



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

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**Case Document No. 10**

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

**INFORMATION FROM CGIL  
(Translation)**

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**INFORMATION ON RECENT DEVELOPMENTS  
IN LEGISLATION AND PRACTICE  
REGARDING VOLUNTARY TERMINATIONS OF PREGNANCY**

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**Confederazione Generale Italiana del Lavoro**

v.

**Italy**

(Collective Complaint No. 91 of 2013)

## CONTENTS

1. Preliminary observations
2. Violation of women's rights (Articles 11 and E of the European Social Charter)
  - 2.1. Preliminary observations on the decision on the merits of collective complaint No. 87 of 2012, adopted by the European Committee of Social Rights
  - 2.2. The proceedings currently pending before the European Committee of Social Rights
  - 2.3. "Italian intervention on the first examination of complaint No. 87/2012 International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, (GR-SOC, 13 and 18 March 2014)"
  - 2.4. Report by the Minister of Health on implementation of the law governing the social protection of motherhood and voluntary terminations of pregnancy (Law 194/78). Preliminary data for 2013. Final data for 2012. Rome, 15 October 2014.
    - 2.4.1. The key passages of the 2014 report by the Ministry of Health
    - 2.4.2. First evaluation parameter ("The termination services offer in relation to the total number of available establishments")
    - 2.4.3. Second evaluation parameter ("The termination services offer in relation to the population of women of fertile age and to the birth centres")
    - 2.4.4. Third evaluation parameter ("The termination services offer taking account of the staff's right of conscientious objection, in relation to the average number of terminations carried out per week by each non-objecting gynaecologist")

#### 2.4.5. Counselling centres

### 2.5. Conclusions

3. Violation of the rights of non-objecting practitioners (Articles 1, 2, 3, 26 and E of the European Social Charter; Articles 21 and 22 of the European Social Charter)

#### 3.1. Preliminary observations

3.2. The relationship between the finding of a violation of women's rights (decision on the merits of collective complaint No. 87 of 2012) and recognition of a violation of the rights of doctors not conscientious objectors

3.3. Developments in legislation and practice following the submission of the CGIL's reply to the observations of the Italian government

3.3.1. The health minister's report on implementation of the law governing the social protection of motherhood and voluntary terminations of pregnancy (Law 194/78). Preliminary data for 2013. Final data for 2012. Rome, 15 October 2014.

3.3.2. Resolution adopted by the Committee on Social Affairs of the Chamber of Deputies

3.3.3. Direct testimony by Dr Rossana Cirillo

### Conclusions

### Appendices

## **1. Preliminary observations**

1. On 19 March 2015, with a view to the adoption of its decision on the merits, the European Committee of Social Rights invited the parties (the trade union *Confederazione Generale Italiana del Lavoro* (CGIL) and the Italian government) to submit further information and documents regarding any recent developments in the law and practice that had emerged since the last document they had filed.

2. The CGIL here wishes to set out a number of observations concerning the complaints of violations of the European Social Charter with regard to both the position of women wishing to obtain a voluntary termination of pregnancy in accordance with Law No. 194 of 1978 and the position of doctors not conscientious objectors who carry out this type of operation. These violations occur as a result of the significant and growing number of doctors who are conscientious objectors and the disorganisation of the hospitals and the regions, which are required, under Article 9 of Law No. 194 of 1978, to guarantee access to a voluntary termination of pregnancy in all cases and therefore to guarantee a sufficient presence of non-objecting practitioners in each hospital.

3. As regards the first aspect – that of a violation of women's rights – the CGIL wishes to underline that, notwithstanding the decision on the merits of collective complaint No. 87 of 2012, adopted by the European Committee of Social Rights on 10 September 2013 and published on 10 March 2014, and the resolution of the Committee of Ministers of the Council of Europe in respect of Italy, adopted on 30 April 2014, the situation of non-compliance with the European Social Charter (Articles 11 and E) persists since no specific positive measures aimed at resolving it have been taken. It therefore requests the Committee to confirm its own previous decision also with respect to collective complaint No. 91 of 2013.

4. As regards the second aspect – that of a violation of the rights of doctors not conscientious objectors – the CGIL will submit further considerations supplementing those set out in collective complaint No. 91 of 2013 and in the reply to the Italian government's observations, so as to provide evidence of the impairment of the non-objecting practitioners' position.

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## **2. Violation of women's rights (Articles 11 and E of the European Social Charter).**

### ***2.1. Preliminary observations on the decision on the merits in respect of collective complaint No. 87 of 2012, adopted by the European Committee of Social Rights***

5. On 10 September 2013 the European Committee of Social Rights adopted its decision on the merits of collective complaint No. 87 of 2012, lodged by the international non-governmental organisation *International Planned Parenthood Federation European Network (IPPF EN)*, concluding that Italy had violated Article 11 (right to health) of the European Social Charter, and Article E (non-discrimination) read in conjunction with Article 11.

6. In finding this violation of the European Social Charter with regard to women's rights, the Committee above all underlined that collective complaint No. 87 did not call for the right of conscientious objection to be impeded or limited (§ 167 of the decision on the merits).

7. Secondly, it is necessary to point out here that the Committee based its finding of a violation of Article 11 of the European Social Charter (§ 177 of the decision on the merits of collective complaint No. 187) on a comparison of the evidence adduced by the parties (the *IPPF EN* and the Italian government) in the course of the proceedings (§ 174, *ibid.*).

