, “was solely the violation of women’s rights, hence the problems of access to the service”. According to CGIL, during the meeting in question the Ministry asked LAIGA to carry out monitoring of the entire demand for abortions. LAIGA responded that, “not being an official public entity, it was obviously unable to inquire into the actual demand for voluntary termination of pregnancy”. CGIL considers that this aspect is of particular importance because, “in the Ministry report it is stated that the number of non-objecting doctors is quite consistent with the voluntary terminations of pregnancy performed”.

157. While referring to the extensive documentation already lodged, CGIL invokes in this connection the substance of the resolution passed by the Social Affairs Committee of the Chamber of Deputies of March 2014, which explicitly mentions “the overestimation of non-objecting doctors with corresponding underestimation of objecting doctors”.

158. Concerning the phenomenon of migration of women abroad, CGIL emphasises that the migration phenomenon not only concerns foreign countries, but also involves movement within Italian borders, whereby women are compelled to move from one town to another, from one hospital to another within the same town, or even to a different region, with obvious discrimination of an economic, social and territorial nature, already clearly determined by the Committee in the decision IPPF EN v. Italy. CGIL stresses that this phenomenon was already recognised when the Chamber of Deputies passed Motion No. 45 in June 2013. CGIL draws the attention of the Committee to the difficulty in finding data on the entire demand for abortions, because “there is not an institutional system registering unfulfilled requests for termination of pregnancy”. In this connection, CGIL refers to the information contained in the relevant report drafted by the President of LAIGA (see paragraph 115 above).

## **D. – Assessment of the Committee**

### **1. Object of the complaint and of the decision of the Committee**

159. In the text of the complaint, the allegations of CGIL are essentially based on a demonstration of the inadequacy of Article 9§4 of Act No. 194/1978 due to the fact that the vast majority of medical practitioners and other health personnel exercise their right to conscientious objection. CGIL underlines that this situation prevents effective access to abortion procedures in Italy and, in so doing, undermines the right of women to the protection of their health.

160. The Committee notes that, in its response to the submissions of the Government, CGIL without referring to an alleged inadequacy of the aforementioned Article, considers that the difficulties of access to abortion procedures are due to the particularly high number of health personnel exercising their right to conscientious objection and the fact that the measures taken by the competent authorities under Article 9§4 of Act No. 194/1978, in order to cope with this phenomenon, are not sufficient.

161. In this regard, in the document providing additional information to the Committee, CGIL requests the Committee to find that the failures in the implementation of Article 9§4 do not allow the effective exercise of the right of women to access abortion services and, consequently, a satisfactory implementation of Article 11 of the Charter. In other words, CGIL asks the Committee to confirm the assessment that it adopted in the decision on the merits of 10 September 2013, IPPF EN v. Italy, complaint No. 87/2012.

162. As regards the rights that CGIL alleges are violated, the Committee recalls that, as stated in the aforementioned decision, the central legal question at stake in the complaint concerns the protection of the right to health.

163. As in its decision in IPPF EN c. Italy, the Committee is called to rule on the adequacy of measures taken by the relevant authorities to ensure effective access to the services responsible for carrying out abortion procedures defined by national legislation as a form of medical treatment related to the protection of health and well-being, which therefore can be considered as falling within the scope of Article 11 of the Charter.

164. The Committee notes that, in referring to the legislative provisions governing the right to health of women in case of abortion, the Government states that Act No. 194/1978 was adopted within the framework of a "margin of appreciation" under Article G of the Charter. The Committee notes that the complaint does not refer to the exercise of the right to conscientious objection guaranteed by the above mentioned Act as a restriction or limitation on the right of women to protect their health. Given the above, the Committee considers that Article G of the Charter is not applicable to the allegations in the complaint.

165. Regarding the applicable caselaw and other relevant sources the Committee recalls that:

"[i]n connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, (...) the 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" (IPPF EN v. Italy, complaint No. 87/2012, decision on the merits of 10 September 2013, §162).

166. In light of the above, the Committee considers that

"the provision of abortion services must be organised so as to ensure that the needs of patients wishing to access these services are met. This means that adequate measures must be taken to ensure the availability of non-objecting medical practitioners and other health personnel when and where they are required to provide abortion services, taking into account the fact that the number and timing of requests for abortion cannot be predicted in advance." (IPPF EN v. Italy, *ibid.*, §163).

167. The Committee recalls that as stated by the National Committee of Bioethics (*Comitato Nazionale per la Bioetica*):

"[t]he statutory protection of conscientious objection should neither limit or hamper the exercise of the rights guaranteed by law (...)" (cf. Conscientious objection and bioethics - *Obiezione di coscienza e bioetica*) - p. 18). (IPPF EN v. Italy, *ibid.*, §165)

168. As regards, on the one hand the relationship between access to abortion services and on the other hand the right to conscientious objection of medical practitioners, the Committee refers to the different motions adopted recently by the Chamber of Deputies of the Parliament the content of which can be taken to reflect

what is provided by Article 11 of the Charter. In this context, the Committee considers that the following statements appear relevant:

- "(...) [Act No. 194/1978] distinguishes between the individual right to object and women's right to freedom of choice in matters of procreation and between the individual's right to object to a law of the State and the States' obligation to provide the required service (...)" (cf. Motion No. 1-00074) (see paragraph 59 above);

- "(...) Health personnel are guaranteed that they will be able to raise an objection of conscience. But this is an individual right, not a right of the health care structure as a whole, which is obliged to guarantee the provision of health care services" (cf. Motion No. 1-00045) see paragraph 59 above).

169. In this context, the Committee refers also to the position expressed in Parliament, according to which

"(...) it is not the number of objectors in itself to determine the state of access to abortion procedures, but the way in which health facilities organise the implementation of Act No. 194/1978" (cf. Motion 1/00079, Chamber of Deputies) (see paragraph 59 above).

## **2. Assessment of the arguments of the parties submitted between January and November 2013**

170. Regarding the allegations contained in the complaint and other documents presented by CGIL during the proceedings, referring to the assessment made in the decision on the merits of 10 September 2013, IPPF EN v. Italy, Complaint No. 87/2012, §168, the Committee considers that:

a) "the provisions of Section 9§4 establish a balanced statutory framework for the fulfilment of the goals of Act No. 194/1978. "

b) "the high number of objecting health personnel in Italy does not *per se* constitute evidence that the domestic legal provisions at stake are being implemented in an ineffective manner;"

c) "(a) the obligation for hospitals and nursing homes to take steps to ensure that abortion procedures are carried out "in all cases" as laid down in Sections 5, 7 and 8 of the said act, and b) the regions' responsibility to ensure that this requirement is met, represent a suitable legal basis to ensure a satisfactory application of Article 11" (decision on the merits IPPF EN v. Italy (see above), §168).

