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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

6 August 2013

Case Document No. 3

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

RESPONSE FROM CGIL TO THE SUBMISSIONS OF THE GOVERNMENT ON THE ADMISSIBILITY AND MERITS (Translation)

Registered at the Secretariat on 29 July 2013

Confederazione Generale Italiana del Lavoro

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REPLY BY CGIL

TO THE SUBMISSIONS OF THE ITALIAN GOVERNMENT

ON ADMISSIBILITY AND THE MERITS

Confederazione Generale Italiana del Lavoro

v.

Italy

(Collective complaint No. 91 of 2013)

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1. Preliminary observations

1. Before making some observations regarding the Italian Government's submissions on collective complaint No. 91/2013, lodged by the CGIL, we would first point out that, apart from being contradictory in various respects, as shown below, these submissions depart from the subject matter of the complaint itself and attribute statements and requests to the CGIL which it never made (this can be seen above all from the conclusions set out in paragraph 52 of the Government's submissions, but also from paragraphs 36 and 37 among others).

2. It is moreover understandable that the Italian Government finds itself in a difficult position, also in the light of the recent statements made by the Government itself, in the person of the Minister for Health, Beatrice Lorenzin, following the numerous motions on the state of application of Law No. 194 of 1978 tabled in the Chamber of Deputies by various political parties (Doc. 7 – 1/10, including one motion tabled in the Senate).

3. These statements reveal that there is considerable inconsistency between the arguments advanced by the Italian Government in the proceedings pending before the European Committee of Social Rights (and reference can be made here to the identical position adopted by the Government in its response to Collective Complaint No. 87/2012, which is at a more advanced stage than Collective Complaint No. 91/2013), to the effect that the high and growing number of practitioners who are conscientious objectors poses no problem in applying Law No. 194 and that a right of access to a voluntary termination of pregnancy does not exist, and the health minister's position in response to the tabling of the motions (Doc. 36).

4. We would also underline, and we will come back to this aspect below, the particularly serious nature of certain statements contained in the Government's submissions as to the alleged inexistence of a right of access for women to voluntary terminations of pregnancy and the contention that, in any case, where women may be granted this possibility, the right of conscientious objection takes precedence over this right (see, in particular, paragraph 35 of the Government's submissions). These assertions appear to take no account of the historical background to the Italian legislation on this subject, beginning with the principles laid down in the Constitutional Court's decision No. 27 of 1975, decriminalising voluntary terminations of pregnancy, principles which were then integrated in Law No. 194 of 1978 and have been consistently upheld in the constitutional case-law. Furthermore, and yet more seriously, they make clear the Government's intention to question the foundations of this legislation, the substance of which is, we repeat, constitutionally binding (see, in particular, paragraphs 39 and 40 of the Government's submissions).

5. From the same point of view, we also regard as particularly serious the assertions concerning the balance struck by Law No. 194, which foreshadow a new reading of that law (based, however, on completely incorrect assumptions that the law strikes a balance between the woman's situation and that of a doctor who is a conscientious objector, rather than between the woman's situation and that of the unborn child, as we shall see below), which would be contrary to the clear letter of the law and, above

all, to the precise findings of the Constitutional Court, which in decision No. 27 of 1975 clarified that there is no equivalence between the situation of someone who is already a person and someone who has yet to become a person (see paragraph 40 of the Government's submissions in particular).

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6. The CGIL considers that, although these comments reveal a lack of respect not only for the CGIL itself but also and above all for the European Committee of Social Rights, it must nonetheless make these observations since they bring to light:

- on one hand, the irrelevance of the submissions regarding the question of an infringement of women's rights to life, to health and to self-determination;

- on the other hand, a failure to demonstrate that the claims made in collective complaint No. 91/2013 are unfounded.

7. Conversely, concerning the issue of impairment of the employment rights of medical staff who are not conscientious objectors, the Government makes no specific reference thereto in its submissions, although an entire chapter of the complaint is devoted to this matter. For this reason, as regards the merits of the argument that the position of practitioners who are not conscientious objectors is being damaged, we refer to the extensive observations set out in the collective complaint and to the documents mentioned in part Q hereunder.

8. In a contradictory manner, the Government nonetheless seems to accept the arguments advanced in the collective complaint when it advises the CGIL to denounce the breaches of the non-conscientious objectors' employment rights in the domestic courts (paragraphs 50 and 51 of the submissions) and thereby succeeds in arguing that, before turning to the European Committee of Social Rights, the CGIL should have exhausted domestic remedies (paragraph 51).

9. The latter argument is clearly unfounded in the light of the procedural rules governing the collective complaints system which, on this very point – as for other aspects, differentiate this procedure from that concerning applications to the European Court of Human Rights (Article 35 of the Convention). For obvious reasons of expediency and respect for the European Committee of Social Rights, which is naturally well acquainted with these rules, we consider that there is no need to reproduce here the content of the Additional Protocol of 1995 establishing the system of collective complaints.

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10. Upon filing collective complaint No. 91/2013 the CGIL considered, and still considers, also in the light of the Italian Government's arguments, that the proceedings brought against Italy in this matter constitute a good opportunity to assist the State to:

- first and foremost take due note of the state of non-application of Law No. 194 of 1978, which will moreover be discussed at greater length below, from the standpoint

of both the infringement of women's rights to life, health and self-determination and the impairment of the non-conscientious objectors' employment rights;

- clarify the contradictory positions adopted by the Government in different contexts, whether in the proceedings pending before the European Committee of Social Rights, on one hand, or before the Italian parliament, on the other hand;

- consequently, make provision for and - going beyond mere declarations of political intent - take effective, efficient action aimed at guaranteeing the full application of the abovementioned law, since, we wish to reiterate, the Italian Constitutional Court has made the substance of this law constitutionally binding and its core provisions cannot be violated without breaching the constitutional principles of which they are a direct expression (Constitutional Court, decisions Nos. 26 of 1981 and 35 of 1997, as well as decision No. 16 of 1978).

11. In this context, the hope is that Italy will commit itself to ensuring the full application of one of its own laws (of constitutionally binding substance) rather than, as is unfortunately clear from the Government's memorials (and here we also refer to the submissions regarding collective complaint No. 87/2012), advancing hypotheses that disregard and undermine Law No. 194, the foundations of which cannot be attacked without violating the Constitution itself, as has been made clear by the Constitutional Court, which is still often asked to decide questions regarding the constitutional legitimacy of certain provisions or to evaluate the admissibility of referendum requests.

12. Ensuring the effective application of a law of the State should however be the joint aim (and a chief objective) of the Italian Government.

13. It was with the same aim in mind that the CGIL decided to lodge collective complaint No. 91/2013 and to initiate these proceedings, which, as can be seen from the procedural rules themselves, are intended not merely to ascertain whether there has been a breach of the European Social Charter, but also to ensure the full and effective application of this treaty by the member States, assisting them to bring their national law into conformity where the necessary conditions are fulfilled, under what could be termed a dialectical approach. This is also apparent from a key declaration made by the Chair of the European Committee of Social Rights, Luis Jimena Quesada, according to whom "the Social Charter's 'stakeholders' … are all the parties involved in its effective implementation, expressing a positive desire, a supportive attitude and a spirit of dialogue (in the institutional, judicial, academic, social and communications fields) in favour of this common cause both within the Council of Europe and outside (in the European Union, the UN and the ILO), together with people from the media, universities and other academic institutions, national institutions (including judicial parties), the social partners and civil society" ("Introduction. The European Social Charter and its 51st anniversary" in "European Committee of Social Rights, Activity Report 2012", page 6).

2. Admissibility of collective complaint No. 91/2013

14. On the issue of admissibility, the CGIL would make a number of observations on the Italian Government's submissions and wishes to underline its difficulty in understanding the Government's own position on this point.

15. The Italian Government states that it considers the collective complaint admissible on the ground that the CGIL is authorised to submit such complaints (paragraph 2 of the Government's submissions).

16. However, it subsequently contends that the issue of the employment rights of the practitioners not conscientious objectors does not come within the scope of the European Social Charter, and thus argues that the collective complaint is not admissible (paragraph 3 of the submissions).

17. Finally, the Italian Government shows that it considers the entire complaint inadmissible – as regards both the aspects concerning women's rights and those relating to the rights of non-conscientious objectors – since it asserts that domestic remedies should have been exhausted before turning to the European Committee of Social Rights (paragraph 51 of the submissions).

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18. Regarding the Government's first stance, the CGIL obviously can but agree with it since it lodged collective complaint No. 91/2013 in accordance with the procedural rules.

19. Concerning the assertion that the collective complaint's tenor regarding the rights of practitioners who are not conscientious objectors falls outside the scope of the European Social Charter, the CGIL refers to the more extensive arguments set out on this matter in the collective complaint itself, to the effect that the European Committee of Social Rights is fully competent to decide this matter.

20. Lastly, the assertion that domestic remedies must first be exhausted is, as mentioned in the preliminary observations, unfounded, since the procedural rules permit the filing of collective complaints against the member States without having exhausted domestic remedies (on this point see the Additional Protocol establishing the system of collective complaints and also "European Social Charter. Collective complaints" in www.coe.int/socialcharter, p. 6), unlike the European Convention on Human Rights, Article 35 of which imposes this requirement.

3. Merits of the collective complaint

3.1 The Italian Government's reference to Part V of the Appendix to the European Social Charter in relation to Article E: conscientious objection as an "objective and reasonable justification" for an infringement of the right of access to a voluntary termination of pregnancy (and hence of a woman's rights to life, to health and to self-determination)

21. The Italian Government asserts that Law No. 194 of 1978 finds a particular justification in Part V of the Appendix to the European Social Charter in relation to Article E (paragraph 7).

22. Article E (Non-discrimination) provides:

''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."

23. Part V of the Appendix to the Charter clarifies this provision as follows:

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

24. The Government concludes from this that conscientious objection constitutes an "objective and reasonable justification" which does not result in any discrimination, since the law provides that medical staff can at any time withdraw a declaration of conscientious objection so as to ensure respect for women's right to health (paragraph 28).

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25. The provision referred to establishes the fundamental principle that, in connection with discrimination, a difference of treatment can be justified where there are objective and reasonable grounds for it.

26. Where these conditions are met differential treatment is accordingly not unreasonable and hence not discriminatory.

27. In the present case the Government's reliance on this provision can be seen to be entirely irrelevant, since the medical and auxiliary staff's right to raise a conscientious objection indeed amounts to an objective and reasonable justification for infringing the right of access to a termination of pregnancy.

28. As we had occasion to clarify in the collective complaint, conscientious objection is a fundamental right, the nature of which no one doubts and which has its exact match, as regards its exercise, in respect for the right of access to a termination of pregnancy

(and hence respect for the rights subject thereto, namely women's rights to life, health and self-determination).

29. As the Italian Government also points out, Article 9 of Law No. 194 of 1978 provides – alongside the recognition given to medical and auxiliary staff's right of conscientious objection – that the right of access to a termination must always be guaranteed in every hospital.

30. It is not a matter of giving either right precedence over the other, and hence of identifying an objective and reasonable ground justifying a breach of the right to terminate a pregnancy.

31. However, Article 9 of the law provides for a single case in which one of the two rights – that of conscientious objection – must be sacrificed in favour of the other. When there is imminent danger to a woman's life necessitating a termination of pregnancy, even the practitioners who have raised a conscientious objection are duty bound to intervene personally where this is necessary to save the woman's life. In this case therefore safeguarding the woman's life constitutes an objective and reasonable justification for breaching the right of freedom of conscience.

32. It must be underlined that Law No. 194 provides for no circumstance in which the woman's legal situation can or must be affected in the light of objective and reasonable grounds that might justify a similar breach in favour of the right of conscientious objection.

33. Moreover, the Government's argument can be seen to be completely dogmatic, since it is underpinned by no normative reference or argument aimed at proving its validity.

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3.2 The Italian Government's reference to the national legislature's margin of appreciation in regulating voluntary terminations of pregnancy (Article G of the European Social Charter)

34. The Government concludes that Italian law in this sphere benefits from the so-called margin of appreciation, referred to in Article G ("Restrictions") of the European Social Charter (paragraph 7 of the submissions).

35. This article provides:

"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."

36. Such restrictions of the enjoyment of rights and of the application of the principles laid down in the Charter must be prescribed by law, understood to mean "statutory law or any other text or case-law provided that the text is sufficiently clear, i.e. that satisfy the requirements of precision and foreseeability implied by the concept of 'prescribed by law'." (Digest of the case-law of the European Committee of Social Rights, 1 September 2008, p. 177)

37. In the case of conscientious objection to voluntary terminations of pregnancy, it must be underlined that there is no provision requiring that the right of access to such treatment should be sacrificed in favour of the right to raise a conscientious objection.

38. On the contrary, Article 9 of Law No. 194 imposes a strict limit on the right of conscientious objection when there is an imminent danger to the woman's life: in this case even practitioners who are conscientious objectors must intervene in person and therefore must perform the necessary termination of pregnancy.

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39. It should be noted that the Italian Government here too does not raise any arguments aimed at justifying the assumption that Article G of the Charter is applicable in the case under consideration here.

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3.3 The Italian Government's assertion that the possibility of withdrawing a declaration of conscientious objection safeguards women's right to health

40. The Italian Government's reference to the possibility of withdrawing a declaration of conscientious objection (paragraph 28 of the submissions) so as to avoid breaching a woman's right to health appears to contradict its arguments, since it would seem to constitute acceptance that the possibility of raising a conscientious objection (first paragraph of Article 9) itself infringes women's right to health and that solely its withdrawal guarantees the effective exercise of that right.

41. In addition, withdrawal of conscientious objection is an unforeseeable, unpredictable eventuality, which in any case does not stand in the light of the data provided on the significant and ever-growing number of medical and auxiliary staff who are conscientious objectors.

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42. The Government's assertion moreover seems to contradict its position that conscientious objection does not constitute a violation of the rights of women and of non-objecting practitioners.

43. It is in fact hard to understand why it refers to withdrawal of the conscientious objection as a means of guaranteeing respect for women's right to health, if in any case the significant and growing number of medical staff who are conscientious

objectors does not prevent its effective exercise, through the guarantee of a right of access to a termination.

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3.4 The Italian Government's assertion that voluntary terminations of pregnancy do not endanger women's health

44. The Italian Government asserts that abortion has so far been shown not to represent a danger to women's health (paragraph 25).

45. The CGIL takes a positive view of this conclusion, reached by the Italian Government, and underlines that collective complaint No. 91/2013 indeed argues that the danger for women derives from the significant and growing number of practitioners who are conscientious objectors, not from regulation of access to voluntary terminations of pregnancy.

46. In other words, it is the failure to guarantee the right of access to such treatment, as a result of the number of conscientious objectors, which leads to a violation of women's rights to life, to health and to self-determination.