8. In particular, the Committee stated that the evidence submitted by the complainant organisation and the documents published and approved by Parliament (namely the motions tabled in the Chamber of Deputies and the act of scrutiny submitted to the Senate) established "the existence of serious problems in relation to the following situations", viz. "a) decrease in the number of hospitals or nursing homes

where terminations of pregnancy are carried out nation-wide (see paragraphs 57 and 108 above); b) significant number of hospitals where, even if a gynaecology unit exists, there are no non-objecting gynaecologists, or there is just one (see paragraphs 57, 108, 110, 112, 114 and 116 above); c) disproportionate relationship between the requests to terminate pregnancy and the number of available non-objecting competent health personnel within single health establishments (see paragraphs 115, 117, 120, 125, 128, 129, 131, 136, 137, 139 and 145 above) - which risk the creation of extensive geographical zones where abortion services are not available notwithstanding the legal right to access such services established under Italian law; d) excessive waiting times to access abortion services (see paragraphs 57, 110 and 120 above); e) cases of non-replacement of medical practitioners who are not available due to holiday, illness, retirement, etc. (see paragraphs 57, 110, 118, 119, 121, 122 and 124 above) - which pose the risk of substantial disruption to the provision of abortion services; f) cases of deferral of abortion procedures due to an absence of non-objecting medical practitioners willing to perform such procedures (see paragraphs 57, 122 and 138 above); g) cases of objecting health personnel refusing to provide the necessary care prior to or following abortion (see paragraphs 52, 126 and 127 above)."

9. Conversely, the Italian government did not provide "any detailed information in respect of the above-mentioned situations which served to refute the allegations presented by the complainant organisation" (§ 170, decision on the merits of collective complaint No. 87), failed to answer some specific questions posed by the Committee (§ 173 of the decision on the merits) and, in respect of a request for further information, declared that such information was not available (*ibid.*).

10. With regard to the violation of Article E read in conjunction with Article 11, the Committee similarly bases its decision on the documents supplied by the IPPF EN, which were not contradicted by the Italian government (§ 191 of the decision on the merits of collective complaint No. 87), and on the motions and the act of scrutiny submitted to and approved by Parliament.



## ***2.2. The proceedings currently pending before the European Committee of Social Rights***

11. With collective complaint No. 91 of 2013, submitted by the CGIL, the European Committee of Social Rights is firstly asked to declare that, as regards women's rights, Italy is in violation of Article 11 of the European Social Charter, read alone or in conjunction with Article E, by reason of the difficulties in applying Law No. 194 of 1978, which impair the right of access to terminations of pregnancy.

12. On account of the identical nature of the issues underlying the claim of a violation of Articles 11 and E of the Social Charter, asserted in the first part of collective complaint No. 91 of 2013, as compared with the object of collective complaint No. 87 of 2012, and in the light of the decision on the merits adopted by the Committee in respect of collective complaint No. 87, the CGIL here confines itself to reiterating its own observations as set out in both collective complaint No. 91 and the reply to the observations of the Italian government.

13. In respect of this claim of a violation of women's rights (Articles 11 and E of the European Social Charter), the CGIL accordingly asks the Committee to confirm its own precedent, established by the decision on the merits of collective complaint No. 87.

\* \* \*

14. Nevertheless, given the European Committee's request of 19 March 2015 – which opens up the possibility of submitting "any information on recent developments in the law or practice" – the CGIL considers it appropriate here to set out some brief considerations aimed at:

- first and foremost showing the European Committee of Social Rights the situation that has arisen following the decision on the merits of complaint No. 87 and the Resolution adopted by the Committee of Ministers in respect of Italy, and

- consequently, demonstrating that the violation found by the Committee continues to exist.

15. To this end, reference can be made to the following official documents produced by the Italian government and the Ministry of Health, which substantiate the ongoing nature of the violation.

16. The Italian government and the Ministry of Health in fact do not concur with the decision adopted by the Committee and do not consider that there are problematic sides to the effective implementation of Law No. 194 of 1978. In their contention it is accordingly not necessary to adopt any positive measures to resolve the problems noted by the Committee.

***2.3. "Italian intervention on the first examination of Complaint No. 87/2012 International Planned Parenthood Federation - European Network (IPPF EN) v. /ta/y, (GR-SOC, 13 and 18 March 2014)".***

17. Following the adoption of the decision on the merits of collective complaint No. 87 of 2012, the Italian government was asked to report on the situation of non-compliance with the European Social Charter at a meeting held on 18 March 2014.

18. On that occasion, even in the face of the decision handed down by the Committee, the Italian government again called into doubt the existence of implementation problems linked to the number of objecting practitioners and to the disorganisation of the hospitals, with negative consequences for the rights of women wishing to undergo a termination of pregnancy, and simply declared its intention to initiate a mere monitoring process.

19. The following excerpts are of particular significance:

"6. Having said that, Letta's Government took note of the decision of the Committee considering it as a stimulus to better the application of Act No. 194/78. In June 2013, the Ministry of Health opened a 'Technical table' calling Regional Assessors, appointed to supervise Health Management in the Regional

Governing Bodies, to gather data in order to assess the impact of conscientious objectors at local level. The results of this monitoring activity, that is about to be concluded, will shed light on the details of the phenomenon. The Minister of Health, Minister Lorenzin, who was confirmed in her duty even with the recent change of government, expressed her will that if any difficulty in the access of women to pregnancy termination services will emerge, the Technical Table will put in place all the suitable initiatives, in respect of National and Regional competences. 7. The Permanent Representation of Italy will communicate to the Committee of Ministers the outcome of this monitoring process as soon as possible and asks that a resolution is drafted taking note of the initiative of our Minister of Health Lorenzin in order to tackle this delicate issue."

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20. Given this position, when it adopted its Resolution of 30 April 2014, the Committee of Ministers of the Council of Europe was unable to take into consideration any positive, effective steps to address the problems noted by the European Committee of Social Rights, nor any resolution of them. In particular, this Resolution states that the Committee of Ministers:

"1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights and welcomes its commitment to bring the situation into conformity with the Charter (see appendix to the resolution);

2. looks forward to Italy reporting, at the time of the submission of the next report concerning the relevant provisions of the Revised European Social Charter, that the situation has been brought into full conformity."

21. The Committee of Ministers is therefore awaiting the adoption of effective measures to remedy the confirmed violation of the European Social Charter with regard to women's rights, and Italy is moreover required to report on the steps taken in its next report on the state of application of the treaty.