171. Furthermore the Committee considers that certain information provided by CGIL as well as other relevant elements referring to the allegations made by CGIL, featured in documents published in June 2013 by the Senate and Chamber of Deputies of the Parliament, including declarations made by the Minister of Health on 11 June 2013 (see paragraph 61 above), indicate that the competent authorities have not yet remedied the problems found by the Committee in its decision IPPF EN v. Italy as regards the implementation of Article 9§4 of Act No. 194/1978.

172. In this context, as found in the above mentioned decision, the Committee finds the persistence of the following situations:

- a) decrease in the number of hospitals or nursing homes where abortions are carried out nation-wide (see paragraph 101 above);
- b) significant number of hospitals where, even if a gynecology unit exists, there are no non-objecting gynaecologists, or there is just one (see paragraphs 97-99, 116-117 above);
- c) disproportionate relationship between the requests to terminate pregnancy and the number of available non-objecting competent health personnel within single health facilities (see paragraphs 116-118 above) - which risk the creation of extensive geographical zones where abortion services are not available notwithstanding the legal right to access such services established under the law;
- d) excessive waiting times to access abortion services (see paragraph 118 above);
- e) cases of non-replacement of medical practitioners who are not available due to holiday, illness, retirement, etc. (see paragraph 118 above) - which pose the risk of substantial disruption to the provision of abortion services;
- f) cases of deferral of abortion procedures due to an absence of non-objecting medical practitioners willing to perform such procedures (see paragraphs 118 above);
- g) cases of objecting health personnel refusing to provide the necessary care prior to or following abortion (see paragraph 120 above).

173. In this respect, the Committee notes that the Government has provided insufficient information on the above mentioned situations in order to refute the allegations made by CGIL.

174. As regards the arguments put forward by the Government, similar to those put forward in the complaint IPPF EN, the Committee considers that the evidence presented relating to the good functioning of the “abortion prevention services”, namely the “the reduction in the number of abortions, in the abortion rate and in the number of repeated abortions”, and in relation to the “stable number of urgent procedures” and “the shorter time between the certification and the procedure” does not rebut the arguments made by CGIL that pregnant women encounter problems in accessing abortion procedures in many regions of Italy.

175. Moreover, the Committee considers that it has not been demonstrated by the Government that the measures that have been taken in response to these problems, namely the encouragement of “staff mobility” and “the conclusion of agreements with specialized obstetrics and gynaecology service providers” on the one hand; and the “increase in the number of one-day hospital procedures” and the “recent introduction of pharmacological abortion” on the other hand, guarantee in practice effective access to abortion procedures throughout the country.

176. As in its assessment in the abovementioned decision, the Committee recognises the merits of the argument by the Government that the large percentage of women having abortions before the tenth week of gestation and the very low rate of complications - no death or serious complications were identified as a result of an abortion – demonstrate that abortions are less dangerous for women who have recourse to them.

177. However, it considers that it is still not established that mechanisms have been put in place to ensure that access to safe abortion services, or to ensure care before and after abortion, is guaranteed, notably when the hospital or the health center has a particularly high number of conscientious objecting staff.

### **3. Consideration of the arguments and information submitted in May 2015 and at the public hearing held on 7 September 2015**

178. In its reply to the question of the Committee regarding the submission of further additional information, the Government refers to “measures currently being adopted in Italy” concerning abortion and conscientious objection, and states that it “is following every situation relating to the issues put by CGIL in the interest of the persons concerned (...) with a view to the protection of their rights”.

179. In this context, the Government indicates that, in June 2013, the Minister of Health initiated monitoring activities, in collaboration with the Regions, concerning abortion procedures and the conscientious objection of gynaecologists concerned, in view of the full implementation of Act No. 194/1978. The Committee notes the specification by the Government that these monitoring activities are undertaken in view of the full application of the law in question.

180. The Committee recognises that the monitoring activities represent a first critical step towards the eventual adoption of measures to resolve the identified problems. In this regard, the Committee notes that in the Resolution adopted on 6 March 2014, the Committee on Social Affairs of the Chamber of Deputies declared that:

“The monitoring activity initiated by the Government was rightly decided in order to verify the possible problems of implementation of Law No. 194, with particular reference to the issue of conscientious objection.”

181. The Committee also notes that in anticipation of the results of the monitoring activities, in the abovementioned Resolution the Committee on Social Affairs invited the Government:

“... to report to the competent parliamentary committees on the initiatives taken by the ministry itself in application of the commitments it entered into on 11 June 2013 before the Chamber of Deputies, as set out in the motions adopted on this subject, and to take all the necessary measures to ensure the implementation of Article 9§4 of Law No. 194, in all regional health systems, especially as regards the obligation to monitor and ensure the right of a woman to a free and conscious choice, and this even using a different staff mobility and ensuring the presence of a suitable network services in the territory of each region.”

182. Despite the on-going nature of the monitoring activities, the Committee notes the declaration of the Government in the abovementioned reply that they have “revealed no conflicts between voluntary termination services and the services dealing with childbirth”. In this regard, the Government refers to the chapter relating to the (first) results of these monitoring activities, contained in the report of the Minister of Health on the implementation of Act No. 194/1978, submitted to Parliament in October 2014.

183. The Committee, first of all, notes that the abovementioned chapter contains wording which reveal uncertainties with regard to the full implementation of Section 9§4 of Act No. 194/1978. In this respect, reference is made to the following statements:

“... the number of non-objectors at regional level seems to be compatible with the number of terminations carried out ...”;

and

“... any problems of access to a voluntary termination of pregnancy may be due to local organisational difficulties, which, following this monitoring exercise, will now be easier to pinpoint.”

184. Furthermore, the Committee notes that, as is recognised by the Government, the information contained in the abovementioned chapter refer to data which are sometimes incomplete. The Committee also notes that, as was raised by CGIL, the number of non-objecting medical staff could be overestimated.

185. The Committee underlines firstly having regard to the fact that in a number of regions the number of institutions providing abortion services constitute fewer than 30% of the total number of institutions offering obstetric and gynaecological services, this does not justify the conclusion contained in the report according to which the national coverage of such institutions is “more than satisfactory”. It notes that it is not certain that a record is kept of the number of women to whom abortion services were refused due to the lack of non-objecting personnel.