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3.5 The Italian Government's assertion concerning the provisions requiring the National Health Service to provide terminations of pregnancy, with the possibility that such operations may also be performed by authorised nursing homes

47. The Government points out that the National Health Service is tasked with providing voluntary terminations of pregnancy and further states that the small number of private health establishments authorised to do so is provided for in the law since there is a ban on the performance of such operations by unauthorised private establishments and sanctions exist to prevent its becoming a profit-based activity (paragraphs 9 and 10), concluding from this that Law No. 194 prohibits any form of discrimination based on financial resources (paragraph 11).

48. Article 8 of Law No. 194 provides:

"Terminations of pregnancy shall be performed by a physician of the obstetrics and gynaecology department of a general hospital among those referred to in Article 20 of Law No. 132 of 12 February 1968, who shall also verify that there are no medical contraindications. Such operations may also be carried out in the specialised public hospitals, institutes and establishments referred to in the penultimate paragraph of Article 1 of Law No. 132 and the institutions referred to in Law No. 617 of 26 November 1973 and Presidential Decree No. 754 of 18 June 1958, whenever the competent administrative agencies so request. During the first 90 days of pregnancy terminations may also be performed in nursing homes authorised by the regions which have the requisite medical equipment and adequate obstetric and gynaecological services. The Minister of Health shall issue a decree limiting the capacity of authorised nursing homes to carry out terminations of pregnancy by establishing: 1) the

percentage of terminations that may be performed in relation to the total number of surgical operations carried out the preceding year in the same nursing home; 2) the percentage of patient-days allowed for terminations of pregnancy in relation to the total number of patient-days in the previous year under the conventions concluded 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. Nursing homes shall be able to select the criterion they wish to observe out of the two mentioned above. Following the establishment of the local medico-social units, it shall also be possible for pregnancy terminations to be performed during the first 90 days in suitably equipped public outpatient clinics, which shall be functionally linked to the hospitals and licensed by the regions. The certificate issued in accordance with the third paragraph of Article 5 and, after seven days have elapsed, the document delivered to the woman in accordance with the fourth paragraph of the same article shall permit her to obtain a termination on an emergency basis, with hospitalisation if necessary."

49. In view of the normative substance of the provisions cited above, it is hard to understand why they are being referred to.

50. First and foremost, Article 8 does not fall within the scope of collective complaint No. 91/2013.

51. Secondly, no doubts have been expressed by the CGIL regarding these provisions' compatibility with the European Social Charter.

52. Thirdly, it is hard to understand how the provisions of Articles 8 and 19 of Law No. 194 can in themselves ensure that there is no financial discrimination, since no arguments are advanced with the aim of establishing the link.

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3.6 The Italian Government's claim of a reduction in the number of clandestine abortions

53. The Government has stated that Law No. 194 has brought about a decrease in the number of illegal abortions by Italian women and above all foreign women (paragraph 13).

54. Contrary to the Government's claims, however, the existence of clandestine abortions has been widely documented (naturally as far as is possible, given the intrinsic difficulty of documenting a phenomenon which is by nature illegal), and the Ministry of Health has itself acknowledged that the data are underestimated (Document 57).

55. In this connection, reference can be made to Chapters H "Cases in which women underwent abortions under unsafe or dangerous conditions" and P "Relationship between the decrease in the number of abortions shown by the official figures presented by the Minister of Health in the annual report to Parliament and the difficulties in applying Law No. 194 of 1978" below, and to the relevant documents on the number and the occurrence of clandestine abortions.

56. We would also refer to Document 37 concerning the link between the deficient and inadequate application of Law No. 194 and clandestine abortions.

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3.7 The Italian Government's reference to the provisions governing legislative powers in health matters (Article 117 of the Italian Constitution)

57. With regard to the alleged decrease in illegal abortions because women can have access to public facilities throughout the country, the Italian Government refers to Article 117, paragraph 2 m) of the Italian Constitution.

58. This provides:

"The State has exclusive legislative powers in the following matters: … m) determination of the basic standards of service related to those civil and social rights that must be guaranteed throughout national territory."

59. The Government also points out that the regions have competence for "health protection, protection and safety of labour, the professions, etc.".

60. As can be seen from the clear wording of Article 117 of the Italian Constitution, these matters fall within the legislative competence of the regions on a concurrent basis:

"The following matters are subject to concurrent legislation of both the State and the regions: … protection and safety of labour; … professions; … health protection; … . In matters of concurrent legislation, the regions have legislative power except for the establishment of fundamental principles, which is a preserve of State law."

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61. In the light of the above, it is hard to understand the significance and the relevance of the Government's reference to Article 117 of the Constitution, specifically as regards the distribution of legislative powers between the State and the regions in the matter raised by collective complaint No. 91/2013, from which the Government automatically and dogmatically concludes that the law on abortion entails no financial discrimination between women (paragraphs 13 and 14)

62. The issue raised by the collective complaint in fact concerns the application of a law of the State, Article 9 of which assigns the regions the task of supervising the organisation of hospital establishments with a view to ensuring that women are effectively guaranteed access to terminations under the conditions and within the limits laid down by that law.

63. Collective complaint No. 91/2013 raises the question of the application of a law of the State, not of the distribution of legislative powers between the State and the regions.

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3.8 The member States' responsibility for monitoring the activities of local and regional authorities so as to guarantee that rights can be exercised: the European Committee of Social Rights' decision on the merits of collective complaint No. 15/2003

64. On the specific subject of the application of law No. 194, which the regions are also required to ensure, we deem it appropriate to refer to the decision on the merits of collective complaint No. 15/2003 (European Roma Rights Centre v. Greece) regarding the member States' responsibility for monitoring the activities of local and regional authorities so as to guarantee that rights can be exercised.

65. This decision establishes a principle governing the member States' responsibility which can be seen to apply to the case currently before the European Committee of Social Rights concerning conscientious objection in matters of voluntary termination of pregnancy.

66. In the decision on the merits of complaint No. 15/2003 the Committee indeed specified that the member States' responsibilities included monitoring the action of local and regional authorities tasked with developing policies and measures concerning access to rights:

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

67. This decision and the principle established by the Committee can be seen to be perfectly applicable to the matter raised by collective complaint No. 91/2013.

68. Although Article 9 of Law No. 194 firstly requires hospital establishments and authorised nursing homes to guarantee the right of access to terminations of pregnancy in all cases and then entrusts the supervision of this activity to the regions, the State cannot consider itself devoid of responsibility if the practical application of these legal provisions fails to guarantee that result and therefore the adoption of measures to ensure effective access to this right.

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3.9 The Italian Government's assertion that access to a voluntary termination of pregnancy is not a right, unlike conscientious objection

69. In different parts of its submissions, the Government asserts that access to a voluntary termination of pregnancy is not a right, unlike conscientious objection (see in particular paragraphs 15, 16, 17, 34, 35, 36 and 37).

70. While recalling the broader observations set out in the collective complaint, we would refer here to the principles laid down by the Italian Constitutional Court in matters of voluntary termination of pregnancy, beginning with its decision that Article 546 of the Italian Criminal Code was unconstitutional to the extent that it failed to provide that a

pregnancy could be terminated when its continuation entailed harm to or a serious, medically attested and unavoidable risk for the mother's health (judgment No. 27 of 1975).

71. Reference to this judgment moreover makes it possible to respond to the Italian Government's observations, which in many places show that the Government regards Law No. 194 itself as unconstitutional, in so far as it permits terminations of pregnancy also where the woman's life is not endangered. The Government indeed considers that danger to the woman's life constitutes the sole ground for infringing a conscientious objection (in this respect see paragraphs 38, 39 and 40 of the submissions).

72. Reference to judgment No. 27 of 1975 can perhaps help remind the Italian Government of the issues here.

73. In particular, the Constitutional Court significantly noted that the question before it raised "a serious problem that was a subject of controversy and of legislative activity in a number of countries."

74. The Constitutional Court, after having decided not to go back over "the history of the offence of procuring an abortion, linked with the emergence of religious beliefs and the development of moral philosophy and social, legal, political and demographic doctrines", noted that "procuring an abortion, which went unpunished at certain times but at others incurred a - sometimes minor, sometimes very severe- penalty, was considered to offend against disparate interests, those of life, of the family system, of morality and of population growth.

In the Criminal Code now in force voluntary abortion is classified as an 'offence against the integrity of the lineage' (Book II, part X). According to the preparatory works and the report to the Crown which accompanies the code what is being protected is 'the State's demographic interest'. The previous code, however, considered abortion as an 'offence against the person', which would seem more appropriate.

The result of conception was regarded alternatively as merely part of a woman's viscera, a hope of a human being, or a living being, whether from the outset or following a more or less long period of gestation."

75. In the light of this introduction, which the CGIL deems particularly relevant in order to remind the Italian Government of the origins of Law No. 194, the Constitutional Court went on to clarify that:

"protection of the conceptus – which is already addressed in civil law (Articles 320, 339 and 687 of the Civil Code) – has a constitutional foundation. Article 31, paragraph 2 of the Constitution expressly provides for the 'protection of maternity' and, more generally, Article 2 of the Constitution recognises and guarantees inviolable human rights, from which the legal status of the conceptus cannot be excluded, albeit subject to its own particular characteristics."

76. That being the case, the court considered that the interests of the conceptus might have come into conflict with other interests which enjoyed constitutional protection.

77. From this standpoint, therefore, the legislature could not have "given the former full and absolute priority, thereby denying the latter appropriate protection".

78. It was for that very reason that the Constitutional Court decided that it was unconstitutional to make abortion a punishable offence, asserting that:

"there is no equivalence between the right not just to life but also to health of someone who is already a person, like the mother, and the protection of an embryo who has yet to become a person".

79. As already mentioned, it was on the basis of this judgment that, in 1978, parliament intervened, laying down rules that reconcile the position of the woman and that of the unborn child, not, as the Government erroneously contends, that of the woman and that of the practitioners who are conscientious objectors.

80. Particular attention can be drawn to paragraph 34 of the submissions in which the Government maintains that conscientious objection and access to abortion should not be balanced one against the other because the former is a matter of conscience and does not admit of exceptions. As we have seen, the legislation makes no provision for any possibility of balancing, except in cases where the woman's life is endangered. In such cases the legislators, on the basis of the Constitutional Court's observations, provided that exercise of the right to raise a conscientious objection should give way to the need to save the woman's life.

81. With a view to genuinely dismantling Law No. 194, the Italian Government also asserts that this provision concerning cases in which practitioners must carry out a voluntary termination of pregnancy constitutes a violation of the right to raise a conscientious objection.

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82. The possibility of raising a conscientious objection was provided for by the legislators on account of the unquestionably sensitive matter at stake and the specific situation in which practitioners would have found themselves, in 1978, given the obligation to perform an operation (voluntary termination of pregnancy) which had until only recently been a criminal offence punishable by law.

83. As regards the nature of the right of conscientious objection and its limits under the same legislative provision, on one hand, and the manner of exercising it, on the other hand, we refer to the submissions made in collective complaint No. 91/2013.

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84. After the entry into force of Law No. 194 the Constitutional Court defined this legislation as being of constitutionally binding substance, stating that it was a law "whose core provisions cannot be altered or rendered ineffective without violating the corresponding specific provisions of the Constitution itself (or of other constitutional laws)" (judgment No. 16 of 1978). With particular regard to Article 6 of Law No. 194 the Constitutional Court stated in its judgment No. 26 of 1981 that:

"since it safeguards not only life but also health, it cannot be reduced to a discretionary decision of the ordinary legislator, but in essence constitutes a norm constitutionally required by Article 32 [of the Italian Constitution]".

85. Subsequently, in judgment No. 35 of 1997, the Constitutional Court declared inadmissible a request for a referendum on the law, underlining that it would have been aimed at abrogating provisions of constitutionally binding substance. The abrogation that might have resulted would have eliminated "the necessary minimum level of protection of the inviolable constitutional rights to life and to health and of maternity, childhood and youth."

86. The Constitutional Court also clarified that laws of constitutionally binding substance include those whose repeal would reduce the minimum protection required in certain situations, as provided for by the Constitution. From this standpoint, Law No. 194 had "attempted to achieve, by reconciling different demands and proposals, the very standards of minimum protection of interests deemed fundamental by the Constitution which the cited judgment No. 27 of 1975 had set for the legislator, thereby making this a genuine obligation."

87. Accordingly, following judgment No. 27 of 1975 it was recognised that a balance must be struck between the legal situations of the unborn child and the woman, not, it must be repeated, between the situations of the woman and of practitioners who are conscientious objectors, as the Italian Government maintains.

88. This balancing is necessary on account of the Constitutional provisions and, from that standpoint, it can be seen to constitute a constitutional obligation.

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89. The Italian Government maintains (paragraph 15) that Article 11 of the European Social Charter requires the member States to keep infantile and maternal mortality under control and to move towards zero risk in this area.

90. It contends, in particular, that no obligation to guarantee access to abortions in Italy can be deduced from the European Social Charter, and the Government considers that this is all the more true in that the European Committee of Social Rights has never had occasion to give its opinion on this issue. In this connection, it can be noted that the scope of the Committee's assessments is not restricted by the subject matter of earlier collective complaints or of the national reports.

91. It must nonetheless be underlined that the first observation can be seen to be devoid of any relevance to the subject matter of the collective complaint, since the CGIL has made no request that would oblige Italy to increase the risk of infantile and maternal mortality.

92. It is moreover particularly serious to assimilate the question of reducing infantile mortality with that of voluntary terminations of pregnancy.

93. Confirming once more that Law No. 194 of 1978 is likely to be called into question, as regards the balance struck between the situation of the woman and that of the unborn child, the Italian Government mentions a number of countries that do not permit voluntary terminations of pregnancy, so as to underline that the provisions of that law are in no way obligatory and to foreshadow the idea that an amendment, or even an abrogation, of the rules would be possible (yet again in complete disregard of the Italian Constitutional Court's findings).

94. The Italian Government's viewpoint is that voluntary termination of pregnancy is necessary, and therefore lawful, only when the woman's life is endangered, and conscientious objection therefore has no impact. The CGIL reiterates that this is a very serious assertion, running counter to the clear provisions of the law, as endorsed by the Constitutional Court.

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95. The Italian Government maintains that the CGIL's concern is the persistent nature of conscientious objection to abortions (paragraph 27).

96. In this connection, the successive statements, aimed, we repeat, at proposing the elimination of the legal basis of Law No. 194, are particularly serious.

97. In particular, the Government asserts that, while it is easy for parliament to establish a right, it is more difficult for medical practitioners to put it into effect and guarantee its exercise.