***2.4. Report by the Minister of Health on implementation of the law governing the social protection of motherhood and voluntary terminations of pregnancy (Law 194/78). Preliminary data for 2013. Final data for 2012. Rome, 15 October 2014***

22. An assessment of the so-called "follow-up" given to the decision on the merits of collective complaint No. 87 of 2012 is essential in order to show how the situation of a violation of women's rights persists at present. In this connection, the 2014 edition of the Minister of Health's annual report to Parliament on the state of implementation of Law No. 194 of 1978 (Doc. 1) is of particular relevance.

23. It must first be underlined that the Ministry of Health, while for the first time devoting a significant part of this report to the theme of conscientious objection — rather than a single paragraph as in previous years, makes no reference to the proceedings relating to collective complaint No. 87 of 2012, which culminated in the decision on the merits adopted by the European Committee of Social Rights and published on 10 March 2014, nor to the Committee of Ministers' resolution, nor to the proceedings still pending before the Committee following the lodging of collective complaint No. 91 of 2013.

24. Secondly, the ministry does not consider that there are problems with the effective implementation of Law No. 194 of 1978. In particular, the report notes that the number of non-objecting practitioners who carry out voluntary terminations of pregnancy is entirely consistent with the number of terminations performed and that, based on a comparison of the data on "the number of termination centres – number of abortions performed" and the "number of birth centres – number of births", a rationalisation of the organisation of the services is necessary, which would lead to the closure of certain termination centres, as they outnumber the birth centres taking into account a comparison of the numbers of abortions and of births (we shall come back to these considerations below).

25. It is therefore deemed necessary to reproduce in brief the key sections of this report, which makes no mention of the decision on the merits of collective complaint No. 87 of 2012, nor of the Committee of Ministers' resolution nor of the proceedings still pending before the European Committee of Social Rights, and in which it is maintained that there are no problems with the tangible application of Law No. 194 (unlike the findings made by the European Committee of Social Rights and the observations included in the subsequent resolution adopted by the Committee of Ministers).

#### **2.4.1. The key passages of the 2014 report by the Ministry of Health**

26. In the introduction to its report the Ministry of Health summarises the process that led to the establishment of the "technical table", or technical board, for monitoring the application of Law No. 194 of 1978 and indicates the parameters determined for the purposes of conducting this investigation (2014 report by the Ministry of Health, page 6; these parameters will be discussed below):

##### *"Services offer and conscientious objection*

On 18 July 2013 – following the commitments entered into by the Minister of Health during the debate which took place in June 2013 in the Chamber of Deputies on a number of motions concerning the implementation of Law No. 194/78 – a "technical table", or technical board, was set up at the Ministry of Health, in which all the Regional Assessors and the National Institute of Health were invited to participate. This body launched a monitoring process concerning the activity of voluntary termination of pregnancies and conscientious objection at the level of the individual hospitals and the family counselling centres, so as to identify any critical situations regarding the application of the law. The regions submitted the data requested, albeit with some delay and a number of qualitative deficiencies.

To summarise the monitoring data obtained for the individual hospitals, three parameters were determined, making it possible to take stock of the services offer in relation to demand and the availability of physical and professional resources:

- **parameter 1:** *The termination services offer in relation to the total number of available establishments*
- **parameter 2:** *The termination services offer in relation to the population of women of fertile age and to the birth centres;*

- **parameter 3:** *The termination services offer taking account of the staff's right of conscientious objection (the average number of terminations carried out per week by each non-objecting gynaecologist) ...".*

27. Therefore, despite the recognition of the problems arising with the tangible implementation of Law No. 194, the Ministry of Health maintains that, a "technical table" has been established with the objective of "monitoring" the situation and noting "any" critical situations in the law's application - subject to the limits described below regarding the incomplete nature of the data gathered, as acknowledged by the ministry itself - rather than determining and applying tangible measures to resolve the critical situations already ascertained to exist, which should have been the logical consequence of the decision on the merits of collective complaint No. 87 of 2012.

28. The introductory section of the health minister's report also contains some conclusions regarding the study itself, which are commented upon below (2014 report by the Ministry of Health, page 9):

*"Conclusions*

[...]

- the first detailed monitoring exercise concerning voluntary terminations of pregnancy and conscientious objection, covering the entire scope of Law No.194/78, confirms the finding made in the previous report to Parliament: at regional level no critical situations regarding the provision of termination services can be noted. In particular it can be seen that terminations are carried out in 64% of the available establishments, with satisfactory coverage, except in two very small regions. It can be seen from the number of centres performing terminations, as compared with the number of birth centres, that, while the number of terminations represents about 20% of the number of births, the number of termination centres represents 74% of the number of birth centres, which is therefore higher than the figure which would correspond to the proportion of terminations to births. If, rather than taking the absolute figures, the comparison of the number of birth centres and of termination centres is made in relation to the population of women of fertile age, it can be seen that for every three establishments performing terminations there are four birth centres. Lastly, based on the number of terminations carried out per week by each non-objecting gynaecologist, and assuming that there are 44 working weeks per year,

**at national level each non-objecting practitioner performs 1.4 terminations per week**, which corresponds to the mean, with a minimum of 0.4 (in Valle d'Aosta) and a maximum of 4.2 (Lazio). The **number of non-objecting practitioners within the hospitals is accordingly sufficient in the light of the terminations carried out. While bearing in mind the not always satisfactory data coverage**, the number of conscientious objectors in the counselling centres is significantly lower than the number recorded in the hospitals;

...

Beatrice Lorenzin".

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29. Furthermore, as is the case every year, the Ministry of Health devotes part of the report to the figures concerning recourse to conscientious objection by professional category (2014 report by the Ministry of Health, pages 41 ff.):

### **"3.10 Conscientious objection**

The data on conscientious objection are not included in the ISTAT D 12 standard forms (which concern women undergoing a voluntary termination of pregnancy) but are requested on an annual basis from the regions by the Surveillance System. The request relates to all staff working in health care establishments with an obstetrics and gynaecology department, or solely a gynaecology department, even if the regions do not always supply the data in that form.

Table 28 shows the percentage of objectors by professional category. It can be seen that there was a high number of objectors in 2012, especially among the gynaecologists (69.6%, that is more than two out of three) with a tendency to stabilise following a noteworthy increase over the years. At national level the figure passed from 58.7% in 2005 to 69.2% in 2006, 70.5% in 2007, 71.5% in 2008, 70.7% in 2009, 69.3% in 2010 and 2011 and 69.6% in 2012.