186. Secondly, the Committee considers that the data relative to the ratio of births to abortions, on the one hand, and the facilities for childbirth and abortion, on the other, do not substantiate the conclusion contained in the abovementioned report according to which the number of such facilities “is more than sufficient, having regard to the number of abortions carried out”. As also pointed out by CGIL this conclusion does not take into account the fact that the alleged violation of Article 11 of the Charter refers to abortion procedures which could not be carried out despite the relevant provisions of Act No. 194/1978 being fulfilled.



#### **4. Conclusion**

187. The Committee considers that the additional arguments advanced by the parties do not modify its assessment of the situation.

188. Taking account of the foregoing, and having regard to the assessment in its decision on the merits of the complaint IPPF EN v. Italy, the Committee notes that:

- a) the shortcomings which exist in the provision of abortion services in Italy as a result of the problems described in paragraph 174 above remain unremedied and women seeking access to abortion services continue to face substantial difficulties in obtaining access to such services in practice, notwithstanding the provisions of the relevant legislation;
- b) the aforementioned health facilities still do not adopt the necessary measures in order to compensate for the deficiencies in service provision caused by health personnel who decide to invoke their right of conscientious objection, or the measures adopted are inadequate;
- c) in such cases, the competent regional supervisory authorities do not ensure a satisfactory implementation of Section 9§4 within the territory under their jurisdiction.

189. Furthermore, the Committee notes that the situation raised in the abovementioned decision – in which it appears that in some cases, given the urgent character of the procedures needed, women wishing to seek an abortion may be forced to move to other health facilities, in Italy or abroad, or to terminate their pregnancy without the support or control of the competent health authorities, or may be deterred from accessing abortion services which they have a legal entitlement to receive in line with the provisions of Act No. 194/1978 – continues to prevail.

190. The Committee emphasises that these situations may involve considerable risks for the health and well-being of the women concerned, which is contrary to the right to the protection of health as guaranteed by Article 11 of the Charter.

191. For these reasons, the Committee holds that there is a violation of Article 11§1 of the Charter.

## **PART II: ALLEGED VIOLATION OF ARTICLE E READ IN CONJUNCTION WITH ARTICLE 11§1 OF THE CHARTER**

192. Article E of the Charter reads as follows:

### **Article E – Non-discrimination**

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

## **A – Arguments of the parties**

### **1. The complainant organisation**

193. CGIL considers that the inadequate implementation of the legislation described with respect to Article 11 also amounts to a breach of the principle of non-discrimination guaranteed in Article E.

194. CGIL maintains the discrimination to be twofold with regard to access to abortion services. The first type of discrimination is of a territorial and economic nature between women seeking to access abortion services in different parts of the territory because the difference in treatment is not based on any objective and reasonable justification. Women living in areas where there is no provision of services are obliged to travel to other areas or, if they have the means to do so, pay for private services.

195. According to CGIL, the second type of discrimination takes place between women seeking access abortion services as a health service, and those seeking access to other health services, regardless of whether they are pregnant or not.

196. It points out that that Article E does not contain an exhaustive list of grounds of discrimination. Differences in territorial application are thus prohibited similarly as the prohibited grounds of discrimination expressly enlisted in Article E. The equal territorial implementation of a law is an important element of the principle of equality before the law. All over Italy, women must be guaranteed effective access to abortion facilities.

197. CGIL considers that the situation is in violation of Article E read in conjunction with Article 11§1 of the Charter.

### **2. The respondent Government**

198. The Government points out that the law prohibits discrimination. It considers the documentation presented by CGIL to support its argument as insufficient in this regard.

199. However it further argues that the law strikes a fair balance between the various rights at stake, the right to life and health of a woman and the right to conscientious objection. It refers in this respect to Part V of the Appendix to the Charter on Article E, which provides a differential treatment based on an objective and reasonable justification shall not be deemed discriminatory. The Government furthermore invokes the applicability of Article G (margin of appreciation).

200. It also argues that the objecting medical personnel avails itself of a fundamental right, whereas access to abortion is not a human right.

201. The Government also observes that only the National Health Service (NHS) and a small number of private service providers in consultation with NHS are authorised to perform abortions in Italy. Recourse to private, non-authorised abortion providers is furthermore expressly prohibited in Section 8 of Act No. 194/1978. Sections 8 and 19 of the said Act similarly prohibit all forms of payment for abortion and provide for appropriate penal sanctions. On the basis of these considerations, the Government contests that those unable to access the public abortion would be forced to turn to private actors.

## **B – Assessment of the Committee**

202. Similarly as above with regard to Article 11 of the Charter, the Committee notes that CGIL's allegations concerning Article E taken together with Article 11 are almost identical to those examined in IPPF EN v. Italy (cited above, §179).

203. Two forms of discriminatory treatment are alleged to exist in this complaint: (i) discrimination on the grounds of territorial and/or socio-economic status between pregnant women who have access to lawful abortion and those who do not; (ii) discrimination on the grounds of gender and/or health status between women seeking access to lawful abortion and men and women seeking access to other lawful forms of medical procedures, which are not provided on a restricted basis.

204. The Committee considers that the allegation that discrimination exists on the grounds of health status between women seeking access to lawful abortion services and others seeking access to other lawful forms of medical procedures, which are not provided on a restricted basis, constitute a claim of 'overlapping' or 'multiple' discrimination, whereby certain categories of women are allegedly subject to less favourable treatment in the form of impeded access to lawful abortion as a result of the combined effect of their health status, territorial location and socio-economic status.

205. As regards the allegation of discrimination on the grounds of territorial and/or socio-economic status between pregnant women who have access to lawful abortion and those who do not; the Committee recalls having established in the decision in IPPF EN v. Italy (cited above), that as a result of the lack of non-objecting medical personnel, pregnant women are in some cases forced to travel to another region or to travel abroad. With reference to its findings under Article 11, the Committee confirms this assessment since nothing in the submissions of the Government indicates any significant change in the practical implementation of Section 9§4.

206. In other words, the public authorities fail to ensure an efficient organisation of the services providing access to abortion, taking into account the right to conscientious objection. As a result, many women are deprived of an effective access to abortion services.

207. Pregnant women seeking to access abortion services are therefore treated differently depending on the area in which they live; in addition, the differential treatment on this basis may by extension have an adverse impact on women in lower income groups who may be less able to travel to other parts of Italy or abroad in order to access abortion services.