98. Foreshadowing the idea of reintroducing a criminal penalty for what is, from this standpoint, comparable to a genuine homicide, the Italian Government asserts that the CGIL simply disregards the fate of unborn children because they weigh only a few grams.

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99. With regard to the Italian Government's subsequent observations, which refer to the moral concepts of conscientious objection and abortion and assert that when the former is reduced to a mere exception to the rule constituted by the latter the moral relationship between these two poles is reversed, the CGIL is adamantly opposed to this approach, in the same way as it refutes the Government's claim that the legislation is unconstitutional and the contention that ending a human life is objectively wrong (paragraph 37).

100. Here too we refer to the considerations regarding the scope of the right of conscientious objection, which, as the Italian Constitutional Court has made clear, cannot be understood as an unrestricted, unconditional right, as the Government maintains (paragraph 37).

101. The Government even manages to claim that conscientious objection is a moral duty requiring an individual to refuse to perform a voluntary termination of pregnancy, a

duty with its own foundations placing it before and above the law, to which its exercise cannot be subordinate in any way (paragraph 37).

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3.10 The Italian Government's reference to the April 2013 decision of the Court of Cassation

102. The CGIL considers itself duty bound to point out that the Italian Government's reference to the Court of Cassation's decision convicting a conscientious objector who had refused to assist a woman who had suffered a serious haemorrhage following a voluntary termination of pregnancy does not constitute proof that there is no risk of deficient or unsatisfactory application of Law No. 194.

103. The Court of Cassation's decision brings to the fore another very serious issue inherent in the attempts to broaden the scope of Article 9 and therefore of conscientious objection.

104. Article 9 of Law No. 194 in fact provides that conscientious objection cannot be extended to procedures and activities that are not specifically and necessarily aimed at carrying out an abortion, nor to the provision of assistance before and after the operation.

105. In this connection, we refer to chapter E "Refusal by practitioners who are conscientious objectors to provide assistance before and after abortions, or the shortage of practitioners for these functions" and the related documents.

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3.11 The Italian Government's position concerning balancing of costs and benefits in the case of medical interventions in general and voluntary terminations of pregnancy in particular

106. If the implications of the matter raised by the Italian Government have been properly understood, the assertions concerning the action to be taken by a doctor preparing to perform a voluntary termination are particularly serious (paragraphs 39 and 40 of the submissions).

107. It is stated that a doctor is entitled to refuse to provide care on professional or personal grounds, except in cases of emergency or for reasons of humanitarian duty.

108. In this connection, reference is made to the provisions of the Code of Medical Ethics, which we consider it appropriate to reproduce here, since the Government has not done so.

109. Article 43 (Voluntary termination of pregnancy) of the 2006 code provides:

"Except in the cases provided for by law, termination of pregnancy constitutes a serious breach of ethics, especially if performed for financial gain.

A doctor's conscientious objection shall be expressed within the scope and limits of the applicable law and shall not relieve him or her of the duties inherent in the care relationship in respect of the woman concerned."

110. Article 44 (IVF) provides:

"Medically assisted conception shall be a purely medical act, at all stages of which a doctor must act towards the persons concerned in accordance with the science and his/her conscience. Couples shall be offered all the appropriate solutions on the basis of the most recent, recognised scientific developments and shall be given the most exhaustive and clear information regarding the likelihood of successfully overcoming infertility, the possible risks for the health of the mother and the child and appropriate prevention measures. A doctor shall be prohibited from implementing, including in the interests of the unborn child: a) forms of surrogate motherhood; b) forms of assisted conception for persons not in a stable, heterosexual relationship; c) assisted conception for menopausal women, not suffering an early menopause; d) forms of assisted conception following a partner's death. The practice of assisted conception for reasons of ethnic selection or eugenics shall be prohibited. The production of embryos solely for research purposes shall be forbidden and any use of gametes, embryos or embryonic or foetal tissues for commercial, advertising or industrial purposes shall be prohibited. Practising assisted conception in non-authorised centres or those without the necessary facilities and personnel shall be prohibited. The rules on conscientious objection shall apply."

111. Lastly, Article 50 (Experimentation on animals) provides:

"Experimentation on animals must be geared to the requirements and purpose of developing knowledge that cannot be attained by other means and must not be carried out for financial gain; it must be performed using methods and means that ensure the avoidance of unnecessary suffering, and the protocols must have been approved by an independent ethics committee. The rules on conscientious objection shall apply."

112. In the light of the above, it can first and foremost be seen that the Italian Government's reference to these provisions is irrelevant.

113. Secondly, with a view to providing a basis for invalidating Law No. 194, the Government asserts that a practitioner can refuse to provide medical treatment above all when there is an issue of proportionality between the requested intervention and its possible outcome and must also respect a balance between the costs and benefits of an intervention.

114. The Italian Government considers that a practitioner can refuse treatment that can be seen to be devoid of any therapeutic purpose.

115. The CGIL confines itself to observing that, once again, the Government is disregarding the scope of Law No. 194, Articles 4 and 6 of which make the possibility of accessing a voluntary termination of pregnancy subject to precise requirements relating to the mental and physical health and the life of the woman concerned.

116. Furthermore, if the Government's reasoning is taken further, the idea emerges that, since the requested treatment inevitably results in a termination of pregnancy, the assessment of the costs and benefits always leads to the conclusion that the practitioner must refuse to carry it out.

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117. From this standpoint, the Italian Government in the end formulates a strategic approach with serious implications, the very aim of which is the abrogation of Law No. 194: termination of pregnancy is possible solely in cases where the woman's life is in danger, since it is only in such cases that the proportionality requirement is respected.

118. The legitimacy of the very provisions that make voluntary terminations of pregnancy lawful also in cases where there is no danger for the woman's life is in the end directly called into doubt. In the Italian Government's opinion, Article 4 is worded in general terms so as to permit its application without strictly medical reasons.

119. In this connection, it can be noted that:

- it is one thing to assert that women undergo abortions also in cases not strictly provided for by Law No. 194;

- it is another thing to consider that the grounds provided for in that law permit, on account of the wording, more extensive recourse to voluntary terminations of pregnancy;

- and it is quite another thing to again confuse this issue – the conditions and limits of access to voluntary terminations of pregnancy – with the subject of collective complaint No. 91/2013, which in fact concerns the significant and growing number of practitioners who are conscientious objectors.

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3.12 The Italian Government's reference to the case-law of the European Court of Human Rights

120. In support of its conclusions, the Italian Government refers to the case-law of the European Court of Human Rights.

121. In this connection, the Government points out in particular that, while no explicit foundation for a right to abortion can be found in the European Convention on Human Rights, in States which allow this practice women are entitled to respect for their choice to terminate a pregnancy, under the conditions provided for by the relevant law (paragraph 16 of the submissions).

122. The Government concludes from this that law No. 194 safeguards the health of women and children (paragraph 17).

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123. Since it is not possible to identify any argumentation aimed at substantiating the Government's assertions, it is necessary to recall the case-law of the European Court of Human Rights in this sphere.

124. The Court has considered that, in matters of voluntary termination of pregnancy, national laws touch upon the sphere of women's private life, which is also closely linked to the situation of the foetus (European Commission of Human Rights, Brüggemann and Scheuten v. Germany, 1977; European Court of Human Rights, Tysiac v. Poland, 2007. See also S. Bartole, P. de Sena, V. Zagrebelsky (ed.), "Commentario breve alla Convenzione Europea dei Diritti dell'Uomo", Cedam, Padua, 2012, pp. 56 et seq.).

125. In particular, Article 8 of the Convention (on the right to respect for private and family life) does not expressly provide for a right to voluntary termination of pregnancy, and in this area, still in the opinion of the European Court of Human Rights, the States must be allowed a broad margin of appreciation.

126. However, this does not mean that the question of voluntary termination of pregnancy falls outside the scope of the European Convention on Human Rights and that legislation of all kinds – in particular all forms of restriction or limitation of access to an abortion – can be regarded as compliant with the Convention (see in particular A., B. and C. v. Ireland, 2010).

127. The Court indeed does not consider that it is unable to assess the compatibility of national law with the Convention, particularly in the light of the subject matter of applications and hence of the circumstances of an individual case.

128. Reference must first and foremost be made to the decision in the case P. and S. v. Poland, 2012,[1] finding a violation by Poland, inter alia, of Article 8 of the Convention, with regard to voluntary terminations of pregnancy, and making consistent reference to the decision handed down in R.R. v. Poland, in 2011, to which we already referred in collective complaint No. 91/2013.

129. In particular, the Court reiterated its earlier case-law:

"96. … the Court held in this context that the State's obligations include both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights, and the implementation, where appropriate, of specific

[1] In this case the Court recalls that: "80. The applicants submitted that the first applicant remained a victim of a breach of Article 8 of the Convention, despite ultimately, after long and protracted efforts, having undergone an abortion. The applicants had never claimed that the first applicant's rights had been violated because she had not been allowed access to an abortion. The core of her complaint was that the State's actions and systemic failures in connection with the circumstances concerning the determination of her access to abortion, seen as a whole, as well as the clandestine nature of the abortion, had resulted in a violation of Article 8. 81. The unwillingness of numerous doctors to provide a referral for abortion or to carry out the lawful abortion as such constituted evidence of the State's failure to enforce its own laws and to regulate the practice of conscientious objection. Both applicants had been misled by the doctors and the authorities as to the applicable procedure and requirements for lawful abortion. The first applicant had been given unwanted counselling by a priest, harassed by doctors and bullied by persons informed of her situation by the doctors and the priest. She had also been unlawfully torn from her mother's custody and put into detention. When she had finally been allowed to obtain the abortion that she lawfully sought, that abortion had been performed in a clandestine manner, in a hospital five hundred kilometres from her home town. 82. The State had failed to take appropriate measures to address the systemic and deliberate violations which had breached the applicants' right to respect for their private life. The set of circumstances surrounding the applicants' efforts to secure a lawful abortion for the first applicant had not been remedied by the fact that she had ultimately obtained it. The first applicant had not lost her victim status because the State had not acknowledged any of the alleged violations, nor had it provided redress."

measures (*Tysiąc v. Poland*, cited above, § 110; *A, B and C v. Ireland* [GC], cited above, § 245; and *R.R. v. Poland*, cited above, § 184)."

130. And it again underlined:

"99. … The Court has already found … that once the State, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations, it must not structure its legal framework in a way which would limit real possibilities to obtain an abortion. In particular, the State is under a positive obligation to create a procedural framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion (*Tysiąc v. Poland*, cited above, § 116-124, *R.R. v. Poland*, cited above, § 200). The legal framework devised for the purposes of the determination of the conditions for lawful abortion should be "shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention" (*A, B and C v. Ireland* [GC], cited above, § 249). "

131. In relation to conscientious objection, and therefore Article 9 of the European Convention on Human Rights, the Court declared:

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

132. In particular, and importantly, the European Court of Human Rights thus clarified that, when a State's legislature decides to regulate this matter, the State itself assumes a positive obligation, deriving from Article 8 of the Convention, to create a legal and procedural framework which does not limit the effective possibility to terminate a pregnancy provided for by the legislation itself (Tysiac v. Poland, 2007, and again see S. Bartole, P. de Sena, V. Zagrebelsky (ed.), op. cit.).

133. A woman is entitled to respect for her own decision to terminate a pregnancy, under the conditions and within the limits provided for by national law, without unreasonable restrictions, failing which there is a violation of Article 8 of the European Convention on Human Rights.

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134. From this standpoint and with reference to the above assessments, it can be recalled that the Italian parliament decided to regulate this matter following the Constitutional Court's previously cited judgment No. 27 of 1975, laying down specific conditions under which access to voluntary termination of pregnancy is lawful.

135. Also in the light of the case-law of the European Court of Human Rights it is therefore part of the State's obligations to ensure the effective application of one of its own laws, guaranteeing women effective access to voluntary terminations of pregnancy in accordance with the limits established by Law No. 194.

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3.13 The Italian Government's reference to the position of the Parliamentary Assembly of the Council of Europe

136. The Government also refers to the position adopted by the Parliamentary Assembly of the Council of Europe (paragraphs 29 to 31), underlining the nature of the right of conscientious objection, which, we repeat, is moreover not in doubt, and the fact that no one may be obliged to perform a voluntary termination of pregnancy.

137. Apart from referring back to our above observations relating to the case-law of the European Court of Human Rights, we reiterate that the aim of the collective complaint is neither to secure a withdrawal of the recognition of the right of conscientious objection nor to force practitioners to refrain from making declarations of conscientious objection or to withdraw them.

138. On the contrary, Italy is being asked to ensure the effective application of a law of the State, which strikes a precise balance between the situations of the woman and of the unborn child and which permits practitioners to refuse to perform such operations, subject to the limits and the conditions laid down in Article 9.

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3.14 The Italian Government's contention that it is impossible for the State to reduce the number of practitioners who are conscientious objectors

139. The Italian Government asks whether it is possible for the State to reduce the number of practitioners who are conscientious objectors without violating the right of conscientious objection and without barring from the medical profession those who, for moral reasons, do not wish to carry out abortions (paragraph 19 of the submissions, repeated in the conclusions – paragraph 52, c).

140. The CGIL would underline here that it has never been maintained that practitioners who are conscientious objectors must be obliged to carry out voluntary terminations of pregnancy, except in case of imminent danger to a woman's life, as provided for in Article 9 of Law No. 194 (taking into consideration both the right of conscientious objection and, a fortiori, the position of women undergoing a voluntary termination of pregnancy, who presumably do not wish to be operated upon by practitioners unwilling to carry out this type of intervention).

141. Consequently, the State is not being asked to prevent practitioners from raising a conscientious objection, but conversely to guarantee the effective application of Law No. 194 by ensuring that in in all establishments there is the medical presence necessary to guarantee the right of access to voluntary terminations of pregnancy.

142. In asserting that the State is unable to reduce the number of conscientious objectors, the Italian Government also seems to confirm the existence of a problem, concerning which it can be asked how a solution can be found if the possibility of reducing the number of doctors who are conscientious objectors is in fact ruled out.

143. The Government dogmatically confines itself to declaring, on the basis of the normative substance of Article 9 of the law, that the regions and the hospitals have always ensured the application of Law No. 194, either through staff mobility measures or through the conclusion of agreements with specialist practitioners (paragraph 21).

144. On a contradictory note, the Government itself moreover subsequently asserts that the level of conscientious objection is "partially" offset by staff mobility and agreements with specialist practitioners (paragraph 26).

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145. One last observation must be made concerning the Italian Government's assertion that the law provides for a right of conscientious objection, on one hand, and, on the other hand, requires the hospitals and the regions to take the necessary measures (paragraph 21). This linking of adoption of the necessary measures with practitioners' exercise of the right of conscientious objection would seem to substantiate the theory that Article 9 of Law No. 194 regulates the exercise of this right and the hospitals and the regions are tasked with putting it into effect.