Among anaesthetists the situation is more stable, with an increase from 45.7% in 2005 to 50.8% in 2010 and 47.5% in 2011 and 2012. For non-medical staff a further increase has been noted, with a figure that rose from 38.6% in 2005 to 45.0% in 2012.

Significant differences can be observed between the regions, with percentages in excess of 80% among gynaecologists, principally in the South: 90.3% in Molise, 89.4% in Basilicata, 87.3% in the Autonomous Province of Bolzano, 84.5% in Sicily, 81.9% in Lazio, 81.8% in Campania and 81.5% in Abruzzo. For anaesthetists too, the highest figures are to be found in the South (with peaks of 78.3% in Molise, 77.4% in Sicily, 71.5% in Lazio and 71.3% in Calabria). For non-medical staff the figures are lower and more variable, with peaks of 90.1% in Molise and 80.9% in Sicily.

It should be pointed out that Article 9 of Law No.194/78 provides "the hospitals and authorised nursing homes shall be required to guarantee in all cases the completion of the procedures provided for in Article 7 and the implementation of the terminations of pregnancy requested in accordance with Articles 5, 7 and 8." The regions are responsible for supervision and for ensuring that this is done. However, staff must bear in mind that "Conscientious objection shall exempt medical staff and staff performing auxiliary activities from carrying out procedures and activities specifically and necessarily aimed at bringing about the interruption of pregnancy, but not from the provision of assistance before and after the operation" (Article 9 of Law 194)."

30. These data – which basically coincide with the information given by the Ministry of Health each year in the sole paragraph usually devoted to the theme of conscientious objection in its report – permit the CGIL to advance a consideration, which is borne out by the resolution adopted by the Committee on Social Affairs of the Chamber of Deputies on 6 March 2014 (Doc. 4) and which will be discussed further below (sections 3.3.1 and 3.3.2.), in respect of the over-estimation of the number of non-objecting doctors, resulting in an under-estimation of the number who are conscientious objectors, since there is no obligation for a doctor to inform his/her own hospital about a decision to raise a conscientious objection.

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31. The ministry – introducing a considerable change as compared with previous reports, as already mentioned – subsequently devotes a whole section (2014 report by the Ministry of Health, pages 43 ff.) to the results of the mere monitoring carried out in respect of conscientious objection and terminations of pregnancy, which is moreover incomplete, as acknowledged by the ministry itself ("4. Results of ad hoc monitoring of terminations of pregnancy and conscientious objection").

32. The ministry above all relates the stages in the implementation of the monitoring activity: on 11 June 2013 the Chamber of Deputies debated the adoption of a number of motions (see document 7 appended to the CGIL's reply to the observations of the Italian government); on 18 June 2013 the "technical table" (or technical board) specifically concerned with monitoring the full implementation of the law was set up; in October 2013 the ministry distributed the monitoring forms to the regions, which were returned, incomplete in some cases, between December 2013 and June 2014.

33. Despite the incompleteness of the data gathered at regional level as part of this mere monitoring process, as mentioned above, one can read "The ministry has in any case proceeded to analyse the information received so as to be able to make public the results" (page 43 of the 2014 report by the Ministry of Health), without, we reiterate, mentioning in the report:

the decision on the merits of collective complaint No. 87 of 2012; the subsequent resolution adopted in respect of Italy by the Committee of Ministers; or the procedure currently pending before the European Committee of Social Rights, introduced by collective complaint No. 91 of 2013, lodged by the Confederazione Generale Italiana del Lavoro;

and without taking into consideration the finding of a violation of women's rights (and hence of Articles 11 and E of the European Social Charter);

and, consequently, without:

the determination, and therefore the adoption, of tangible measures to deal with the problems in the implementation of Law No. 194 of 1978, as identified by the European Committee of Social Rights (decision on the merits of collective complaint No. 87) and noted by the Committee of Ministers (resolution adopted in respect of Italy on 30 April 2014).

*2.4.2. First evaluation parameter ("The termination services offer in relation to the total number of available establishments")*

34. With regard to the first parameter identified by the ministry ("The termination services offer in relation to the total number of available establishments", page 44 of the 2014 report by the Ministry of Health), it is stated that the total number of establishments with an obstetrics and gynaecology department at national level is 630, while the total number in which terminations of pregnancy are carried out is 403.

35. The ministry concludes from this that the "coverage is more than satisfactory", but without verifying that the number of termination centres is sufficient in relation to the demand for terminations of pregnancy.

36. In this connection, we refer to the observations set out in collective complaint No. 91 of 2013 and in the CGIL's reply to the observations of the Italian government, as well as to the documents filed by the IPPF EN in the course of the proceedings relating to collective complaint No. 87 of 2012, with particular regard to the impossibility of determining the effective number of women who request a voluntary termination of pregnancy without account being taken on the fact that the hospitals keep no record of unanswered requests.

*2.4.3. Second evaluation parameter ("The termination services offer in relation to the population of women of fertile age and to the birth centres")*

37. With regard to the second parameter ("The termination services offer in relation to the population of women of fertile age and to the birth centres", page 45 of the 2014 report by the Ministry of Health), the ministry deemed it "appropriate to put in context the data on the establishments performing terminations in relation to the population of women of fertile age and to the birth centres".

38. Of the establishments taken into account (630), 543 are birth centres.

39. The Ministry of Health then compares the number of abortions and of births with the number of termination centres and of birth centres (page 45 of the 2014 report by the Ministry of Health):

40. "In 2012 the number of births in Italy was 527 770; the same year 107 192 voluntary terminations of pregnancy were carried out, giving a ratio of 4.9:1, while the ratio of the number of birth centres (Cedap 2012 data) to the number of termination centres is 1.3:1.

**In other words, while the number of terminations is equivalent to about 20% of the number of births, the number of termination centres stands at 74% of the number of birth centres.**

[...]