208. The Committee considers that there is no public health or public policy justification for this difference in treatment. It arises solely due to the inadequate implementation of Act No. 194/1978. Therefore the difference in treatment amounts to discrimination and constitutes a violation of Article E in conjunction with Article 11 of the Charter.

209. The second allegation claims that discrimination exists on the grounds of health status between women seeking access to lawful abortion services and women seeking access to other lawful forms of medical procedures, which are not provided on a restricted basis.

210. The Committee firstly considers that the groups are comparable as they are all seeking access to medical services provided by the public authorities in accordance with legislation. The Committee considers the difference in treatment to be established as a result of its findings under Article 11 of the Charter.

211. The Committee further observes that the Government has not invoked any objective justification for the difference in treatment. The Committee considers that even if the difference in treatment were to be based on an objective justification it could not be proportionate to such a potential objective, since, because of the specific conditions of access to abortion services, the situation amounts to a denial of access to these services. As a consequence, the difference in treatment constitutes discrimination and therefore a violation of Article E in conjunction with Article 11 of the Charter.

## **PART III: ALLEGED VIOLATION OF ARTICLE 1§2 OF THE CHARTER**

212. Article 1§2 provides as follows:

### **Article 1 - The right to work**

“Part I: Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

“Part II: With a view to ensuring the effective exercise of the right to work, the Parties undertake:

[...]

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;

[...].”

## **A – Arguments of the Parties**

### **1. The complainant organisation**

213. CGIL alleges a violation of Article 1§2 of the Charter which prohibits discrimination in employment on the grounds that non-objecting medical practitioners are discriminated against in terms of workload, career opportunities and protection of health and safety. The insufficient number of medical practitioners to carry out abortion means that non-objecting medical practitioners have an excessive workload.

214. It refers to statistics on the numbers of non-objecting medical practitioners which allegedly demonstrate that in some parts of Italy abortions are performed by a very small number of medical personnel (e.g. one operational doctor per hospital at a minimum).

215. CGIL maintains that the grounds on which discrimination is prohibited is not exhaustive in Article 1§2 of the Charter and can be extended to include discrimination on grounds of belief.

216. Non-objecting medical practitioners suffer from direct and indirect discrimination in this respect. Discrimination results from the absence of appropriate measures to ensure that all medical personnel can effectively exercise their rights. CGIL argues that the relevant authorities have failed to take adequate steps to ensure that all the rights at work that are in principle open to all are genuinely accessible also to the non-objecting medical personnel.

217. CGIL also maintains that the situation amounts to a violation of Article 1§2 of the Charter on the grounds that, given the limited number of non-objecting medical practitioners, they are forced to undertake without adequate assistance and support,

a sole type of intervention, namely abortion procedures, in breach of the prohibition on forced labour. CGIL emphasises that non-objecting practitioners are required to exclusively carry out abortion procedures, and are unable therefore to carry out other procedures, for which they have been trained and thereby negatively affecting their possibility to develop their professional competencies.

218. CGIL lastly alleges a breach of Article 1§2 of the Charter on the grounds that non-objecting medical practitioners are prohibited from exercising their right to earn their living in an occupation freely entered upon. CGIL relies on the Committee's case law on the right to privacy of employees.

219. CGIL in support of its arguments refers to a publication: "Notes on the application of the Act No. 194/1978 in Italy" by Silvana Agatone, President of LAIGA, a third-party intervener to IPPF EN v. Italy, which includes testimony from non-objecting medical practitioners; for example:

"For the application of Law 194, the non-objecting gynaecologists are often the only ones needing to undertake multiple tasks, including sometimes those of anaesthetists, assistants, and of other personnel who have also raised conscientious objection"

"It is not rare that during an operational session, if the assistant is not present, it is the doctor themselves who undertakes to place the patient on the operating table, or when the anaesthetist is absent, the non-objecting gynaecologist equally proceeds without their help, thus taking on a large supplementary stress and responsibility ."

"Almost immediately everyone came out as an objector. Only two of us were left, without even one anaesthetist, and at the same time the workload grew out of all proportion. I couldn't attend conventions I couldn't take time off or do anything else: I was alone, the only one performing abortions. I held on for ages - without me the service would close- but I now felt it was an unsustainable burden."

A non-objector is often forced to make long and tiring journeys in order to perform terminations of pregnancy in an establishment other than the hospital to which he or she belongs.

Article 9 of Law 194 refers to "ensuring the interventions also through staff mobility", but here too it is always the non-objector who bears the fatigue and the increased workload and responsibility, becoming a commuter within the region.

220. CGIL also cites motions approved by the Chamber of Deputies which call upon the Government to take measures to prevent discrimination between objecting and non-objecting health care staff (for example Motion tabled by Miglore and others, no. 1-00045, Motion tabled by Brunetta and others, No. 1-00079) as well as statements from regional counselors.

221. Finally it provides numerous examples of direct testimonies from medical practitioners:

“My assistant, (...), was to sit a competition to become a head doctor and he was advised to raise a conscientious objection. The other two gynaecologists followed his example.”

“...doctors who are objectors are given preferential treatment in terms of their career and earnings prospects.”

“The truth is that no one wants to perform abortions any longer because they are discriminated against in their career and obliged to work alone and to carry out only those operations.”

## **2. The respondent Government**

222. The Government responds very generally to these allegations referring to the National Italian Committee on Bioethics document of 12 July 2012, as well as Act No. 194/1978.

223. The Government states that the situation complained of results from attempts to balance the right to conscientious objection with the statutory right to access abortion services provided by Act No. 194/1978. Reducing the number of objecting medical personnel must in the Government's view be balanced against the need to safeguard the continued access to the medical professions of such personnel.

224. The Government refers to a statement by the National Bioethics Committee of 12 July 2012, according to which:

“The law must provide appropriate measures to ensure the delivery of services, [...]. Conscientious objection in bioethics must be regulated in such a way that there is no discrimination of objectors or non-objectors and therefore no burdening of either, on an exclusive basis, with services that are particularly heavy [...]. For this purpose, we recommend the setting up of an organisation of tasks and recruitment in the fields of bioethics, in which conscientious objection is applied, which may include forms of personnel mobility and differentiated recruitment so as to balance, on the basis of available data, the number of objectors and non-objectors.”

225. It further maintains that conscientious objection is “partly balanced by staff mobility and agreements with specialised obstetrics and gynaecology services.”

## **B – Information provided at the hearing held 7 September 2015**

### **1. The complainant organisation**

226. The representative of CGIL submits that there is a link between the already established violation of women's rights and the labour rights of non-objecting doctors. CGIL has further testimony from non-objecting doctors attesting to their

poor working conditions, failure to pay overtime or properly compensate doctors for work performed.