146. However, in the light of the substance of Article 9 and the foundations of Law No. 194 it is possible to take a converse view of the balance struck by parliament between the rights at stake.

147. In parallel with the recognition of medical personnel's right to raise a conscientious objection, the hospitals above all, and subsequently the regions, are required to guarantee that the right of access to a termination of pregnancy can in any case be exercised.

148. It is with regard to this last right that the establishments are called upon to take the necessary measures and ensure its effective exercise, and also that the regions are required to supervise the activity of the hospitals in pursuit of the objective of guaranteeing the right of access to a termination of pregnancy in all cases, as required by law.

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3.15 The data provided by the Italian Government on conscientious objection and the number of voluntary terminations of pregnancy

149. After having stated that there is no problem of application of Law No. 196 and that there is in any case no right to an abortion, but solely a right of conscientious objection, the Italian Government asserts that the phenomenon of conscientious objection has stabilised in recent years (paragraph 22).

150. It then cites a number of figures which are entirely irrelevant to the subject matter of the collective complaint, and for which no source is given, thereby placing not just the CGIL but also and above all the European Committee of Social Rights in the position of being unable to verify their reliability.

151. In particular, reference is made to the data on recourse to abortions, which would seem to indicate a decline, and to the quality of abortion prevention services. Specific programmes in this area are moreover mentioned but without providing any supporting documents (paragraphs 22 and 23).

152. In this connection, we refer to the considerations set out in chapters P. "Relationship between the decrease in the number of abortions shown by the official figures presented by the Minister of Health in the annual report to Parliament and the difficulties in applying Law No. 194 of 1978" and H. "Cases in which women underwent abortions under unsafe or dangerous conditions" and the related documents, which bring to light the underlying problem of a decrease in official terminations and an increase in clandestine abortions.

153. The data on recourse to emergency procedures, on the surgical interventions carried out in day hospitals, on the reduced period between issue of the certificate and performance of the termination and on the lesser number of complications, alleged to constitute proof of an improvement in the services' efficiency particularly from an organisational standpoint, can also be seen to be entirely irrelevant (paragraphs 24 and 25).

154. Lastly, the Italian Government's argument that the number of practitioners who are conscientious objectors has no practical, direct impact on recourse to abortions, and accordingly does not harm women's rights, also because the reduction in the number of abortions exceeds the increase in the number of conscientious objectors, can be regarded as dogmatic (paragraph 26).

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3.16 Motions tabled in Parliament and the position of the Minister of Health, of which the Government takes no account or is unaware

155. The positions expressed in the Italian Government's submissions, to which the CGIL is responding here, are in contradiction with those adopted 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 (Doc. 7 -1/9) (11 June 2013).

156. It is irrelevant to contend that the tabling of the motions in parliament and the subsequent debate and statement by the Minister of Health post-dated the filing of the Italian Government's submissions in the procedure relating to collective complaint No. 91/2013.

157. The two positions are in fact genuinely of contrasting substance, and this cannot be explained simply in terms of a change of mind or of approach, emerging over a brief period, regarding the question raised by the complaint itself.

158. It is first necessary to make clear the scope of the documents tabled in the Chamber of Deputies (Doc. 7 – 1/9) and the Senate (Doc. 7 – 10), so as to understand their concrete implications for the application of Law No. 194.[2]

159. While it must be noted that the Italian Government expresses two contrasting positions, firstly in the context of the two procedures pending before the European Committee of Social Rights (collective complaint No. 87/2012 and collective complaint No. 91/2013) and secondly in the proceedings in the Italian Parliament, there can be no disregarding the fact that the declarations made by health minister Beatrice Lorenzin would seem to be completely pointless, since they continue to be based on the simple idea that it is enough to monitor the application of Law No. 194.

160. In this connection, the minister confines herself to expressing 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."

161 Again, the minister asserts that she intends "to take action to enable the establishment of … a technical board of the regional commissioners, 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."

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162. In the first place it must be said that the Minister of Health makes declarations of principle, such as those concerning the need for full application of the law or on the need to convey a (mere) "united message", which cannot be regarded as effective stances likely to bring about a change in the situation regarding application of Law No. 194 (from this point of view see the extensive documentation on cases of failure to apply this law, or inadequate application thereof, appended hereto). In this respect, attention can be drawn to the contrasting assessment of the situation made by the Italian Government in the context of the procedure regarding collective complaint No. 91/2013 (and that concerning collective complaint No. 87/2012).

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163. In the second place, the Minister of Health talks in terms of probabilities and hopes when she reminds the parliamentarians that, in July, she will be presenting the usual annual report to Parliament on the state of application of Law No. 194.

[2] In particular, a motion is a measure whereby a discussion or deliberation takes place on matters regarding which the Government is active. The latter is invited to adopt a certain line of conduct, and once it has itself approved the motion in question it is politically bound to fulfil the commitment entered into.

164. On one hand, she confines the scope of her own action to mere monitoring and assessment of the state of application of the law, saying she hopes the statistics obtained will permit effective communication of extensive data in the annual report. In this connection, it would seem that the minister – like the CGIL moreover – deems the official statistics cited in the annual reports to be completely unreliable, which again points to a lack of coordination of the positions adopted by the Government in the different contexts (before the Italian Parliament and in the proceedings before the European Committee of Social Rights).

165. On the other hand, she appears to confirm the reliability of the official data, in that she maintains that, if she is able to present an "effective" report on the state of application of the law in July, it will be possible to verify that the various data (presented during the debate on the motions tabled in the Chamber of Deputies) are interpretable in different ways, and are therefore of course also justifiable.

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166. In the third place, the Ministers of Health specifies:

- firstly that the monitoring she hopes to be able to implement will be performed "with care", again suggesting that the official monitoring has not been careful up to now;

- secondly, that it will be confined to verifying that "there is no discriminatory impact in respect of objectors and non-conscientious objectors within the same regional establishments."

167. It is surprising that the Minister of Health intends to confine the possible monitoring activity to discrimination between practitioners, not just non-objectors but also conscientious objectors.

168. On this subject, recalling the multiple ways in which the rights of both women and non-objecting practitioners are violated, the CGIL refers to the content of collective complaint No 91/2013.

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169. In the fourth place the very declaration of intent made by the health minister concerning her commitment to take future action so as to permit the establishment of a technical board – limited, it must be underlined, to mere monitoring aimed at identifying possible discrimination between practitioners who are objectors and those who are not – reveals an insufficient degree of incisiveness on the part of the competent minister, who seems to suggest that this initiative is not fully within the competence – or the possibilities and perhaps also ultimately the priorities – of the minister herself and therefore of the Government, which further confirms the Government's real and effective stance on this matter, as adopted in the proceedings pending before the European Committee of Social Rights.

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170. In the fifth place, the Minister of Health makes brief reference to a question which would seem to annul all the considerations – still only of principle – on the need to apply law No. 194.

171. In particular, the minister states "We have obviously also had to respect the competencies, that is to say the powers of governance that can be conferred by Parliament, in legislative matters and in the field of regional self-government. However, I believe everyone's intent was to be able to verify at local level and in individual health establishments, that the principles of the law are effectively applied."

172. Here, reference should first be made to chapter 3.7 "The Italian Government's reference to the provisions governing legislative powers in health matters (Article 117 of the Italian Constitution)" of this document.

173. In addition, we would point out that it is not clear what is the purpose of referring to legislative powers and regional self-government, since the issue raised by the collective complaint is the deficient and unsatisfactory application of a law of the State, which dates from 1978 and which the Constitutional Court qualified as being of constitutionally binding substance. This therefore has nothing to do with the distribution of legislative powers between the State and the regions.

174. Lastly, it can be underlined that, once again, the Minister of Health confirms that "everyone's intent" is limited to "being able to verify" the effective application of Law No. 194.

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175. Finally, we would draw attention to a statement by the health minister which seems particularly significant, whereby she recognises that "where the number of objectors has increased or decreased, this has not always meant no problem of access to local services."

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3.17 Documents concerning the deficient and unsatisfactory application of Law No. 194 of 1978

3.17.1 Preliminary observations

176. The Italian Government's position that there has been no violation of the rights of women and of practitioners who are not conscientious objectors provides the CGIL with an opportunity to submit the many documents which were not available at the time of lodging collective complaint No. 91/2013, most of which came to light following the publication of the collective complaint and the related official documents or the publication of collective complaint No. 87/2012 (reference being made herein to the documents relating to that complaint or to other cases of deficient or unsatisfactory application of Law No. 194), since the latter proceedings were brought at an earlier date and are therefore at a more advanced stage, not least because the complaint is being dealt with under urgent procedure.

177. In this connection, it should be underlined that, in any case, there are still objective difficulties in obtaining such information for a number of reasons, set out below, and that further cases of deficient and unsatisfactory application of Law No. 194 continue to materialise.

178. In any case a number of general comments must be made concerning the specific nature of the documentary evidence adduced before the European Committee of Social Rights and of voluntary terminations of pregnancy, and therefore the particular situation of women who decide to undergo such an intervention, on one hand, and of medical personnel and auxiliary staff (hereinafter "practitioners") who decide not to raise a conscientious objection, on the other hand.

179. We again recall that Article 9 of Law No. 194 provides that access to voluntary terminations of pregnancy must always be guaranteed under the conditions and within the limits laid down by that law, and therefore regardless of an effective request for a termination: hospitals are thus always required to guarantee this type of service, subject to the supervision of the regions, which can also have recourse to staff mobility. It must accordingly be ensured that practitioners who are not conscientious objectors are systematically present in each establishment to deal with requests for a termination, even if such requests are only an eventuality and clearly never foreseeable by the establishments concerned.

180. Article 9 in fact requires that the service be systematically guaranteed whether or not terminations are requested in practice in a given geographical area served by a specific hospital. Otherwise, it could be concluded that, if there had been no requests for terminations in a given location, the hospitals could legitimately refrain from guaranteeing this service (governed by a law of constitutionally binding substance, as the Italian Constitutional Court has established). In this connection, please see, for example, the statement by M. Pensa, Secretary General of the FLC CGIL for the province of Sondrio, who asserts that the large number of practitioners who are conscientious objectors in itself shows that Law No. 194 is not being applied in a satisfactory way (Doc. G). See also the statement by Doctor A. Uglietti, who is in charge of the Unit for Simple Operations under Law No. 194 and Minor Interventions, Department for Women's, Children's and Newborns' Health, Mangiagalli Clinic, IRCCS Foundation Ca' Grande General Polyclinic, Milan, concerning the fact that when there is just one practitioner who is not a conscientious objector only one voluntary termination can be carried out per week (Doc. L).

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181. A full review of the state of application of Law No. 194 necessarily requires a survey covering each and every hospital, care home or counselling centre (hereinafter referred to as "establishments") throughout Italy.

182. In particular, it would be necessary to have feedback on the conditions of application of the law in all these establishments in respect of all cases in which a voluntary termination of pregnancy was carried out (with or without difficulty) and all cases in which, conversely, a termination could not take place because of the difficulties arising

from the insufficient number of non-objectors or because there were no non-objectors.

183. The reports so far submitted to parliament by the Ministry of Health contain no analysis concerning the deficiencies or application problems resulting from the number of conscientious objectors, nor do they even provide information on the relationship between requests for voluntary terminations and the presence of non-objecting practitioners in individual establishments, which would nonetheless be relevant to the arguments advanced by the Government in these proceedings before the European Committee of Social Rights.

184. Moreover, as can be seen from the data collected by the association LAIGA, the data supplied by the Ministry of Health in its annual reports concerning the state of application of Law No. 194 differ from those cited in other reports by the same ministry.

185. In this regard, see also Documents 1 and 2 on the situation in the region of Lazio, and also Doc. 17, concerning research carried out in the provinces of Como, Lecco, Lodi, Monza and Brianza and Sondrio, and Doc. 18 on the situation in the region of Lombardy. See also the documentary evidence (Doc. 53) produced by Doctor G. Scassellati, a member of the association LAIGA, concerning the gap between the official data and the real data on conscientious objection and waiting times for obtaining a voluntary termination of pregnancy.

186. In addition, ISTAT (the National Statistics Institute), while requiring forms to be completed with the personal particulars of women who obtain a voluntary termination of pregnancy, refused to provide a list of establishments carrying out abortions, requested by the association so as to take stock of the real state of application of Law No. 194 (Doc. 43, report by the Chair of the Association LAIGA, also in French).

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187. The importance of obtaining full data is due to the specific nature of the topic under consideration here and the particular circumstances of the women concerned, on one hand, and, on the other hand, of the practitioners who are not conscientious objectors, as confirmed by Doctor C. Lalli, the author of many publications on this theme (see below), who, in order to be able to bring out her publications, had to visit a number of hospitals in Rome to seek information direct from the available staff. It can be noted, in this connection, that Doctor Lalli has offered to make herself available should any further information be required (Doc. A). See also the declarations made by Doctors V. Galanti and E. Borzacchiello, who, with regard to the possibility of applying to the European Court of Human Rights, point out how tenuous is the hypothesis that a woman might resort to a judicial remedy. They too are available to provide further input on this subject (Doc. C).

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188. A full survey of this kind is therefore very difficult to carry out, not only because of our limited resources, but also and above all given the deadline for submitting these

observations (in this connection, as can be seen below, a number of people have offered to provide further information if required).

189. It is hard to imagine surveying women about the difficulties they encountered in obtaining access to a voluntary termination for the following reasons:

- if they can be traced they do not wish to reply because they must find alternative solutions, such as going to other hospitals or abroad, within the strict timeframe laid down by the law;

- if they succeed in obtaining an abortion, even with difficulty, describing what happened may cause them to relive their traumatic experience, including the termination itself. See, for example, C. Lalli's book "A la verità, vi prego, sull'aborto" (Please tell the truth about abortion), Fandango, 2013 (Doc. 3) (and also the same author's "C'è chi dice no. Dalla leva all'aborto. Come cambia l'obiezione di conscienza", (Some say no. Conscription to perform abortions. How conscientious objection is changing), Il Saggiatore, 2011, Doc. 40), in which she describes various women's experience and notes with regard to the first case described that "Bianca disregarded the pact of silence among women who have been through abortions, but only ten years later" (page 235, Doc. 3). See also all the cases described in L. Fiore's book "Abortire tra gli obiettori. La moderna inquisizione. Diario del mio aborto." (Aborting among the objectors. The modern inquisition. Diary of my abortion), Tempesta editore, 2012 (Doc. 31), in which the tragic story told shows how difficult it is, if not impossible, for women to find the courage to speak out. The same author recounts her own experience of a therapeutic abortion (Doc. 32).