At national level, for every 100 000 women of fertile age (15-49), there are four birth centres, as compared with three termination centres, giving a ratio of 1.3:1. This means that for every three establishments performing terminations there are four where women give birth.

Accordingly, whether one considers the total number of termination centres, or their number prorated to the number of women of fertile age, **the number of termination centres can be seen to be more than sufficient as compared with the number of terminations carried out, all the more so in comparison with the number of birth centres.**"

38. The Ministry of Health also notes (page 45 of the 2014 report) that **"in many regions there are more termination centres than birth centres** (Liguria, Emilia Romagna, Tuscany, Umbria), **which is in direct contrast with the ratio of births to terminations.**

However, also in cases where the ratio is lower (such as Campania, where for every 5.1 birth centres there are 1.9 termination centres, and Lazio, where for every 3.5 birth centres there are 1.9 termination centres), **the ratio is in any case consistently higher than what it would be if it followed the proportion of births to terminations.** In both these cases, however, **the regions in question intend to reduce the number of birth centres following a reorganisation:** once this has taken place the ratio of birth centres to termination centres will be closer to that of the other regions."

41. In view of this inappropriate comparison between "termination centres – terminations" and "birth centres – births", the Ministry of Health (considering it "important to recall that one objective of Italian health policy, according to the agreement between the State and the regions of December 2010, is to make the birth centres safe, which entails their reorganisation by closing those in which less than 500 births take place per year. The objective of reducing the number of birth centres is to concentrate births in more appropriate establishments, with more expert personnel, so as to guarantee greater safety of the birth process with a view to the full protection of the health of women and children") concludes **"as regards terminations, it would be appropriate to monitor the centres where few take place, in the same way as is being done for the birth centres.** This consideration is all the more relevant in the case of late terminations, those carried out after the first trimester, where the operation should be performed solely in establishments with a neonatal intensive care department, bearing in mind the possible need to take care of a child born alive following a late termination."

42. The Ministry of Health's observations in respect of the second parameter are therefore aimed at establishing a direct relationship between births and abortions and between centres in which children are born and centres in which voluntary terminations of pregnancy are carried out.

43. This parallel can be seen to be entirely irrelevant with regard to the theme of the ministerial report, in general, and, in particular, the specific aspect of the right of conscientious objection and the guarantee of access to a termination of pregnancy.

44. In the face of the Committee's decision on the merits finding that there are serious problems with the tangible application of Law No. 194 and the subsequent resolution of the Committee of Ministers, the Ministry of Health – without referring to either the decision on the merits or the resolution – even foresees a reduction in the number of centres carrying out voluntary terminations of pregnancy.

45. This statement by the Ministry of Health again confirms the overall approach taken in the report, which, on one hand, disregards the proceedings brought against Italy in this respect (collective complaints Nos. 87 and 91) and the criticisms voiced by the Committee and, on the other hand, in line with this approach, fails to determine or adopt tangible measures to resolve these issues.

46. Other reasons for concern, in respect of the same parameter determined by the Ministry of Health for the purpose of monitoring the application of Law No.

194, are the statement that **"the number of termination centres can be seen to be more than sufficient as compared with the number of terminations carried out, all the more so in comparison with the number of birth centres"** (*ibid.*, page 45) and the statement that **"the number of establishments is more than sufficient for the terminations carried out in Italy"** (*ibid.*, page 46).

47. It is in fact inevitable that the number of centres which carry out voluntary terminations of pregnancy, as well as the number of non-objecting practitioners who perform these operations, should be "more than sufficient" as compared with the number of terminations taking place. Otherwise, the terminations in question would not have been carried out. Once again, therefore, reference must be made to the earlier considerations on the indeterminate, unrecorded number of women who seek such an intervention but are not admitted by the hospitals.

48. In this connection, we refer in particular to collective complaint No. 91 and to the government's observations in reply, as well as to the documents relating to collective complaint No. 87 of 2012 and the Committee's decision on the merits, with specific regard to the increased number of clandestine abortions and the so-called abortion tourism phenomenon, which show how the competent regional authorities are failing to satisfy the demand for terminations.

***2.4.4. Third evaluation parameter ("The termination services offer taking account of the staff's right of conscientious objection, in relation to the average number of terminations carried out per week by each non-objecting gynaecologist")***

49. In relation to the **last parameter** identified (**"The termination services offer taking account of the staff's right of conscientious objection, in relation to the average number of terminations carried out per week by each non-objecting gynaecologist"**, 2014 report by the Ministry of Health, page 46), the ministry confirms its overall stance that there are no problems with the application of Law No. 194 of 1978.

50. From this standpoint, while referring to the successive sections dealing with the violation of the rights of non-objecting practitioners and the related observations (chapter 3), it must be noted that the ministry maintains firstly that "the number of non-objectors at regional level can be seen to be consistent with the number of terminations carried out, and the number of conscientious objectors should not prevent the non-objectors from also engaging in activities other than terminations" and secondly that "any problems of access to a voluntary termination of pregnancy may possibly be due to local organisational difficulties, which, following this monitoring exercise, will now be easier to pinpoint" (2014 report by the Ministry of Health, page 46), which therefore also amounts to:

- calling into question the effective existence of problems of access to terminations;
- ascribing these "possible problems" to local organisational deficiencies, concerning which no solutions are however proposed or applied.

#### *2.4.5. The counselling centres*

51. One last aspect should be taken into consideration, with a view to giving the overall picture regarding the so-called "follow-up" of the decision on the merits of collective complaint No. 82 and hence demonstrating the ongoing nature of the violation of the European Social Charter.

52. The Ministry of Health devotes part of its report to a discussion of the data on the family counselling centres (2014 report by the Ministry of Health, pages 47 ff.).

53. As in the case of the overall monitoring of the application of Law No. 194 with regard to the right of conscientious objection, it has been noted that the data gathered and submitted by the regions are incomplete and here too the ministry has underlined that "**the data collection proved particularly problematic**".

54. In the light of this, the ministry observes that "the analysis of the forms received shows that the situation regarding recourse to counselling centres for the activities linked to terminations of pregnancy varies greatly from one region to another.