227. The representative from CGIL highlights the difficulties doctors face when seeking to report their poor working conditions, and also the difficulties faced by them when seeking to gather testimonies.

228. It also refers to testimony of non-objecting doctors who bear very heavy workloads as a result of being the sole non-objecting doctors where they work.

229. As regards the Government's argument that the number of non-objecting doctors is satisfactory when compared with the number of abortions performed, CGIL states that this was due to an overestimation of the number of non-objecting doctors and an underestimation of objecting doctors.

230. CGIL refers to motions No. 1-00045 and No. 1-00079 adopted by the Chamber of Deputies in June 2013 which call on the Government to eliminate discrimination between objecting and non-objecting doctors.

## **2. The respondent Government**

231. The Government recalls that in 1983 the number of abortions performed by a gynaecologist per week was 3.3 while in 2011 the number of abortions performed by a gynaecologist per week was 1.6 assuming that there are 44 working weeks in a year. Recent figures show that at the national level, each gynaecologist performs 1.4 abortions per week, an average between a minimum of 0.4 in Valle d'Aosta and a maximum of 4.2 in Lazio. That also means in the worst situation in Lazio a non-objecting doctor performs less than five abortions per week. The conclusion is that the number of non-objecting doctors in hospitals is therefore satisfactory.

232. The Government states that it was not aware of widespread problems relating to non-objecting doctor's working conditions.

## **C – Assessment of the Committee**

### **i) Discrimination**

233. The Committee recalls that Article 1§2 requires the States having accepted it to effectively protect the right of workers to earn their living in an occupation freely entered upon. This obligation requires, *inter alia*, the elimination of all forms of discrimination in employment regardless of the legal nature of the professional relationship (*Syndicat national des Professions du Tourisme v. France*, Complaint No. 6/1999, decision on the merits of 10 October 2000, §24; *Quaker Council for European Affairs (QCEA) v. Greece*, Complaint No. 8/2000, decision on the merits of 25 April 2001, §20; *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, complaint No. 74/2011, decision on the merits of 2 July 2013, §104).



234. It recalls that discrimination is defined as a difference in treatment between persons in comparable situations, where the treatment does not pursue a legitimate aim, is not based on objective and reasonable grounds or is not proportionate to the aim pursued (*Syndicat national des Professions du Tourisme v. France*, Complaint No. 6/1999, decision on the merits of 10 October 2000, §§24-25).

235. Indirect discrimination may arise by failing to take due and positive account of all relevant differences between persons in a comparable situation or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (*Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52).

236. Discriminatory acts prohibited by Article 1§2 are those that may occur in connection with employment conditions in general (in particular with regard to remuneration, training, promotion, transfer and dismissal or other detrimental action) (Conclusions XVI-1 (2002), Austria).

237. The Committee recalls that in respect of complaints alleging discrimination, the burden of proof should not rest entirely on the complainant organisation, but should be shifted appropriately (*Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No. 41/2007, decision on the merits of 3 June 2008, §52; *IPPF EN v. Italy*, cited above, §189).

238. As regards the allegations on discrimination at work, the Committee considers discrimination on the grounds of conscientious objection, or of non-objection, to fall within the scope of the prohibited grounds of discrimination under Article 1§2 of the Charter.

239. It further observes that the allegations with regard to the protection at work relate to discrimination between two groups of medical practitioners, those who raise conscientious objection to abortion within the meaning of Section 9§4 of Act No. 194/1978 and those who do not.

240. The Committee considers that the non-objecting and objecting medical practitioners are in a comparable situation, because they have similar professional qualifications and work in the same field of expertise. They accordingly constitute comparable groups of workers for the purposes of Article 1§2.

241. The Committee notes that CGIL has provided a wide range of evidence demonstrating that non-objecting medical practitioners face several types of cumulative disadvantages at work both direct and indirect, in terms of workload, distribution of tasks, career development opportunities etc. In particular it notes the evidence of the President of LAIGA and the motions approved by the Chamber of Deputies which, *inter alia*, call upon the Government to “to take steps to establish a technical monitoring board with the regional Assessors so as to verify that Act No. 194/1978 is being fully and correctly implemented, especially Articles 5, 7 and 9,

with the aim of preventing any form of discrimination between objecting and non-objecting health care staff, also through modified management and mobility of staff guaranteeing the existence of an adequate services network in each region" (Motion tabled by *Miglione* and Others, No. 1-00450) as well as the numerous direct testimonies which demonstrate a lack of career opportunities including promotion for non-objecting medical practitioners, excessive workload and aggravated working conditions.

242. The Committee notes that the Government has provided virtually no evidence contradicting the evidence supplied by CGIL. It has not demonstrated that discrimination is not widespread.

243. The Committee finds that this difference in treatment (the disadvantages suffered by non-objecting personnel) between non-objecting medical personnel and objecting personnel arises simply on the basis that certain medical practitioners provide abortion services in accordance with the law, therefore there is no reasonable or objective reason for this difference in treatment.

244. Consequently, the Committee holds that the difference in treatment between the objecting and non-objecting medical practitioners amounts to discrimination in violation of Article 1§2 of the Charter.

## **ii) Forced labour**

245. Article 1§2 also covers issues related to the prohibition of forced labour (International Federation of Human Rights Leagues (FIDH) v. Greece, Complaint No. 7/2000, decision on the merits of 5 December 2000, §17), as well as certain other aspects of the right to earn one's living in an occupation freely entered upon (FFFS v. Norway, cited above, §104).

246. Forced or compulsory labour in all its forms must be prohibited. The definition of forced or compulsory labour is based on Article 4 of the European Convention on Human Rights and on Article 2§1 of ILO Convention No. 29 on forced labour: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Forced labour is understood as "coercion of any worker to carry out work against his wishes and without his freely expressed consent" (see Conclusions III (1973), p. 5).

247. However, the Committee considers that the current complaint raises issues relating to the first aspect of Article 1§2, prohibition of discrimination and not to forced labour or any other aspect of the right to earn one's living in an occupation freely entered upon.

248. Therefore the Committee holds that there is no violation of Article 1§2 of the Charter in this respect.

## **PART IV: ALLEGED VIOLATION OF ARTICLE 2§1 OF THE CHARTER**

249. Article 2§1 provides as follows:

### **Article 2 - The right to just conditions of work**

"Part I: All workers have the right to just conditions of work."