190. This is very sensitive information and the testimonies are difficult to obtain whether directly (see, in Documents 28, 31 and 32, the direct testimonies of women who were courageous enough to make their own experience public; the vast majority of those who describe their experience in the books do so anonymously), or anonymously, since it is in any case hard for women to tell their stories in this sphere. From this standpoint it is inconceivable that women should be forced to relate these matters or that an attempt should be made to discover the identities of the women concerned, so as to be able to investigate their cases.

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191. At any event, 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 (in this connection, see the video report on the website http://video.repubblica.it/edizione/bari/odissea-consultori-io-obiettore-il-dottore-passa-solo-a-timbrare/113822?video=&ref=HREC2-8 and the related investigation: Documents 4 and 46 concerning Doctor P. Puzzi's statements on the waiting times that oblige women to tour the hospitals and on the list of neighbouring hospitals to which they can apply for an abortion. See also Doc. 43, Report by the Chair of LAIGA, showing the difficulties of gathering this type of data).

192. It must also be noted that the certificates issued for terminations of pregnancy do not specify the content of the interview between the woman and the doctor (an example of a certificate attesting a request for a voluntary termination of pregnancy, Doc. 33, is attached). Nor is it even possible to recover any documents in the possession of the practitioner or the woman, which are safeguarded by privacy law and concern a topic which is, we repeat, entirely specific, differing considerably from other medical/health related topics.

193. It should also be said that the establishments carrying out voluntary terminations have absolutely no means of obtaining the list – if such a list indeed exists – of women who encounter difficulties in obtaining certificates from the counselling centres.

194. In this connection, please see motion 1-00082 (Doc. 7-7), which states "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."

195. Lastly, there can be no disregarding the fact that even practitioners who are not conscientious objectors encounter considerable difficulties in denouncing the deficient application of Law No. 194, or its non-application. This entails:

- on one hand, that the practitioners who are not objectors denounce an establishment which does not guarantee the service, with inevitable repercussions on their employment situation; and

- on the other hand, that the practitioners who are not objectors denounce objecting practitioners who, for example, refuse to provide assistance with activities not related to the termination itself (see the recent case decided by the Court of Cassation, Doc. 19, and also Documents 20 and 25).

196. While we have gathered statements by gynaecologists and anaesthetists, it is not possible to cite their names here since, as already mentioned, that would harm their interests.

197. It would clearly be all but pointless for the CGIL to furnish an attestation of the truth of the statements. This is why fundamental importance is attached to the testimonies gathered, even on an anonymous basis, in the publications of L. Fiore, also describing her own experience, and the philosopher and journalist C. Lalli.

198. In this connection, and by way of example, mention should be made of the steps taken by the Luca Coscioni Association and the Italian Association for Demographic Education to file a complaint of violation of Law No. 194 in the region of Lazio. The purpose of this complaint was to ask the Rome Prosecutor's Office – on the basis of information provided by the LAIGA association concerning the real number of conscientious objectors – to conduct an investigation into the illegal situation in which public hospitals are finding themselves (Doc. 26).

199. In conclusion, as regards these aspects, it must be underlined that it is very difficult, if not impossible, to ask women, above all, but also non-objecting practitioners, to

expose themselves publicly by denouncing individual conscientious objectors or establishments in which access to voluntary terminations of pregnancy is not guaranteed.

200. Reference can be made, for example, to the statement by Doctor A. Uglietti, who is in charge of the Unit for Simple Operations under Law No. 194 and Minor Interventions, Department for Women's, Children's and Newborns' Health, Mangiagalli Clinic, IRCCS Foundation Ca' Grande General Polyclinic, Milan, concerning these difficulties, which seriously hamper the gathering of detailed data and testimonies (Doc. L).

201 See also the statements by V. Galanti and E. Borzacchiello, Doc. 52, concerning the difficulties in investigating this subject, combined with the lack of testimonies by women and practitioners. Various other people testify to this situation in the same document: see for example the statements by E. Raffa, a journalist, and M. Pepe.

202. See also the statement by G. Medina concerning the situation in the region Friuli Venezia Giulia, mentioning the long waiting list for access to voluntary terminations of pregnancy after the first three months and the difficulties in denouncing this situation (Doc. 52, setting out G. Medina's own experience and the way in which she was treated) and the statement by Doctor M. Toschi, of the Umbria region, concerning the difficult access to voluntary terminations of pregnancy (Doc. 52).

3.17.2 Documents

203. These justifiable, preliminary considerations regarding the situation, which does not permit any organised search for data on the deficient or unsatisfactory application of Law No. 194, on account of the specific nature of the topic under consideration and the particular physical and mental condition of women who attempt to obtain a termination of pregnancy in accordance with the conditions and time-limits laid down by that law, not to mention that of the practitioners who are not conscientious objectors, put into perspective the documents that have been gathered.

204. In this connection reference must necessarily be made to the cases in which the persons involved decided to report the conditions in which the law is being applied.

205. As already mentioned, it is necessary to take account of the nature of the topic being discussed and the circumstances of both the women and, albeit with obvious differences, the practitioners who are not conscientious objectors.

206. Accordingly, on one hand we have statements by practitioners not conscientious objectors, who have decided to tell their stories, even taking account of their own stipendiary status, and on the other hand testimonies by women, many taken from books in which, it must be underlined, the women are in any case guaranteed anonymity.

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A. **<u>Cases of suspension of the pregnancy-termination service due to a shortage of practitioners not conscientious objectors</u>**

207. Conscientious objection has deprived the city and province of Bari (Puglia region) of the last hospital where voluntary terminations were carried out. This is because, at the San Paulo hospital, the sole public establishment, all of the practitioners have raised a conscientious objection (Doc. 10).

208. It can be noted, in particular, that, because they cannot access terminations in public hospitals, women are obliged to apply to the polyclinics, which are not part of the local health service (ASL) and which encounter considerable organisational difficulties on account of the shortage of non-objecting practitioners, or to establishments in Monopoli, Putignano and Corato, if not even in other regions.

209. Reference is also made to the video investigation on the Bari counselling centres, which brought to light the difficulties encountered by women in finding doctors who prescribe the morning after pill and issue the documents required to obtain a voluntary termination of pregnancy: http://video.repubblica.it/edizione/bari/odissea-consultori-io-obiettore-il-dottore-passa-solo-a-timbrare/113822?video=&ref=HREC2-8.

210. Also in the Department of Gynaecology and Obstetrics of Perrino di Brindisi hospital (Puglia region) all the practitioners are conscientious objectors (Doc. 47).

211. The public voluntary termination service in the Naples Polyclinic (Campania region) was shut down following the violent death of the only practitioner not a conscientious objector, who was run down by a motorbike (Doc. 11).

212. We also append the article published on the website www.uccronline.it, which apart from reporting the facts, also describes the, to say the least worrying, context in which this incident took place: "Life has won at the Naples Polyclinic, for a while human beings will no longer be killed because there is no longer a doctor prepared to eliminate what the embryologists call a 'new unique and irreproducible human being'. The decision has been taken to suspend the abortion service and dispensing of the Ru486 pill."

213. Then there are the cases of Fano and Jesi (in the Marche region) concerning which we append substantial documentary evidence – also supplied by the CGIL – concerning the suspension of the voluntary termination service (Doc. 12).

214. We also enclose the document published on the website www.uccronline.it, which confirms this situation, announcing "good news for the birth rate in Jesi: all the doctors are conscientious objectors" (Doc. 6). In the same vein, the article entitled "Abortions, fortunately the number of conscientious objectors is growing" confirms, starting with its very heading, the link between the high number of practitioners who are conscientious objectors and the decrease in the number of abortions (Doc. 13). In particular, reporting on the fact that the news had been relayed by the national newspapers in early September, the website stated, on a triumphant note, that this situation – where all ten gynaecologists are conscientious objectors – had in fact prevented any terminations from being performed in August.

215. Also in the Lazio region, where the association LAIGA noted that 91.3% of practitioners are conscientious objectors, 9 out of 31 public establishments do not carry out

terminations of pregnancy and in three provinces there are no therapeutic abortions (Docs. 1 and 2, referring to the provinces of Frosinone, Rieti and Viterbo. See also document 56.)

216. Concerning this situation, attention can again be drawn to the report on the website www.uccronline.it, as a means of understanding the context underlying the non-implementation of Law No. 194. In particular, the dramatic situation noted by the association LAIGA, far from being denied, is welcomed in triumphant terms "Good news from Lazio: in 9 public establishments out of 31 … human beings are not exterminated during the first stages of their existence"; or again, in the cases of Formia and Palestrina "they have suspended the service", or regarding the Tor Vergata Polyclinic "while the establishment has the necessary facilities, terminations of pregnancy are not carried out", concluding with the question "If abortionist doctors are not available, how can the health establishment be held responsible?" (Doc. 14).

217. Again in the Lazio region, the S. Andrea hospital (a public teaching hospital) does not carry out abortions or train new gynaecologists (in this connection, see the testimony of Dr M. Parachini, a gynaecologist and member of LAIGA – Doc. 2).

218. It can also be noted that "Many non-objecting practitioners are near pensionable age and will not be replaced due to a lack of professional training." (Doc. 2 – also see the case of Doctor P. Puzzi, Doc. 4).

219. The CGIL has gathered some data concerning the shortage of non-objecting practitioners, or their reduced number: in the province of Palermo (region of Sicily) there is no non-objecting practitioner in certain hospitals (or only one, including external practitioners); in the Abruzzo region there are hospitals with no non-objecting practitioners (in Pescara only one out of three hospitals guarantees the service, with just one practitioner; in Teramo only two hospitals out of four guarantee the service; in Chiteti only three hospitals out of five guarantee the service, in one case with an external non-objecting practitioner; in l'Aquila there is only one non-objecting practitioner for three establishments); in Messina there are hospitals without any non-objecting practitioner (Barcellona, Patti, Lipari and Mistretta – Doc. 39); information has also been provided on the ratio between objecting and non-objecting practitioners (anaesthetists, doctors, nurses, obstetricians) for each hospital in the Puglia region, from which it emerges that some hospitals have no non-objecting practitioners (Doc. 44).

220. See document 52, setting out the testimony of L. Barbaro, Director of the Operational Consultation Unit for Area Ionica Asl 5, concerning the need to send women seeking a termination elsewhere because it is impossible to guarantee the treatment in Messina (Sicily region).

221. See also document 49 on the situation in the region of Liguria, where, apart from having been submitted late, the report for 2011 on the state of application of Law No. 194 contained no data on conscientious objection. In addition, Doc. 1 indicates that in this region's hospitals widespread recourse to conscientious objection is compromising access to voluntary terminations of pregnancy.

222. See also the table in Doc. 43, the report by the Chair of the association LAIGA, which shows the number of hospitals in which voluntary terminations of pregnancy are carried out for the regions of Piedmont, Lombardy, Trentino, Veneto, Friuli, Liguria, Emilia Romagna, Tuscany, Umbria, Lazio, Abruzzo, Molise, Basilicata, Puglia, Calabria, Sicily and Sardinia.

223 The same document 43 lists hospitals that do not guarantee the treatment and/or in which all the practitioners are conscientious objectors: "the S. Andrea teaching hospital (Rome), the Acquapendente hospital (Viterbo), the Andosilia hospital (Civitacastellana), the Belcolle hospital (Viterbo), the S. Camilo de Lellis hospital (Rieti), the Umberto 1 hospital (Frosinone), the S. Benedetto hospital (Alatri), the Maggiore della Carità hospital (Novara), the Castelli hospital (Verbania), the Portogruaro hospital (Verona), the hospitals of Gorizia, Jesi Marche, Fano Marche, Fermo Marche, Belluno, Camposampiero, Runiti S. Lorenzo Varmagnola in Turin, the Brescia civil hospital, S. Maria delle Stelle Melzo in Milan, Cernusco, Carate, Gallarate, Gorgonzola, Angera, Treviglio and Caravaggio, Como, Cantù, Monza, Sassuolo, Franchini-Montecchio in Reggio Emilia, Ponteannicari, Lipari, Muscatello Augusta (SR), Bosa (Sardinia), Ozieri (Sardinia), Bassano, San Paolo di Bari, Perrino (Brindisi), Venere (Bari), Bitonto (Bari), Bisceglie, Fasano, Velletri."

224. Reference can also be made to the statement in document 52 on the situation in the Tuscany region, particularly at the Sienna teaching hospital and polyclinic specialising in obstetrics and gynaecology ("Le scotte", Iale Bracci, Sienna), which mentions the presence of objecting practitioners as the express ground for the service's suspension.

225. The documentation provided by Doctor P. Puzzi, a retired gynaecologist, is also appended. In his former hospital (in Gavardo, province of Brescia, Lombardy region) he performed voluntary terminations of pregnancy together with another gynaecologist, who found himself alone after Dr Puzzi's retirement and was subsequently obliged to raise a conscientious objection on account of the workload (Doc. 8, experience of Dr P. Puzzi, who also gathered data on the hospitals in Brescia – Doc. 9). Dr Puzzi in addition supplied documents on the many cases in which the service was suspended (Doc. 45).

B. **Link between the number of practitioners not conscientious objectors and the number of requests for voluntary terminations of pregnancy**

226. Reference can be made here to the considerations already set out in relation to the cases where the voluntary termination service was suspended on account of the number of practitioners who are conscientious objectors.

227. In any case it must be reiterated that there are no official data on this subject. The annual reports by the Ministry of Health contain no specific information on the number of requests for terminations of pregnancy per hospital. As already mentioned, the LAIGA association's request that 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 voluntary terminations of pregnancy – and 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 – and the number of non-objecting practitioners called upon to perform this type of intervention.

228. We would repeat once again that Article 9 of Law No. 194 requires all establishments to guarantee the service at all times, regardless of the existence (or absence) of requests for terminations in practice. Otherwise, it could be concluded that, if there are no such requests in a given area, local establishments would be justified in not guaranteeing the service (governed by a law of constitutionally binding substance).

229. Although it addresses other questions, not relevant to voluntary terminations of pregnancy, but which help to describe the general context in which the women find themselves, reference can be made to the video report by the Radicali di Roma association (http://roma.repubblica.it/multimedia/home/2899382) on the difficulties in prescribing the morning after pill (Doc. 30, which also deals with the legal aspects). In particular, this report contains direct testimonies, albeit anonymous, concerning the hospitals of Casilino, Cristo Re, Cto, Gemelli, Fatebenefratelli, Grassi, Sandro Pertini, Regina Margherita, Sant'Andrea, Figlie di San Camillo, San Giovanni, San Carlo, Tor Vergata polyclinic, Sant'Eugenio, San Filippo Neri, San Pietro Fatebenefratelli, San Giacomo, Aurelia, Santo Spirito and Umberto I.