The differences noted are partly due to the **survey's failure to achieve complete coverage in all regions**; it is also necessary to take account of the diverse organisational solutions adopted at local level, as regards relations between the local government agencies and the hospital departments, with a view to taking charge of women seeking a voluntary termination of pregnancy."

55. More importantly, it is also underlined that "In general, while bearing in mind the not always satisfactory data coverage, **the number of conscientious objectors in the counselling centres is significantly lower than the number recorded in the hospitals.**

**The fact that, in a majority of cases, the number of interviews conducted exceeds the number of certificates issued could be an indication of the effectiveness of the action taken to assist women in "overcoming the reasons which lead them to request a termination of pregnancy"** (Article 5 of Law 194)."

56. In this connection, it should be noted that Law No. 194 in no way grants a right of conscientious objection in respect of the activities carried out in the counselling centres. Article 9 of the law provides that conscientious objection is valid solely for activities specifically and necessarily aimed at carrying out an abortion, not for assistance provided before and after the operation. If the right of conscientious objection were to be granted to persons performing activities even more remote in time from the activity of assistance prior to the abortion, this would result in completely unreasonable discrimination against the health care staff who carry out this assistance activity, in respect of which no conscientious objection can be raised (regarding this point, see above all the 2010 decision of the Puglia regional administrative court, which held that the right of conscientious objection could not lawfully be exercised in the counselling centres, Doc. 2, and the recent initiative of the Lazio region, which has adopted a decree reiterating that no conscientious objection can lawfully be raised by the counselling centres' staff who are obliged to prescribe and administer hormonal and mechanical contraceptives. An appeal against this decree has been lodged by the National Federation of Italian Pro-Life Centres and Movements (Federazione Nazionale dei Centri e Movimenti per la Vita D'Italia), the Italian Association of Catholic Doctors and the Italian Association of Catholic Gynaecologists/Obstetricians, Doc. 3).

## *2.5. Conclusions*

57. In the light of the above considerations, the CGIL wishes to underline that the Italian government and the Ministry of Health, respectively in the reply appended to the Committee of Ministers' resolution of 30 April 2014 and the report submitted to Parliament on 15 October 2014:

- fail to take account of and to cite the Committee's decision on the merits, the resolution itself and the proceedings currently pending before the Committee;
- consider that there are no problems of application of Law No. 194 of 1978 in relation to conscientious objection;

and, deeming the violations found by the Committee to be invalid, consequently:

- determine no tangible measures to resolve these violations
- and therefore do not apply such measures, the implementation of which is necessary in practice in the light of the decision on the merits adopted by the European Committee of Social Rights and called for by the Committee of Ministers.



### **3. Violation of the rights of non-objecting practitioners (Articles 1, 2, 3, 26 and E of the European Social Charter; Articles 21 and 22 of the European Social Charter)**

#### ***3.1. Preliminary observations***

58. As foreseen, with regard to the problems underlying the exercise of the right of conscientious objection and the organisation of the hospitals and the regions in the case of voluntary terminations of pregnancy, the aspect on which the European Committee of Social Rights did not give any ruling in the decision on the merits of collective complaint No. 87 of 2012 – since this question was not specifically addressed in those proceedings – was the violation of the rights of doctors who are not conscientious objectors and who have to bear the entire workload on account of the high and growing number of objecting doctors and the disorganisation of the hospitals and the regions.

59. The CGIL here refers to the considerations set out in collective complaint No. 91 and in the reply to the observations of the Italian government regarding violations of Article 1 (the right to work), Article 2 (the right to just conditions of work), Article 3 (the right to safe and healthy working conditions), Article 26 (the right to dignity at work) and Article E (non-discrimination) of the European Social Charter, and also considers as relevant to the subject matter of collective complaint No. 91 the Charter's Articles 21 (the right to information and consultation) and 22 (the right to take part in the determination and improvement of working conditions and the working environment).

60. The following passages from the reply to the observations of the Italian government are of particular significance: §§ 6 – 8, §§ 155 – 206 and §§ 314 - 323.

61. The CGIL also refers to the documents appended to collective complaint No. 91 and to the reply to the observations of the Italian government, and specifically to:

- the institutional documents (at national level - the motions and the act of scrutiny submitted to and approved by Parliament – and at regional level);
- the documents provided by LAIGA – the Italian Association of Gynaecologists for Application of Law 194;
- the documents provided by the CGIL itself;
- the direct testimonies of non-objecting doctors and of women, with regard to the position of the doctors who are not conscientious objectors.

***3.2. The relationship between the finding of a violation of women's rights (decision on the merits of collective complaint No. 87 del 2012) and recognition of a violation of the rights of doctors not conscientious objectors***

62. In the light of these considerations, the CGIL first wishes to mention – as was the case for the evidence of the violation of women's rights recognised by the European Committee of Social Rights in the decision on the merits of collective complaint No. 87 of 2012 - the difficulties encountered in gathering information and evidence of a violation of the rights of non-objecting doctors in the course of the proceedings currently pending before the Committee, on account of the sensitive nature of the subject and the possible negative consequences for the future employment situations of those concerned.

63. As already underlined, the European Committee of Social Rights has recognised the violation of Articles 11 and E of the European Social Charter with specific regard to the position of women seeking a voluntary termination of pregnancy.

64. That recognition was based on the documents submitted by IPPF EN and the institutional documents (especially the motions and the act of scrutiny approved by Parliament).

65. The documents submitted by IPPF EN, which were not contradicted by the Italian government, as the Committee noted, comprise information provided by LAIGA and the CGIL and direct testimonies of non-objecting doctors and women, as is the case with the documents filed by the CGIL in the proceedings relating to collective complaint No. 91.

66. In assessing the violation of women's rights the Committee underlined that it based its finding on the high and growing number of objecting practitioners and the organisational deficiencies at the level of the hospitals and the regions.

67. This therefore shows the link between the problems of access to terminations (for women) and the lack of organisational measures to give effective application to the provisions of Article 9 of Law No. 194 requiring the hospital and the regions to guarantee the service requested in all cases.