"Part II: With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;  
[...]."

## **A – Arguments of the parties**

### **1. The complainant organisation**

250. CGIL alleges a violation of Article 2§1 of the Charter on the grounds that, given the heavy workload of non-objecting medical personnel in carrying out abortions and the distribution of the workload, there is a risk that this will lead to unreasonable daily and weekly working hours.

251. It refers in this regard to the opinion of the European Commission, issued within pending infringement proceedings before the Court of Justice of the European Union. The proceedings have been initiated pursuant to several complaints concerning the fact that doctors are obliged to work excessive hours due to the insufficient implementation of the relevant Directive (Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18 November 2003, pp. 9-19).

252. CGIL further refers to a publication by the President of LAIGA (Notes on the application of Act No. 194/1978 in Italy), cited above, pp. 29, 35), which includes testimony from non-objecting medical practitioners.

"Often, the non-objector is obliged to work long and tiring shifts in order to perform IVGs in establishments outside their hospital."

253. It also cites motions approved by the Chamber of Deputies which make reference to the heavy work load of non-objecting doctors.

254. In response to the Governments figures, which indicate that non-objecting doctors on average carry out a low number of abortions, CGIL argues that the data used is by no means certain, the number of non-objecting doctors could be overestimated as there is no obligation for a doctor to inform the hospital in which he/she is employed of a decision to become a conscientious objector. It refers in this respect to a Resolution adopted by the Committee on Social Affairs of the Chamber of Deputies on the "Report on the state of implementation of Act No. 194/1978 governing the social protection of motherhood and voluntary terminations of pregnancy" (6 March 2014).

## **2. The respondent Government**

255. The Government responds very generally to these allegations referring to the National Italian Committee on Bioethics document of 12 July 2012, as well as Act No. 194/1978 (see above §§222-226).

256. It maintains that the law adequately protects worker's rights and is entirely compatible with Article 2§1 of the Charter.

257. It submitted the latest report on the implementation of Act No. 194/1978, submitted by the Ministry of Health to the Parliament, and notes that pursuant to the report, a non-objecting gynaecologist is on average required to perform 1.4 abortions per week, whereas a doctor who objects to abortions is not required to do so (Report of 15 October 2014, p. 7).

## **B – Assessment of the Committee**

258. The Committee observes that the provisions of the Charter on working time are intended to protect workers' safety and health in an effective manner. Every worker must receive rest periods adequate for recovering from the fatigue caused by their work.

259. The Committee recalls that weekly working time of more than sixty hours is too long to be considered as reasonable under Article 2§1. This is a limit which cannot be exceeded even in the context of flexibility schemes, where compensation is granted by rest periods in other weeks (Conclusions 2010, Albania, Article 2§1).

260. The Committee observes that it has not been provided with any information on the average working time of non-objecting medical practitioners. It was provided with evidence on excessive workload which it has considered under Article 1§2. No substantiated allegations have been made on their average daily working times, the reference periods for calculating working time, the arrangements providing for shifts for health care professionals, etc.

261. Neither has information been provided on the supervision of working time regulations by the Labour Inspection, including on the number of breaches identified and penalties imposed with regard to the working conditions of the non-objecting medical practitioners.

262. In light of all the information available to it, the Committee finds that the allegations of CGIL are not supported by sufficient evidence and therefore holds that there is no violation of Article 2§1 of the Charter.

## **PART V: ALLEGED VIOLATION OF ARTICLE 3§3 OF THE CHARTER**

263. Article 3 of the Charter reads as follows:

### **Article 3 – The right to safe and healthy working conditions**

Part I: “All workers have the right to safe and healthy working conditions.”

Part II: “With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations:

[...]

3. to provide for the enforcement of such regulations by measures of supervision;

[...].”

## **A – Arguments of the parties**

### **1. The complainant organisation**

264. CGIL alleges that, due to inadequate implementation of Section 9 of Act No. 194/1978 and high rates of objecting physicians and medical personnel, the few non-objecting medical practitioners available are left to perform the entire workload of all requested abortion procedures. The increased number of such procedures performed by non-objecting practitioners, their gradually repetitive character as well as working conditions involving overtime, work in isolation or without replacement, affect the physical and mental health of such practitioners, in breach of the right to safe and healthy working conditions enshrined in Article 3 of the Charter, read alone or in conjunction with the non-discrimination clause in Article E.

265. CGIL also contends that the extent of the damage to the health and safety of non-objecting medical practitioners, as well as the breach of Article 3 of the Charter, can be established on the basis of the frequency of performed abortion procedures, as deducted from figures on the number of objecting medical practitioners.

266. CGIL points at general difficulties in obtaining information and criticises the general data put forward by the Government as being unreliable or irrelevant.

## **2. The respondent Government**

267. The Government rejects the allegations of CGIL as being unsubstantiated and unfounded.

268. It does not directly address the issue of the health and safe working conditions of non-objecting medical practitioners. It maintains that the available data demonstrates that the rate of non-objecting medical practitioners to the number of abortion procedures is adequate.

269. The Government maintains that it is for the regions and the relevant medical establishments to ascertain the implementation of Act No. 194/1978.

270. It notes that according to the National Health Plan 2012-2013, the domestic health services are based on, *inter alia*, the systematic surveillance of situations, where the provision of health services is discontinued.

271. The Government's commitment to the implementation of Act No. 194/1978 is furthermore attested by the annual reports it submits to the Parliament on the implementation of the Act.

### **B – Assessment of the Committee**

272. Under Article 3 of the Charter, CGIL mainly refers to the necessity of effectively supervising the implementation of the relevant legal framework on occupational health and safety. Therefore the Committee decides to review the situation under Article 3§3 of the Charter.

273. The Committee notes that Article 3 grants everyone the right to safe and healthy working conditions. This right stems directly from the right to personal integrity (Conclusions I (1969), Statement of interpretation of Article 3, p. 22).

274. In accepting Article 3, States Parties have undertaken to guarantee individuals' right to physical and mental integrity at work. The Committee recalls that the conformity with the Charter "cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised" (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32; Conclusions XVI-2 (2004), Spain, Article 3§3).

275. However, the Committee is able to assess the development of the situation only if it is provided with statistics on the number of establishments receiving inspection visits and the number of persons they employ, as well as up-to-date figures on the staffing of the labour inspectorate and the number of visits carried out, breaches found and penalties imposed (Conclusions XVI-2 (2003), Spain, Article 3§3). The Committee also needs to know the proportion of workers covered by inspections compared with the total workforce (Conclusions XVIII-2 (2007), Luxembourg, Article 3§3).