230. This question is moreover undoubtedly of importance in the light of the widespread practice of extending the scope of Article 9 of Law No. 194 to other activities which are not in fact linked to abortions (on this matter see also the case decided by the Court of Cassation, Doc. 19, the decision by the Puglia Regional Administrative Court, Doc. 25, the cases of "conscientious objection by pharmacists" described in Doc. 34 and document 19 on "conscientious objection by porters and nurses").

C. **Significant increase in requests for voluntary terminations of pregnancy in a given establishment**

231. In this connection reference can be made to the case of the Bari polyclinic described on the website www.uccronline.it (Doc. 10) stating that, for administration of the RU486 pill, "Bari has become a destination for easy abortions, visited by women not just from Puglia but from all over the South."

D. **Cases of failure to replace non-objecting practitioners in their absence**

232. In this connection, reference can be made to the already cited case of the hospital of Gavardo, province of Brescia, where following Doctor P. Puzzi's retirement no other practitioner was recruited to work with the sole remaining practitioner not a conscientious objector (Doc. 8).

233. Mention should again be made of the Naples Polyclinic where the service was suspended following the death of the sole practitioner not a conscientious objector (Doc. 11).

234. At San Camillo hospital in Rome (see also Doc. 15) a therapeutic abortion was postponed for four days due to the lack of an anaesthetist not a conscientious objector, following which everyone was on leave. The postponement posed a risk of exceeding the time-limits set out in Law No. 194 (Doc. 16).

235. Attention can also be drawn to a survey carried out in Lombardy which, apart from showing that the real figures for conscientious objection are higher than the official data (Documents 17, 18 and 27), brings to light the need to cope with the shortage of non-objecting staff by having recourse to consultants who have already retired or to private practitioners who are paid a fee per operation (in this matter, apart from Doc. 8, see Docs. 17, 18 and 27, containing further data relating to the situations in Treviglio, Como, Cremona, Lecco, Lodi, Milan, Monza e Brianza, Mantova, Sondrio and Gallarate).

236. In addition, it must be noted that the situation can but deteriorate, since "Many non-objecting practitioners are old and approaching retirement age … whereas the younger ones are almost all objectors." (Doc. 18)

237. Again in relation to the situation in Lombardy, further considerations have been put forward, which "could be valid for all of Italy" (see C. Lalli in "Abortion and conscientious objection in Lombardy's hospitals", Doc. 27).

238. In particular, the consequences of the high relative percentages of conscientious objectors depend on a number of variables: "the town where you live and the ease with which you can choose one establishment rather than another. … How aware you are of your rights and of the effects of conscientious objection on the genuine guarantee of the service. … How much money you have. … How many people you know and who. … And unquestionably in any case the likelihood that a given service will be under threat in the light of those percentages." (C. Lalli, Doc. 27).

239. Reference can also be made to the case of Ascoli Piceno (Marche region), where the service is guaranteed by a practitioner originating from Milan: "The effective application of the law depends on the attitude of a "very narrow category of professionals with particular technical skills (in obstetrics and gynaecology)"; this brings to mind the situation in Ascoli Piceno, where it would not be possible to carry out voluntary terminations of pregnancy without this practitioner who travels every week from Milan. There is thus a need to ensure that all the establishments involved, including the counselling centres, correctly apply the law, rigorously complying with the time-limits laid down therein. As a result of the organisational difficulties caused by the high number of conscientious objectors, terminations take place increasingly late, which endangers the women's health." (Doc. 29, p. 844)

240. Moreover, in this connection it can be noted that "According to the previously cited report by the Ministry of Health, in 2006 the percentage of terminations carried out within 14 days of the document's issue (56.7%) decreased compared with 2004 (58%) and the percentage of interventions taking place beyond three weeks accordingly increased: 18% in 2006 compared with 16.4% in 2005." (Doc. 29,p. 844)

241. See also document 43, the report by the Chair of LAIGA, containing various references to similar cases, such as in Bari (concerning the difficulties when the sole non-objecting practitioner is on holiday), Monterotondo (concerning the difficulties when the sole non-objecting practitioner is ill), Jesi (concerning the difficulties when the sole non-objecting practitioner retires) and Naples (concerning the difficulties when the sole non-objecting practitioner dies).

E. Refusal by practitioners who are conscientious objectors to provide assistance before and after abortions, or the shortage of practitioners to carry out these functions

242. Concerning the provision of assistance before and after terminations, attention should be drawn to the case decided by the Court of Cassation on 2 April 2013, in which it sentenced to one year's imprisonment an objecting practitioner who had refused to assist a woman who had already undergone an abortion and subsequently suffered a severe haemorrhage (Doc. 19).

243. In this regard, see also the statement by F. Gallo, a lawyer and Secretary of the Luca Coscioni association (http://www.radioradicale.it/scheda/376858/legge-194-intervista-a-filomena-gallo-sulla-sentenza-della-corte-di-cassazione-sullobiezione-di-coscienza), again drawing attention to the difficulties of reporting cases of deficient application of Law No. 194.

244. This case is all the more striking, and particularly illustrative of a general climate hostile to the effective application of the law, because it involved assisting a woman who had already undergone an abortion. It can incidentally be pointed out that Law No. 194 itself requires practitioners, even those who object, to intervene themselves and carry out an abortion to save the life of the woman when necessary (Article 9).

245. The decision of the Court of Cassation merely confirms the legislative provisions and the established case-law, which confines the operational scope of conscientious objection to those acts strictly linked to the abortion procedure (see the authoritative commentary by V. Zagrebelsky concerning the decision of the Ancora magistrate's court of 9 October 1979 finding that the operational scope of conscientious objection solely includes those activities immediately preceding the anaesthesia of the patient, the anaesthesia itself and the abortion operation: Doc. 20. See also the case-law of the Italian Constitutional Court ruling out the possibility for the guardianship judge to raise a conscientious objection in the case of a voluntary termination of pregnancy carried out on under-age woman (Article 12 of Law No. 194), since the judge's activity is not included among those linked to the abortion, as a result of which there can be no form of discrimination between guardianship judges and doctors, who can conversely raise a conscientious objection among the many other possibilities (judgment No. 196 of 1987, Doc. 41). See also Document 42 for a reconstruction of the successive Constitutional Court decisions, showing that Law No. 194 continues to be challenged through applications seeking a declaration of unconstitutionality regarding the law's core provisions, which the Italian Constitutional Court has held to be of constitutionally binding substance).

246. We further refer to the observations concerning the difficulties in having the morning after pill prescribed (in this connection see the video report by the Radicali di Roma association (http://roma.repubblica.it/multimedia/home/2899382 – Doc. 30) and the reports on so-called conscientious objection by those working within the counselling centres, the pharmacists, the porters and the nurses (Documents 19, 25 and 34).

247. Along the same lines, another consideration must be raised regarding the activities carried out in the counselling centres (in this connection, see the video report http://video.repubblica.it/edizione/bari/odissea-consultori-io-obiettore-il-dottore-passa-solo-a-timbrare/113822?video=&ref=HREC2-8 - Doc. 4).

248. These activities – the supply of psychological assistance, information and advice for pregnant women, in addition to tests and gynaecological consultations – fall outside the scope of Article 9 of Law No. 194, since they are not specifically and necessarily aimed at bringing about a termination of pregnancy. In this connection, see the decision by the Puglia Regional Administrative Court (Doc. 25, in addition to the already cited Doc. 20 concerning the decision by the Ancona magistrate's court, with the commentary by V. Zagrebelsky referred to above) which found that "the exemption provided for in Article 9 of Law No. 194 for objectors solely concerns the procedure and activities specifically and necessarily aimed at bringing about a termination of pregnancy, not assistance before and after the intervention."

249. Moreover and significantly, the Puglia Regional Administrative Court took note of the difficulties surrounding the application of the same law in counselling centres, recalling the region's assertion that "The fear that the mass presence of conscientious objectors within a counselling centre can lead to incorrect application of Law No. 194 is clearly apparent from page 10 of the Puglia region's observations in reply filed on 14 July 2010, in which it asserts: ' … had to note that the critical situations complained of were also due to the presence in many counselling centres of objecting physicians who do not all take the same attitude as regards the performance of their activities. Whereas some (the majority), in accordance with the law, are willing to issue the pregnancy termination documents to women who so request as part of the "global care" provided by the counselling team as a whole (psychologist, social assistant, obstetrician, doctor), others refuse to do so and often also refuse to insert an IUD (coil) for contraceptive purposes or to prescribe emergency contraception (the morning after pill), also rendering the counselling service ineffective as regards the prevention of terminations both before and after conception.'" (Doc. 25) Again in connection with this case, the Puglia court envisaged a solution that "would not breach the principle of equality enshrined in Article 3 of the Constitution", consisting in "reserving 50% of posts for specialist practitioners who have not raised a conscientious objection and the remaining 50% for objecting specialist practitioners" within individual counselling centres.

250. Lastly, reference is made to the observations set out in the following statement by F. Gallo, a lawyer and Secretary of the Luca Coscioni association (http://www.radioradicale.it/scheda/376858/legge-194-intervista-a-filomena-gallo-sulla-sentenza-della-corte-di-cassazione-sullobiezione-di-coscienza), concerning the testimonies of women who were obliged to undergo an abortion alone in the

establishments' bathrooms because after administering the necessary drugs the doctors did not provide them with the required assistance.

251. See also motion 1-00045 (Doc. 7-1) asserting that the objecting practitioners (whose number is qualified as "exorbitant") "often also refuse to point patients towards a non-objecting practitioner or another health care establishment authorised to perform voluntary terminations of pregnancy."

F. Cases in which women unsuccessfully attempted to obtain terminations of pregnancy and underwent abortions under unsafe or dangerous conditions or were obliged to continue with the pregnancy

252. On this subject, we would recall our above comments on the impossibility of obtaining testimonies from the women concerned.

253. This matter indeed concerns sensitive data and information, which could be pieced together first and foremost from direct testimonies. These women could be identified solely by staking out the health establishments on a daily basis or by requesting lists of women from them, but they would be unable to grant such requests for reasons of protection of privacy. Once the women had been identified, they would have to be prepared to talk about and make public their experience, which, it must be recalled, is not comparable with other medical interventions, whether the abortion took place – with or without difficulties – or whether the woman had to go for another solution.

254. A further possibility would be to recover the clinical files of all the patients. Such an operation, comparable with requesting the establishments for a list of women who had sought a termination of pregnancy, is completely unfeasible for reasons of protection of privacy.

255. As already mentioned, even the data included in the health ministry's annual reports result from the compilation of anonymous questionnaires which, as can be seen from the elements included in the reports, contain no specific section on malfunctioning of the health establishments on account of the high number of practitioners who are conscientious objectors.

256. It is accordingly inconceivable that women finding themselves in the situation of having to seek a voluntary termination of pregnancy might be obliged to provide written documentation on their own experience.

257. Reference can again be made to the complaints received concerning women who were obliged to undergo an abortion alone, as mentioned in the following statement by F. Gallo, a lawyer and Secretary of the Luca Coscioni association (http://www.radioradicale.it/scheda/376858/legge-194-intervista-a-filomena-gallo-sulla-sentenza-della-corte-di-cassazione-sullobiezione-di-coscienza), which underlines the difficulties in filing complaints, along with the ill-treatment suffered by the women concerned (this ill-treatment is moreover also apparent from the previously cited works appended hereto; concerning a case of ill-treatment in Naples which was reported in the press see Doc. 38) and the establishment of a legal advice service

(under the head "Civil assistance" on the website www.associazionelucacoscioni.it, Doc. 35).

258. F. Gallo has declared her availability to provide further details of these highly sensitive cases.

259. Concerning the situation in the Lazio region, reference should be made to the statement by Doctor G. Pacini, a member of the association Vita di Donna (www.vitadidonna.it) (Doc. 52), which has been running a free telephone call line since 2002 for the purpose of collecting women's testimonies about the difficulty of obtaining access to an abortion.

G. **Cases in which women unsuccessfully attempted to obtain terminations of pregnancy**

260. Concerning this aspect, reference is made to the cases already mentioned concerning the failure to provide a voluntary termination service.

261. Another case, which did end in termination of pregnancy, can be of significance in explaining the difficulties encountered by women when there are organisational deficiencies at the level of the hospitals. It concerns a woman in Padua who was denied a therapeutic abortion and was obliged to travel to Naples. This led the Radicals group in the Chamber of Deputies to raise a parliamentary question (Doc. 21. See also the account of R. Melone's therapeutic abortion, Doc. N).

262. In addition, with regard to the Marche region, the local branch of the CGIL has reported that "already in 2010 out of 2 409 voluntary terminations of pregnancy carried out on women living in the Marche, some 5.5% were in fact performed outside the relevant province and 24.5% outside the region itself" (Doc. 12).

263. We also append a report by Dr S. Agatone, Chair of the LAIGA Association, containing the testimonies of certain foreign health centres along with data on the movements of women between regions (concerning the situation in the Lombardy region the report describes the system for taking charge of the women) (Doc. 43). See also the statement by Dr E. Canitano (Doc. 52 and Doc. F) concerning the difficulties of finding a hospital guaranteeing the treatment in the Lazio region. In particular see the case of a woman who was obliged to travel to Greece.

264. Doctor P. Puzzi has provided documents concerning the need to transfer women from one establishment to another. In some cases it was even possible to calculate the number of women obliged to go elsewhere (Doc. 45). In this connection it can further be noted that some establishments provide lists of other establishments to which women can turn when they are unable to carry out a termination of pregnancy because of a shortage of non-objecting practitioners (Doc. 46).

265. Accordingly, from this standpoint, also recalling the above preliminary observations concerning the difficulties in tracing the necessary data, it can be noted that there may be some establishments where a termination is never requested because it is by now

known that this type of intervention is not carried out there, thereby violating the legal provision requiring all establishments to guarantee such a service.

266. Reference should also be made to the situation described by Doctor A. Uglietti concerning the cases of women who attempt unsuccessfully to access the voluntary termination procedure in the hospitals of Gallarate, Busto Arsizio, Melegnano and Foggia. These women are forced to travel to the hospital in Milan where Dr Uglietti herself works (Doc. L).

267. See also Doc. 50 on the situation in Milan, where the hospitals operate a specific system of access to abortions: only a limited number of women is accepted, which differs from one hospital to another and which applies only on certain days and at certain periods of time (see also Doc. 43 containing the report by the Chair of LAIGA on the situation in the Lombardy region, in particular the cases of the following hospitals: Buzzi, San Carlo, San Paolo, Clinica Mangiagalli, Luigi Sacco in Milan and the hospitals of Rho, Garbagnate Milanese and Cernusco sul Naviglio).