68. The lack of organisational measures accordingly has a direct negative impact **not only:**

- **on the position of the women, as the Committee already ascertained** (decision on the merits of collective complaint No. 87 of 2012) on the basis of the documents and the evidence which IPPF EN succeeded in filing despite the lack of official data, the impossibility for that organisation to conduct a comprehensive survey and the difficulties encountered by women in giving direct testimonies. As foreseen, this documentation was not contradicted by the Italian Government and the Committee took note of this;

**but also:**

- **on the position of the non-objecting medical practitioners**, who have to bear the entire workload in the hospitals where they are employed and the entire workload arising from the hospitals in which there are no non-objecting doctors at all. The non-objecting doctors are in fact required to travel from one hospital to another and to receive a greater number of women in their own establishments. Here too, as can be seen from the introduction to the CGIL's

reply to the observations of the Italian Government, the same difficulties arose in obtaining comprehensive information on the non-objecting doctors' working conditions and career progression and the organisation of their leave. These difficulties result from a lack of comprehensive official data and the fact that non-objecting practitioners find it hard to offer direct testimonies of their experience, since there is a risk that this will subsequently impair their own employment situation.

### ***3.3. Developments in legislation and practice following the submission of the CGIL's reply to the observations of the Italian government***

#### ***3.3.1. The health minister's report on implementation of the law governing the social protection of motherhood and voluntary terminations of pregnancy (Law 194/78). Preliminary data for 2013. Final data for 2012. Rome, 15 October 2014.***

69. Following the submission of the CGIL's reply to the observations of the Italian government the situation of a violation of the rights of doctors who are not conscientious objectors was confirmed, since no specific positive measures were adopted in order to resolve it.

70. In view of the close link between the violation of women's rights – as confirmed by the Committee – and the violation of the rights of non-objecting medical practitioners, the CGIL refers to the considerations set out previously in connection with the so-called follow-up of the decision on the merits of collective complaint No. 87 of 2012 with regard to the violation of women's rights.

71. With specific regard to the position of non-objecting doctors, it is also necessary to refer once again to the 2014 report by the Ministry of Health and to the arguments raised in respect of the third parameter ("The termination services offer taking account of the staff's right of conscientious objection, in relation to the average number of terminations carried out per week by each non-objecting gynaecologist"), as identified by the ministry itself for the purpose of the monitoring exercise.

72. Regarding the overall workload of each non-objecting doctor in respect of voluntary terminations of pregnancy, the Ministry of Health indeed concludes that there are no problems (2014 report by the Ministry of Health, page 46):

"the number of non-objectors at regional level can be seen to be consistent with the number of terminations carried out, and the number of conscientious objectors should not prevent the non-objectors from also engaging in activities other than terminations, and therefore any problems of access to a voluntary termination of pregnancy may possibly be due to local organisational difficulties, which, following this monitoring exercise, will now be easier to pinpoint."

73. In this connection, we would refer to the observations set out above (section 2.4.4.), while underlining that, in the first place, the Ministry of Health indicates that it is by no means certain of either the consistency of the number of non-objecting doctors at regional level with the terminations of pregnancy carried out or the fact that the number of doctors who are conscientious objectors does not prevent non-objecting doctors from also carrying out activities other than terminations, and, in the second place, again disregarding the decision on the merits of collective complaint No. 87 and the Committee of Ministers' resolution, the Ministry of Health calls into doubt the existence of problems of access to the treatment requested, acknowledging solely that they may "possibly" be due to local organisational difficulties.

74. In relation to this hypothesis, which the ministry simply acknowledges as a possibility, no mention is made of tangible, effective measures designed to give effect to the requirement, under Article 9 of Law No. 194, that the hospitals and the regions should organise themselves in an appropriate way.

75. In addition, as foreseen in section 2.4.1 and as also indicated below in section 3.3.2, the number of non-objecting medical practitioners could be over-estimated because there is no obligation for a practitioner to inform his/her own hospital of a decision to raise a conscientious objection.

### ***3.3.2. Resolution adopted by the Committee on Social Affairs of the Chamber of Deputies***

76. On 6 March 2014 the Committee on Social Affairs of the Chamber of Deputies approved a resolution on the "Report on the state of implementation of Law No. 194 of 1978 governing the social protection of motherhood and voluntary terminations of pregnancy, containing preliminary data for 2012 and final data for 2011" (Doc. 4).

77. Together with the motions and the act of scrutiny submitted and approved by parliament, this document constitutes a particularly significant source of evidence of the situation of non-conformity with the European Social Charter with specific regard to the violation of the rights of non-objecting medical practitioners.

78. Indeed, apart from noting that the data gathered by the Ministry of Health are incomplete, this resolution underlines that there is truly an "indeterminate number" of conscientious objectors, in so far as there is no obligation for a doctor to inform his/her hospital of his/her decision to raise a conscientious objection (which therefore tends to result in undue inflation of the number of doctors who are non-objectors).

79. The following passages can be seen to be of particular importance:

**"The XIIIth Committee on Social Affairs,**

**whereas:**

...

**The reference data** (final for 2011 and provisional for 2012) **in any case pose a limit on analysis of the real situation**, to which the difficulties reported by many of the regional assessors in collecting data from the establishments carrying out voluntary terminations of pregnancy and the closure of a number of the departments concerned must be added, with the result that in some regions (Abruzzo, Campania, Puglia, Sicily and Sardinia) it was necessary to integrate the information obtained from the supervision system based on the hospital discharge forms;

...

**whereas:**

...

**a verification is necessary since the statistics on the number of non-objectors could be overstated**, as, given that there is no obligation to inform the competent health authority of a decision to raise a conscientious objection, all the gynaecologists that have never raised an objection simply because their institutional role does not entail the performance of voluntary terminations of pregnancy could be considered as non-objectors; it is considered that, in 2011, the workload stood at 1.7 terminations per week;

...

**the report is undoubtedly deficient as regards quantification of the number of clandestine abortions carried out in our country;**

...