276. As concerns the current complaint, the Committee notes that CGIL has provided evidence by LAIGA and direct testimonies from non-objecting medical practitioners which indicate that their working environment and conditions may affect their health and safety at work. However the Committee notes that this evidence is largely anecdotal.

277. Further the Committee notes that despite the above information, the allegations made under Article 3 of the Charter relate to the enforcement and monitoring of any national regulations on the right to safe and healthy working conditions with regard to the non-objecting medical personnel in particular.

278. No specific information has been provided by either party on the enforcement or failure to do so of the relevant health and safety provisions.

279. In light of all the information available to it, the Committee finds that the allegations of CGIL are not supported by sufficient evidence and therefore holds that there is no violation of Article 3§3 of the Charter.

## **PART VI: ALLEGED VIOLATION OF ARTICLE 26§2 OF THE CHARTER**

280. Article 26§2 of the Charter reads as follows:

### **Article 26 – The right to dignity at work**

Part I: “All workers have the right to dignity at work.”

Part II: “With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

[...]

2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.”

## **A – Arguments of the parties**

### **1. The complainant organisation**

281. CGIL alleges that, due to the inadequate application of Section 9 of Act No. 194/1978 and high rates of objecting medical practitioners, the few non-objecting practitioners available are left to perform the entire workload of all requested abortion procedures. This involves in particular more and repeated abortion procedures that often are outside the field of training and specialisation of non-objecting medical practitioners. The situation, CGIL contends, affects the career and dignity of non-objecting physicians and medical personnel, in breach of the right to dignity at work enshrined in Article 26 of the Charter, read alone or in conjunction with the non-discrimination clause in Article E.

282. CGIL points at general difficulties in obtaining information and criticises the general data put forward by the Government as being unreliable or irrelevant.

283. It provides direct testimony from non-objecting medical practitioners.

## **2. The respondent Government**

284. The Government rejects the allegations of CGIL as being unsubstantiated and unfounded.

## **B – Information provided at the public hearing held on 7 September 2015**

### **1. The complainant organisation**

285. The representative of CGIL highlights again the difficulties of reporting behavior such as mobbing / harassment experienced by non objecting medical practitioners especially in light of the fact that the law does not recognise “mobbing” as a specific criminal offence.

### **2. The respondent Government**

286. The representative of the Government underlined that medical practitioners in the public system were afforded the same protection as employees in the private system. Therefore a doctor who alleges he/she has been harassed may address a labour judge alleging mobbing or discrimination. The law provides remedies for those who have been harassed.

## **C – Assessment of the Committee**

287. Under Article 26 of the Charter, CGIL refers to moral harassment and not to sexual harassment. The Committee consequently examines this allegation under the second paragraph of the Article.

288. The Committee recalls that, under Article 26§2, irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination. And this is independently from the fact that not all harassment behaviors are acts of discrimination, except when this is presumed by law (Conclusions 2007, Statement of Interpretation of Article 26§2).

289. Article 26§2 requires the States Parties to take adequate preventive measures against moral harassment. In particular, they should inform workers about the nature of the behaviour in question and the available remedies (Conclusions 2010, Albania, Article 26§2; Conclusions 2007, Statement of Interpretation of Article 26§2). States parties are required to take all necessary preventive and compensatory measures to protect every worker against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work,



290. The Committee recalls that it has further considered that, from the procedural standpoint, effective protection of employees may require a shift in the burden of proof to a certain extent, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the conviction of the judge or judges (Conclusions 2007, Statement of Interpretation of Article 26§2).

291. The Committee notes that it has found that the legal situation protecting persons from moral harassment at the workplace to be in conformity with the Charter (Conclusions 2014, Italy).

292. CGIL has provided examples of the moral harassment of non-objecting medical practitioners for example direct testimonies from medical practitioners and from LAIGA:

“The non-objectors are therefore placed under intense pressure to suspend the service, which sometimes takes oral rather than written form.”

“Disregarding these pressures very often results in genuine "mobbing".

293. The Committee also notes the following information:

“In addition, at the above-mentioned hearing by the Chamber of Deputies, Doctor *Scassellati* further clarified “[w]e are 30 gynaecologists at St. Camillus, including the Chief Physician, of whom only three are non-objectors. Over the last four years we have been under continuous attack. We are the clinicians who have decided to defend a law of the state. Thus, in my opinion, conscientious objection constitutes the most serious aspect of the problem. We should talk about it, since those who terminate pregnancies are steadily decreasing and constantly have to justify their work”.

294. The Committee observes that the Government does not refute the allegations of moral harassment in any way, for example by referring to preventive and reparatory means taken to protect individual non-objecting workers against such harassment. There is furthermore no indication on the practical application of the existing laws by the relevant authorities or courts that would provide the necessary protection in practice, nor of any policy measures.

295. The Committee regards the statements by non-objecting medical practitioners alleging moral harassment to be insufficient in themselves to ground a violation of the Charter, as they are largely anecdotal. However the Committee considers that Article 26§2 of the Charter imposes positive obligations on States parties, to take preventative action to ensure moral harassment does not occur in particular in situations where harassment is likely. It therefore finds that the failure of the Government to take any preventative action, training or awareness raising to ensure the protection of non-objecting medical practitioners amounts to a violation of Article 26§2 of the Charter

296. Therefore the Committee holds that there is a violation of Article 26§2 of the Charter.

## **PART VII: ALLEGED VIOLATION OF ARTICLE E READ IN CONJUNCTION WITH ARTICLE 2§1, 3§3 AND 26§2 OF THE CHARTER**

### **A – Arguments of the parties**

#### **1. The complainant organisation**

297. CGIL argues that the situation complained of also amounts to a violation of Article E read in conjunction with Articles 2§1 (right to just conditions of work), 3§3 (right to safe and healthy working conditions) and 26§2 (right to dignity at work) of the Charter.

298. CGIL alleges that physicians and medical personnel suffer discrimination on the basis of whether they choose to exercise their right to conscientious objection or not. In particular, non-objecting personnel are placed in bad or unfavourable working conditions in comparison to objecting personnel, with regard to both the right to safe and healthy working conditions and to the right to dignity at work.

299. CGIL contends that such discrimination has no reasonable and objective grounds required by the case law of the Committee (e.g. *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52). It considers such discrimination all the more unreasonable given that, as much as their limited workforce allows them to, non-objecting personnel are committed to the proper implementation of Section 9 of Act No. 194/1978.