H. **Cases in which women underwent abortions under unsafe or dangerous conditions**

268. Apart from the cases already mentioned concerning the so-called financial discrimination, whereby only the more well-off women are able to travel to private nursing homes abroad, the question of clandestine abortions or DIY solutions must be raised. The former number 15 000 per year, despite the entry into force of Law No. 194 (whereas before there were some 250 000 clandestine abortions per year – see Docs. 22 and 23 on the case of Ischia in the Campania region).

269. In this connection reference is made to a recent investigation, published on 23 May 2013 on the web-site of the La Repubblica newspaper: http://inchieste.repubblica.it/it/reppublica/rep-it/inchiesta-italiana/2013/05/23/news/aborti_obiettori_di_coscienza-59475182/ and the web-site http://incheste.repubblica.it/it/repubblica/rep-it/inchiesta-italiana/2013/05/23/news/torna_l_aborto_clandestino-59480523/ (Doc. 57), including testimonies of various cases of deficient and unsatisfactory application of Law No. 194 (see also Doc. 37 concerning the link between the deficient and unsatisfactory application of the law and the increase in clandestine abortions).

270. In particular, it is becoming apparent that the issue of voluntary terminations of pregnancy is being sent back underground by the high number of practitioners who are conscientious objectors. Women who do not succeed in accessing a termination in fact resort to clandestine abortions. The Ministry of Health itself estimates the number of illegal abortions at about 20 000, although this figure has not been updated since 2008 and the ministry itself recognises that it is understated (Doc. 57; again in the context of the investigation see the statements by F. Bonarini, a lecturer at Padua University and author of a paper on "Sexuality and reproduction in modern-day Italy", and B. Mozzanega, again of Padua University).

271. The real figure for the number of clandestine abortions could however be as high as 50 000, with all the risks linked to this kind of practice. Moreover, it must be

underlined how difficult it is to quantify a phenomenon which, by its very nature, escapes any kind of monitoring.

272. On one hand, there are the risks of death or sterility for the women and the need to travel from one hospital to another, including abroad (see the cases reported on in the investigation), while on the other hand there are the clandestine sale of drugs and the unauthorised clinics (see the section of the investigation concerning the illegal outpatient clinics, in connection with which mention can be made of the Padua Finance Police's operation to close down an illegal outpatient clinic run by the Chinese mafia), in addition to the one known case, in Caserta, – but others may obviously exist – of the sale of a newborn child after a gynaecologist had persuaded the mother not to abort, but to give birth in exchange for financial compensation (Doc. 57).

273. The same investigation mentions the seizures and the illegal peddlers of abortion drugs and manufacturers of the Ru486 pill, in addition to the 188 prosecutions brought over the last year for breach of Law No. 194 (Doc. 57).

274. 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 Law No. 194, 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.

275. Significantly, regarding the situation in Lombardy (which could be the same throughout Italy), C. Lalli (Doc. 27) observes that the variables that alter the consequences of the high number of conscientious objectors include the financial factor, or the financial resources available to women, which obliges them either to go abroad or to have recourse to means of terminating their pregnancy which are likely to harm their health or their very lives: "if you can afford it you might choose to go to London, as was the case before Italy adopted Law No. 194. At the other extreme, there are a number of cases of women who have taken Cytotec, a drug used for treating ulcers but which has the side effect of terminating a pregnancy (misoprostol, the active ingredient in Cytotec is used to terminate pregnancies, but using it as a do-it-yourself remedy may be risky depending on where you take it and whether you get the dosage wrong)."

276. The self-managed counselling centre in Milan refers to the case of a woman who attempted to obtain an abortion in Bassini hospital at Cinisello Balsamo (Lombardy region), where there were only two external doctors. She tells of the unhealthy conditions in which she had to undergo the operation. The counselling centre maintains, on the basis of the most recent official data on application of Law No. 194, that in the regions where there is a low percentage of conscientious objectors there are virtually no post-operative complications and in the regions where the number of conscientious objectors is increasing the complications are increasing in parallel (Doc. 50).

I. <u>Cases in which women were obliged to continue with a pregnancy</u>

277. All the cases already mentioned where difficulties in accessing the service obliged women to continue with their pregnancy while seeking other available establishments or alternative solutions come under this head.

278. In San Camillo hospital in Rome (see also Doc. 15) a therapeutic abortion was postponed for four days due to the lack of a non-objecting anaesthetist, and then everyone was on holiday. The woman previously made the following declaration "I am at the mercy of chance and the health personnel's holidays … They have not given me a fixed appointment and the time-limit for carrying out the abortion ends on Thursday, after which I will be obliged to keep the baby until the ninth month, but in any case it will be born dead." (Doc. 16)

279. In connection with this issue, see also the statement made by the Chair of LAIGA, Doctor S. Agatone (Doc. 57). Given the high number of practitioners who are conscientious objectors, "the waiting lists are scary and there is a risk of overrunning the number of weeks in which a termination is authorised."

L. **Difference between abortions performed in the first three months of pregnancy and abortions performed after the first three months**

280. In this connection, reference is again made to the case of the Lazio region. It is described as follows "Although it is possible to cope with abortions carried out in the first trimester by calling on external doctors affiliated to the national health service or fee-charging practitioners, who represent about 11% … the same does not apply to therapeutic abortions, on which the 91.3% figure weighs like lead. Recourse to affiliated doctors and fee-charging practitioners reduces the objectors' percentage to 84%, but this is in any case more serious than the 80.2% figure mentioned by the Ministry of Health, which fails to take into consideration the fact that some of the non-objecting gynaecologists (4%) in fact do not perform terminations" (statement by Doctor M. Paravicini, Doc. 2).

281. It should be noted (Doc. 43, report by the Chair of LAIGA) that the external doctors and fee-charging practitioners cannot carry out so-called therapeutic terminations of pregnancy (see also the interview with S. Rodotà, emeritus professor of civil law, La Sapienza University, Rome, and President of the Personal Data Protection Authority (Doc. 48).

282. Attention is drawn here to the observations by Prof. G. Brunelli (Doc. 29, pp. 843 et seq.): "What particularly complicates the situation is the legislators' ideological decision [Article 8 of Law No. 194, whereby during the first ninety days a voluntary termination of pregnancy can be carried out also in nursing homes authorised by the regions] to allow the operation to be carried out solely in public hospitals and nursing homes authorised by the regions, with negative implications for 'the quantitative supply of services'." There are in fact "some local situations where widespread conscientious objection in fact equates with a shortage of services and, therefore, the emergence of a need for local mobility to have the termination carried out elsewhere." as was pointed out by A. Burgo, who is in charge of the operating unit for health care services and epidemiology at the National Statistical Institute, during the hearing in the

Chamber of Deputies (XIVth legislature, XIIth committee, sitting of 15 December 2005, verbatim report, investigation into the application of Law No. 194 of 1978, entitled "Rules on the social protection of motherhood and the voluntary termination of pregnancy", in particular regarding the tasks assigned by law to family counselling centres). (Doc. 29, p. 844).

283. Attention can also be drawn to the testimony of M. Brunetti, who recounts her personal experience (Doc. 28; reference is also made to the book by C. Lalli "C'è chi dice no. Dalla leva all'aborto. Come cambia l'obiezione di conscienza", Il Saggiatore, 2011, Doc. 40), describing the painful process which led her to undergo a so-called therapeutic abortion due to the presence in the hospital concerned of a single non-objecting doctor, who had advised her to attend the hospital by day, when she could guarantee her presence, and was then required to replace another doctor for the night shift and was therefore unable to be present on the predetermined day. The attitude of the head doctor who arranged the replacement for the night shift and refers to M. Brunetti and another woman awaiting a termination of pregnancy as "the lady doctor's women" is also of significance here.

284. In this case, apart from the tragic direct testimony, mention must be made of the courage shown by Ms Brunetti in denouncing the situation. We will come back to this subject in relation to the cases of complaints against practitioners and hospitals.

285. See also document 43, the report by the Chair of LAIGA, which highlights the gap between the number of hospitals accepting requests for abortions in the first three months and the number accepting requests made after the first three months in the regions of Piedmont, Lombardy, Trentino, Veneto, Friuli, Liguria, Emilia Romagna, Tuscany, Umbria, Lazio, Abruzzo, Molise, Basilicata, Puglia, Calabria, Sicily and Sardinia.

286. The same document 43 shows the specific difficulties linked to voluntary terminations of pregnancy after the first three months (in the case of the Lazio region the report shows that only seven hospitals out of 31 guarantee access to abortions after the first three months and that women are obliged to travel to other provinces).

M. **The impossibility for practitioners external to establishments to perform therapeutic abortions and effective provision of the service by available non-objecting practitioners**

287. We recall the observations set out above on the situation in the Lazio region: "Although it is possible to cope with abortions carried out in the first trimester by calling on external doctors affiliated to the national health service or fee-charging practitioners, who represent about 11% … the same does not apply to therapeutic abortions, on which the 91.3% figure weighs like lead. Recourse to affiliated doctors and fee-charging practitioners reduces the objectors' percentage to 84%, but this is in any case more serious than the 80.2% figure mentioned by the Ministry of Health, which fails to take into consideration the fact that some of the non-objecting gynaecologists (4%) in fact do not perform terminations" (statement by Doctor M. Paravicini, Doc. 2).

288. The non-objecting practitioners cannot perform therapeutic abortions on account of the time that it takes to carry out this type of treatment. The women are obliged to attend other hospitals (Doc. 43, report by the Chair of LAIGA; see also Doc. L).

289. Concerning this issue, reference should be made to another statement by the Chair of the association LAIGA. In view of the high number of practitioners who are conscientious objectors "… the true tragedy concerns therapeutic abortions … because they entail a genuine operation, requiring doctors internal to the hospitals, gynaecologists, anaesthetists and nurses and it is not possible to replace them with professionals under contract. However, given the number of conscientious objectors it stands to reason that, within a very short time, this type of abortion will no longer take place in Italian public establishments." (Doc. 57)

N. <u>Complaints of failure to apply Law No. 194 of 1978</u>

290. Attention is drawn to the already mentioned case of the woman who suffered a serious haemorrhage, following an abortion, and was denied assistance by a woman doctor, found guilty by the Court of Cassation (Doc. 19). In particular, the objecting practitioner had refused to provide assistance after the abortion and therefore in relation to treatments which, since they did not come within the scope of Article 9, could not be covered by conscientious objection.

291. We would also refer to the above-mentioned case of M. Brunetti, who had the courage to complain about her experience of a so-called therapeutic abortion: "Margherita decided to lodge a complaint against [the head doctor]. After more than two and a half years virtually nothing had happened: the public prosecutor requested that the complaint be archived, which Margherita opposed. The court wished to hear the parties before selecting another public prosecutor. Margherita attended the hearing with her husband but without legal counsel. 'I said what had happened to me. I did not need a lawyer. I did not want any woman to have to go through the same as me. There is no redress. What redress can there be for pain?' Margherita told her story and then the head doctor's lawyer took the stand. He said he understood her reasons, that there were organisational problems and he was sorry that she had been upset. 'I wasn't upset I was enraged' clarified Margherita. Following the hearing everything went quiet and then the case was archived. The head doctor wrote her a letter to 'apologise'. 'But he did not even apologise, he merely repeated that for organisational reasons …'. The letter indeed seems to be a mix of a pre-prepared model reply and an impossible attempt to defend oneself. In July 2007 [the head doctor] said he was sorry for the series of 'unfortunate' events and that he understood 'your distress on learning that Dr … with whom you had established a relationship of trust might be absent.' However, the reason for her distress had nothing to do with the latter doctor's character or the relationship she had with her, but rather with the fact that she was the only non-objecting doctor in the entire department. [The objecting doctor] … lastly regretted the fact that the hospital's image was affected." (Doc. 28)

292. This last observation once again goes to show how difficult it is for the women concerned, and also for the non-objecting doctors, to denounce such situations.

293. Mention can be made of the experience of "Piera", who complained of having been obliged to "undergo humiliating questioning by volunteers of the 'Movement for Life', placed there by the health directorate, who for two weeks attempted to make me 'think things over', seeking to persuade me not to do it, speaking openly of homicide, while the time-limit was running out. This was genuine abuse, outside the law, as if I was not already suffering enough. I underwent the abortion in hospital and then lodged a complaint against the local health authority." (Doc. 57)

294. It cannot be assumed that a hypothetical complaint will rapidly – and therefore within the time-limits laid down by Law No. 194 – have a positive outcome in a tangible case, and it is easy to imagine that the woman will emerge weakened and ill at ease vis-à-vis the hospital which is denying her access to a termination of pregnancy. Moreover, a complaint is not a suitable means of resolving these issues in general.

295. It is indeed scarcely conceivable that this means can be effective in a situation where women need to abort and the law lays down strict time-limits for doing so legally (see Doc. 26 concerning the case of the complaint filed with the prosecution service in Rome by the Luca Coscioni Association and the Italian Association for Demographic Education).

O. **Measures taken by the establishments and the regions to apply Law No. 194 of 1978**

296. In this respect, mention can be made of the case of the Bari Polyclinic, concerning which Dr N. Blasi, a non-objecting practitioner, complained of the disorganisation within the hospital, in particular the failure to establish a specific out-patient service and to strengthen the staff (Doc. 10).

297. Again in connection with Bari and with specific reference to the hospitals' disorganisation, it was noted "There is indeed no point in concealing the existence of a creeping sabotage campaign against all the non-objecting operatives by the heads of the operating unit and the hospital, the general management, and last but not least the regional office, which in recent years has shown itself incapable of reminding the directors general of the local health authority of their own responsibilities." (Doc. 10)

298. It was noted that women seeking access to a voluntary termination of pregnancy were being "diverted" to other hospitals following the death of the only non-objecting practitioner at the Naples Polyclinic and the blocking of the waiting list. (Doc. 11)

299. San Camillo hospital in Rome is the only hospital in the Lazio region that administers the RU486 pill, as confirmed by Doctor G. Scassellati, who is in charge of the day hospital, whereas in Umbria there is no establishment providing "pharmacological abortions", resulting in considerable financial discrimination, since "rich women go to Marseilles". (Doc. 15)

300. In addition, at the above-mentioned hearing by the Chamber of Deputies, Doctor Scassellati further clarified "in San Camillo we are 30 gynaecologists, including our head, and only three are non-objectors". "Over the last four years we have constantly been under attack. We are those who have chosen to defend a law of the State. I therefore consider that the most serious aspect of this question is conscientious

objection. It needs to be discussed, since those performing terminations are ever smaller in number and they constantly have to justify their own work." (Doc. 29, pp. 842 et seq.)

301. Attention should also be drawn to the investigation published on the website www.ilfattoquotidiano.it (Doc. 24), which pinpoints three decisive aspects that undermine implementation of Law No. 194 by the regions and the emergence of "a non-uniform national coverage, with a patchy distribution of services at regional level and visible differences between the North, the Centre and the South."