**Calls on the government:**

**... to report to the competent parliamentary committees** on the initiatives taken by the ministry itself in application of the commitments it entered into on 11 June 2013 before the Chamber, as set out in the motions adopted, **and to take all the necessary measures**, within the limits of its competence, to ensure the implementation, as regards the organisation of the regional health systems, of the fourth paragraph of Article 9 of Law No. 194 of 1978 ..., guaranteeing the presence of a sufficient network of services in every region across the country;

...

to take all the necessary measures to enable more accurate, up-to-date, analytical and coherent monitoring of the critical matters raised in the preamble;

...

**to provide that the regions must make known, using all the necessary means of information including institutional websites, the procedure whereby women can have access to the service and the names of hospitals in which voluntary terminations of pregnancy are carried out, covering a reasonable catchment area."**

### *3.3.3. Direct testimony by Dr Rossana Cirillo*

80. The CGIL also refers here to the direct testimonies collected and lodged in the course of the proceedings relating to collective complaint No. 91 and wishes to submit the testimony – obtained after the submission of the reply to the observations of the Italian government (15 March 2014) - of a non-objecting practitioner who worked for 25 years in Villa Scassi hospital in Sampierdarena (Genoa) and who decided to become a conscientious objector on account of the difficulties she encountered during her career.

81. The following are the most significant passages regarding the working conditions of non-objecting medical practitioners (Doc. 5):

**"Alone, abandoned in that tight spot, cut off from a career and obliged to carry out abortions as if on an assembly line, with no further contact with patients, marginalised within the hospital, which has always considered my work degrading, I made the only possible choice, one which I had always rejected: I declared myself an objector, I said goodbye to the department which I had set up with so much hard work and I changed my life."**

"We doctors who performed abortions were abandoned."

"Joining the service providing voluntary terminations of pregnancy seemed a natural career step whether in human or professional terms."

"The possibility of aborting was like a bomb hitting the suburbs: dozens of women came along with behind them the traumas of the clandestine interventions; they could not believe that someone would take care of them in a hospital, in an operating room. They talked about themselves and opened up, a relationship was established. Some unfortunately came back, but others learned about contraception, and yet others chose to keep their child. Then the youngest came along, those of my generation, aware that this had become an acquired right. However, there was a relationship with each of them, and that gave a meaning to my work and my commitment."

"To begin with, in the eighties, I worked alongside a group of doctors who were motivated and committed to guaranteeing the application of the law."

**"Almost immediately everyone came out as an objector. Only two of us were left, without even one anaesthetist, and at the same time the workload grew out of all proportion. I couldn't attend conventions**



**I couldn't take time off or do anything else: I was alone, the only one performing abortions. I held on for ages - without me the service would close- but I now felt it was an unsustainable burden."**

**"My health director never supported me. However, I remember that one day he said to me 'Doctor, I don't understand why you are doing all this but you clearly really believe in it'."**

"At the end of the nineties, with the mass arrival of the immigrants something broke inside me. Dozens of desperate women arrived – Nigerians, Albanians, Chinese, daughters of poverty and prostitution. They had an abortion and they went away. It was impossible to establish a relationship with them without cultural mediators and welfare assistants. **I began to feel bad. I felt that I was simply an executor of tasks;** it was as if there was now a worrying selection among women and the right to have children was granted only to some but not to others, like these invisible women who arrived without a word and then disappeared."

**"Before declaring myself an objector I waited for someone to take over my job.** Two male gynaecologists arrived. It's perhaps better that way."

**"I was marginalised and penalised,** but I am serene and aware that I helped hundreds of women. For my inner self that is enough."

## Conclusions

82. Taking all this into account, the CGIL, assisted by lawyers Marilisa d'Amico and Benededetta Liberali del Foro of the Milan Bar, recalling the considerations set out in collective complaint No. 91 of 2013 and in the CGIL's reply to the observations of the Italian government on admissibility and the merits, **requests the European Committee of Social Rights to:**

- **Confirm its own precedent, consisting in the decision on the merits of collective complaint No. 87 of 2012,** with which it found a violation by Italy of Article 11 of the European Social Charter and of Article E, read in conjunction with Article 11, of the European Social Charter in respect of the rights of women wishing to obtain a termination of pregnancy under the conditions laid down in Law No. 194 of 1978;
- in view of the link between the finding of a violation of women's rights on account of the problems of access to terminations of pregnancy and a violation of the rights of doctors who are not conscientious objectors, and in view of the comprehensive documentation produced by the CGIL, **recognise that Italy is in violation of the following Articles of the Charter** in respect of the rights of medical and auxiliary staff who are not conscientious objectors:

- **Article 1** on account of the difficulties in applying Law No. 194 of 1978, which impair the legal position of non-objecting medical practitioners, who have to bear the entire workload relating to terminations of pregnancy;

- **Articles 2, 3 and 26, read alone or in conjunction with Article E**, on account of the difficulties in applying Law No. 194 of 1978, which impair the legal position of non-objecting medical practitioners, who have to bear the entire workload relating to terminations of pregnancy;

83. The CGIL further requests the European Committee of Social Rights to **recognise the relevance**, for the purpose of collective complaint No. 91 of 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.

1 May 2015

Susanna Camusso

Secretary General of the CGIL

## Appendices

### *Doc. 1*

*Report by the Minister of Health on implementation of the law governing social protection of motherhood and voluntary terminations of pregnancy (Law 194/78). Preliminary data for 2013. Final data for 2012. Rome, 15 October 2014.*

### *Doc. 2*

*Regional Administrative Court of Puglia, judgment No. 3477 of 14 September 2010*

### *Doc. 3*

*Decree of the Commissioner ad Acta of 12 May 2014, No. U00152. "Networks for reproductive health and women's and children's health: redefinition and reorganisation of the functions and activities of the regional family counselling centres. Rates of reimbursement of home births, for integration in decree No. U0029 of 1/4/2011, adopted by the President as Commissioner ad Acta".*

### *Doc. 4*

*Resolution on the "Report on the state of implementation of Law No. 194 of 1978 governing the social protection of motherhood and voluntary terminations of pregnancy, containing preliminary data for 2012 and final data for 2011".*

### *Doc. 5*

*Direct testimony by Dr Rossana Cirillo.*