#### **2. The respondent Government**

300. The Government rejects the allegations as unsubstantiated and unfounded.

### **B – Assessment of the Committee**

301. The Committee holds in light of its findings above that no separate issue arises under Article E.

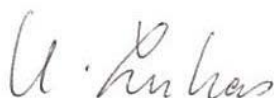
## CONCLUSION

For these reasons, the Committee:

- unanimously declares the complaint admissible

and concludes:

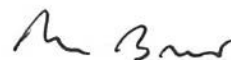
- unanimously that there is a violation of Article 11§1 of the Charter
- by 9 votes to 2, that there is a violation of Article E read in conjunction with Article 11 of the Charter
- by 6 votes to 5, that there is a violation of Article 1§2 of the Charter ; i) first ground
- unanimously that there is no violation of Article 1§2 of the Charter ii) second ground
- unanimously that there is no violation of Article 2§1 of the Charter
- unanimously, that there is no violation of Article 3§3 of the Charter
- By 7 to 4, that there is a violation of Article 26§2 of the Charter and
- unanimously no separate issue arises under Article E taken together with Article 2§1, 3§3 and 26§2 of the Charter



Karin LUKAS  
Rapporteur



Giuseppe PALMISANO  
President



Régis BRILLAT  
Executive Secretary

In accordance with Rule 35§1 of the Rules of the Committee, a separate dissenting opinion of Giuseppe PALMISANO, joined by Lauri LEPPIK, Elena MACHULSKAYA Eliane CHEMLA and Raul CANOSA USERA and a separate concurring opinion of Petros STANGOS are appended to this decision.

**SEPARATE DISSENTING OPINION OF GIUSEPPE PALMISANO JOINED BY  
LAURI LEPPIK, ELENA MACHULSKAYA, ELIANE CHEMLA  
AND RAUL CANOSA USERA**

1. Article 1§2 requires the States having accepted it to effectively protect the right of workers to earn their living in an occupation freely entered upon. According to the Committee, this obligation requires *inter alia* the prohibition and elimination by States of such discriminatory acts that may occur in connection with employment conditions, in particular with regard to remuneration, training, promotion, transfer and dismissal (Conclusions XVI-1 (2002), Austria).
2. In this respect, the alleged disadvantages experienced by non-objecting doctors (i.e. lack of career opportunities, heavy workload and working conditions) for which some evidence has been supplied by the complainant organization (CGIL), do not properly fall, in my view, within the scope of the acts prohibited by Article 1§2 of the Charter, which are essentially related to remuneration, training, promotion, transfer and dismissal.
3. Furthermore, to the extent that certain of the alleged acts may be considered to fall within the scope of Article 1§2 of the Charter, the evidence put forward by CGIL is, in my view, largely anecdotal and is not sufficient to ground a finding of discrimination likely to affect the core of Article 1§2 of the Charter, that is the right of workers to earn their living in an occupation freely entered upon.
4. For the above reasons, I cannot share the decision adopted by the Committee, according to which Italy, insofar as the treatment of non-objecting medical doctors is concerned, would have infringed its obligation under Article 1§2 of the Charter to effectively protect the fundamental right of workers to earn their living in an occupation freely entered upon.

## **SEPARATE CONCURRING OPINION OF PETROS STANGOS**

While I agree with the majority of the members of the Committee, who decided that there is a violation of Article E read in conjunction with Article 11 of the Charter, I did not concur with the legal reasoning behind the finding of a violation of the provisions in question. I am therefore obliged to file a separate concurring opinion.

In part II of its decision, the Committee mentions various grounds on which the Italian authorities' policy discriminated against women seeking access to abortion: place of residence (or, to quote the decision, "the area in which they live"), socio-economic status ("lower income groups"), gender, health status, public health and public order. In my view, the place of residence is the only ground of discrimination with which the Committee ought to have concerned itself, so that it could then ascertain whether the Italian authorities have applied it in practice.

In order for discrimination to be established, however, there must be one or more acts by public authorities which affect the material or non-material interests of the persons concerned, and two distinct individuals, such that it is possible to determine whether, through the act or acts in question, the authorities either treated one of these individuals differently from the other even though they were in a comparable situation, or treated them in the same way, even though their situations differed. As the Committee rightly points out in paragraph 209 of its decision, a group of people exists, who are homogenous in terms of their health status and who are also entitled to protection against discrimination, namely "pregnant women seeking to access abortion services". As I see it, however, this group can be further divided into two sub-groups. The first, whose defining feature is the fact that its members live in certain areas of the country, goes to hospitals where the presence on the staff of objecting gynaecologists does not prevent the relevant services from being provided in a timely and effective manner. The second sub-group, which is likewise defined by the fact that its members live in other parts of the country, is made up of people who go to hospitals where the presence on the staff of objecting gynaecologists does in fact make it difficult for the pregnant women concerned to receive early and effective medical treatment. In my view, the Italian authorities, to the extent that they are not interested in adopting a policy that would address the shortcomings in health care provision for the people in the second of the sub-groups mentioned above, have opted for inaction, which is no different from their treatment of the pregnant women in the first sub-group (although in this instance, no public action was required, for the obvious reason that the pregnant women did not encounter any difficulties in accessing abortion services connected with the fact that there were objecting gynaecologists on the hospital staff). In my opinion, therefore, the Italian government, in according identical treatment to people in different situations, is in breach of Article E of the Charter and, by extension, Article 11 of the Charter, since the pregnant women are prevented from effectively exercising their right to protection of their health, enshrined in Part I of the Charter.

I realise that the approach outlined here, albeit in fairly broad terms, is based on individual cases of discrimination and, as such, may be seen as derogating from the Committee's usual approach when assessing compliance with Article E of the Charter, in which individual cases are disregarded. It will be noted, however, that the approach presented here is in keeping with the unwritten principle of equal treatment (which requires that equal situations be treated equally and unequal situations differently, unless there is an objective justification), which the Committee has repeatedly upheld as being inherent to the normative system of the Charter. Lastly, as a "reading" of Article E, taken in conjunction with a substantive provision (Article 11), this approach follows a similar line to that taken by the Committee in its decision of 15 June 2005 on the merits of complaint No. 26/2004 SAGES v. France, when it observed with respect to Article E: "Its role is comparable to Article 14 of the European Convention on Human Rights. It has no independent existence and has to be combined with a substantial provision of the Charter. Nevertheless, a measure (...) may infringe this [substantial] provision when read in conjunction with Article E for the reason that it is of a discriminatory nature" (§34).