302. See the testimony by M. Pini, Director of the Mother and Child Department in Naples (Campagnia region), concerning the difficulties encountered in applying Law No. 194 and the lack of measures to improve the situation such as staff mobility and forms of alternative recruitment (Doc. 52).

303. Concerning the situation in the Lombardy region, it must be noted that some regional councils conducted a written survey concerning conscientious objection and application of Law No. 194, via a questionnaire distributed on 11.4.2013 (Doc. 51) one year after a first such survey (26.4.2012). The first survey had shown the growing difficulty in applying the law within the region, due to a significant increase in the number of conscientious objectors, which in some areas reached 85% (Doc. 55). In the more recent survey the relevant health commissioners were asked to provide information on the number of objecting and non-objecting practitioners in all hospitals throughout the region; data on mobility by women seeking access to an abortion; the names of hospitals where external doctors had to be employed (in other words fee-charging practitioners and external affiliated doctors) and the cost of mobility among the practitioners (Doc. 51).

P. **Relationship between the decrease in the number of abortions shown by the official figures presented by the Minister of Health in the annual report to Parliament and the difficulties in applying Law No. 194 of 1978**

304. It must be said that the decrease in the number of abortions cannot be considered a sign that there are no problems in implementing Article 9 of Law No. 194.

305. 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 (Doc. 23, concerning the clandestine abortions made necessary by practitioners who are conscientious objectors, who may moreover willingly carry out the operation in their own private practices; Doc. 15 denouncing the so-called financial discrimination suffered by "poor and desperate" women, since "it is rare to find actors, managers and career women sitting waiting in the corridors … They have other facilities.")

306. Again see document 22 concerning the number of clandestine abortions among Italian women – for foreign women the figures are not reliable – which amounts to 15 000 since the entry into force of Law No. 194, whereas before its entry into force there were over 250 000 per year. Another phenomenon can also be noted, so-called DIY abortions entailing the purchase of pills over the Internet or from black market sources (Doc. 22).

307. See also the data provided by the Marche branch of the CGIL (Doc. 12), showing the increase in the number of objecting gynaecologists, anaesthetists and non-medical personnel in that region, on one hand, and the number of voluntary terminations of pregnancy carried out there, on the other hand.

308. Again with regard to the Marche region, it can be noted that "already in 2010, with 2 409 voluntary terminations carried out on women living in Marche, 5.5% of the interventions were carried out outside the woman's home province and 24.5% outside the region itself." (Doc. 12)

309. Lastly, and in general, reference is made to the recording of the conference "Conscientious objection in Italy. Legal proposals for guaranteeing full application of Law 194 on abortions", which was held in Rome on 22 May 2012: http://www.radioradicale.it/scheda/352813/obiezione-di-conscienza-in-italia-proposte-guiridiche-a-garanzia-della-piena-applicazione-della-legge-194-s.

310. See also document 43, the report by the Chair of LAIGA, which contains some tables on the differences, in all the hospitals taken into consideration, between the number of non-objecting practitioners and the number of objecting practitioners, for the regions of Piedmont, Lombardy, Trentino, Veneto, Liguria, Tuscany, Emilia Romagna, Lazio, Abruzzo, Molise, Campania, Basilicata, Puglia, Calabria, Sicily and Sardinia.

311. In his report (Doc. 43), the Chair of LAIGA, Dr S. Agatone, shows what happens in a hospital when there is only one doctor not a conscientious objector.

312. He also recounts his own experience as a non-objecting practitioner and makes reference to certain women's experience.

313. See also document 52 on the research done by V. Galanti and E. Borzacchiello, already cited above, concerning the testimonies of some doctors and women (for example E. Raffa, M. Pepe, G. Medina, L. Barbaro, M. Pini, the Save194Campania association, G. Pacini, E. Canitano, N. Blasi, M. Toschi, G. Fattorini – the Chair of AGITE, the association of local gynaecologists – www. agite.eu, M. Orlandella and A.D. Turchetto).

Q. **Impairment of the position of practitioners who are not conscientious objectors**

314. In this connection, we would recall all the cases of non-recognition, or very difficult recognition, of the right of access to terminations for women satisfying the requirements of Law No. 194, as well as the report by the Chair of LAIGA. (Doc. 43)

315. The breach of women's rights resulting from the high and growing number of practitioners who are conscientious objectors, as already brought to light in collective complaint No. 91/2013, also has a direct impact on the situation of practitioners who are not conscientious objectors because the entire workload inevitably falls on their shoulders. Regarding the direct link between the breach of women's rights and the breach of the doctors' rights see the declaration made by the Health Commissioner for the Marche Region, A. Mezzolani, (Doc. 5) to the effect that "in the Marche region significant difficulties have been noted as a result of conscientious objection by many professionals active within the region's boundaries. This has critical implications for the application of the law itself and leads to disparities in access to the services provided for by law, engendering discrimination among the female residents who wish to avail themselves of it. It should be pointed out that in some highly critical situations we are obliged to utilise external affiliated practitioners so as to fill the gaps."

316. We would here reiterate the considerations already set out above regarding the difficulties of gathering full documentation on the testimonies in this matter.

317. Reference should also be made to the investigation published on 23 May 2013 on the website of the daily newspaper La Repubblica: http://inchieste.repubblica.it/it/reppublica/rep-it/inchiesta-italiana/2013/05/23/news/aborti_obiettori_di_coscienza-59475182/ and the web-site http://incheste.repubblica.it/it/repubblica/rep-it/inchiesta-italiana/2013/05/23/news/torna_l_aborto_clandestino-59480523/ (Doc. 57).

318. In connection with this investigation attention can be drawn to the statement made by Dr S. Agatone, Chair of the association LAIGA, maintaining "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" (Doc. 57; see also his report in Doc. 43).

319. Reference can also be made to the Honourable M. Nicchi's declaration when voting on the motions on application of Law No. 197 in the Chamber of Deputies.

320. Concerning the "behaviours which, seriously disrupting the balance of Article 9, … undermine" Law No. 194, he asserts that they are "let's not be hypocritical, often motivated by power and career interests whereby many youngsters are blackmailed and the work of the non-objectors is debased and discriminated against." (Doc. 36)

321. Attention can again be drawn to the declaration by the Honourable G. di Vita, asserting "Concerning the conditions in which the operatives have to work within hospitals, special emphasis has been laid on the stigmatisation of everything revolving around voluntary terminations of pregnancy. This situation of "Cinderella" of the gynaecology profession is also the result of the growing number of objectors, leading to considerable isolation of the non-objectors, which can be qualified as genuine professional ghettoization." (Doc. 36)

322. With regard to the position of the non-objecting practitioners, see motion 1-00074 (Doc. 7-2) which maintains that the state of deficient and unsatisfactory application of Law No. 194 "leads us to believe that the working atmosphere is unfavourable to non-objecting practitioners and that the few who do not object have to bear a heavy workload, which fosters growth in the number of objectors, to the point where services are definitively closed with the serious consequence that women are obliged to turn to establishments abroad, to utilise illegal drugs or to have recourse to clandestine abortions which seriously damage their health."

323. Again see motion 1-00059 (Doc. 7-10) stating "the few non-objecting practitioners today run the risk of a form of professional segregation, since they are obliged primarily to perform abortions, rather than other kinds of operations."

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3.18 The Italian Government's conclusions

324. With regard to the Italian Government's conclusions, we confine ourselves to observing briefly that the sections containing the excerpts taken from the Digest of the Case Law of the European Committee of Social Rights and the Conclusions of the European Committee of Social Rights can be seen to be devoid of any arguments and that the subsequent assertions concerning the absence of any kind of violation of women's rights or of the rights of non-objecting doctors are consequently dogmatic in nature.

325. The Italian Government also alleges in its conclusions, and throughout its submissions, that collective complaint No. 91/2013 contains certain assertions, which are in fact not to be found there, whether expressly or by implication.

326. First and foremost, the Government claims that the CGIL has distorted the interpretation of the European Social Charter. Reference is hereby made, not only to the conclusions drawn herein, but also to all the considerations on this matter set out in the collective complaint itself.

327. Secondly, it is maintained that the CGIL wants women to be assisted solely by non-objecting practitioners without carrying out the verifications required by law for access

to a termination of pregnancy to be legal. On the contrary, the CGIL has lodged collective complaint No. 91/2013 with the very aim of ensuring that Law No. 194 is correctly and effectively implemented.

328. Thirdly, the Government argues that the State cannot limit the number of practitioners who are conscientious objectors. Here too, reference must be made to the content of collective complaint No. 91/2003, which makes no request to limit the number of objecting medical staff or to prevent them from raising a conscientious objection. The law itself, Article 9 of which acknowledges the right of conscientious objection, requires the hospitals and the regions to ensure the right of access to these treatments at all times, without making provision for any restriction of the free will of individuals (except in the sole case where the woman's life is in imminent danger; as already mentioned, in that event even those who have raised a conscientious objection are required to intervene) but conferring on these entities the task of guaranteeing the effective exercise of the right of access to voluntary terminations of pregnancy.

329. Furthermore, the Government underlines (in a dogmatic manner) that there are no difficulties because the law safeguards the rights of women and of non-objecting practitioners.

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3.19 Further considerations and research results

330. As announced to begin with, and still within the ambit of the preliminary observations, the CGIL would underline that cases of deficient and unsatisfactory application of Law No. 194 continue to arise at the very time of writing this document, for some of which it is therefore unable to submit the necessary documentary evidence here.

331. From this standpoint, as was the case with collective complaint No. 87/2013, the following declare that they are willing to provide further information and clarifications:

- C. Lalli, philosopher and journalist, author of many publications and works on the subject, whose investigations in a number of Rome hospitals made it possible to gather women's testimonies on the difficulties they encounter in gaining access to terminations of pregnancy, testimonies which were used to describe their experiences in anonymous form (Doc. A).

  The author has kindly accepted that we append hereto in an electronic version copies of her books "A la verità, vi prego, sull'aborto" (Please tell the truth about abortion), Fandango, 2013, and "C'è chi dice no. Dalla leva all'aborto. Come cambia l'obiezione di conscienza", (Some say no. Conscription to perform abortions. How conscientious objection is changing), Il Saggiatore, 2011, requesting that they should not be disseminated in that form.

- L. Fiore, author of the book "Abortire tra gli obiettori. La moderna inquisizione. Diario del mio aborto." (Aborting among the objectors. The modern inquisition. Diary of my abortion), Tempesta editore, 2012, containing various testimonies by women and an account of the author's own experience of a so-called therapeutic abortion (Doc. B).

  The publisher has kindly accepted that we append hereto a copy of her book, requesting that it should not be disseminated further.

- C. Flamigni, lecturer in gynaecological endocrinology, obstetrics and gynaecology at the university of Bologna, and a member of the National Bioethics Committee;

- M. Mengarelli, a sociologist and Chair of the Social Observatory on Infertility, who is also a member of the Bioethics Advisory Council and the General Council of the Luca Coscioni Association.

- F. Gallo, a lawyer and Secretary to the Luca Coscioni Association.

- V. Galanti, a doctoral researcher at the Institute for Advanced Studies, Lucca (Doc. C)

- E. Borzacchiello, a doctoral researcher at Compluense University of Madrid (Doc. C)

- A. Pompili, a member of the LAIGA association and gynaecologist (Doc. D)

- S. Agatone, Chair of the LAIGA Association and gynaecologist (Doc. F)

- M. Parachini, a member of the LAIGA association and gynaecologist (Doc. F)

- C. Damiani, a member of the LAIGA association and gynaecologist (Doc. F)
- P. Facco, a member of the LAIGA association and gynaecologist (Doc. F)
- C. Grande, a member of the LAIGA association and gynaecologist (Doc. F)
- G. Orlando, a member of the LAIGA association and gynaecologist (Doc. F)
- P. Lopizzo, a member of the LAIGA association and gynaecologist (Doc. F)
- G. Scassellati, a member of the LAIGA association and gynaecologist (Doc. F)
- D. Valeriani, a member of the LAIGA association and gynaecologist (Doc. F)
- E. Canitano, a member of the LAIGA association and gynaecologist (Doc. F)
- P. Puzzi, a gynaecologist (Doc. E)
- M. Pensa, General Secretary FLC CGIL of the province of Sondrio (Doc. G)
- D. Fantini, a gynaecologist (Doc. I)
- E. Cirant, a journalist (Doc. H)
- A. Uglietti, gynaecologist and head of the Unit for Simple Operations under Law No. 194 and Minor Interventions, Department for Women's, Children's and Newborns' Health, Mangiagalli Clinic, IRCCS Foundation Ca' Grande General Polyclinic, Milan (Doc. L)
- A. Mezzolani, Health Commissioner for the Marche Region (Doc. 5).

List of available doctors, drawn up by the association LAIGA:

- A. Resta
- A.G. Moretti
- P. Scorpiniti
- N. Bagetta
- R. Bonafiglia
- C. Ciccone
- D. Biasi
- E. Beolchini
- D.N. Granchi Zanieri
- I. Abu Eid

- L. Ermio
- G. Lucarini
- M. Mariano
- M. Sani
- M. Toschi
- N. Cherli
- S. De Zordo
- B. Zeni
- P. Mazzucco
- C. Pesce (anaesthetist; Doc. M concerning organisational difficulties)
- R. Marino
- E. Diana.

List of the women available, drawn up by the Association LAIGA:

- C. Massacesi
- S. Cecchini
- R. Melone (Doc. N)

Conclusions

332. In the light of all the above, the CGIL, assisted by lawyers Marilisa d'Amico and Benedetta Liberali of the Milan Bar, recalling the considerations set out in collective complaint No. 91/2013, requests the European Committee of Social Rights to declare Italy in violation of:

- with regard to women's rights, Article 11 of the European Social Charter, read alone or in conjunction with the provisions of Article E, on account of the difficulties in applying Law No. 194 which breach the right of access to terminations of pregnancy;

- with regard to the rights of medical and auxiliary staff who are not conscientious objectors, Article 1 of the European Social Charter, on account of the difficulties in applying Law No. 194 which impair the legal position of non-objecting practitioners who bear the entire workload relating to terminations of pregnancy;

- with regard to the rights of medical and auxiliary staff who are not conscientious objectors, Articles 2, 3 and 26 of the European Social Charter, read alone or in conjunction with the provisions of Article E, on account of the difficulties in applying Law No. 194 which impair the legal position of non-objecting practitioners who bear the entire workload relating to terminations of pregnancy.

333. The CGIL further requests the European Committee of Social Rights to recognise the relevance, for the purpose of collective complaint No. 91/2013, of the principles set out in Articles 21 and 22 of the European Social Charter, although their scope is confined to for-profit undertakings.

(signature)

Susanna Camusso

Secretary General of the CGIL