



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

25 November 2013

Case Document No. 9

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

**FURTHER RESPONSE OF THE GOVERNMENT ON THE
ADMISSIBILITY AND THE MERITS**

Registered at the Secretariat on 25 November 2013

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**FURTHER OBSERVATIONS BY THE ITALIAN GOVERNMENT IN REPLY TO THE CGIL'S
RESPONSE TO THE ITALIAN GOVERNMENT'S SUBMISSIONS ON THE ADMISSIBILITY
AND THE MERITS**

Rome, 21 November 2013

1. Further to the Committee's letter of 23 October 2013, the Government would like to make the following observations.
2. Firstly, the Government disputes every criticism made by the CGIL concerning the submissions of the Italian Government, which wished to emphasise that the purpose of Law No. 194/1978 on provisions for the social supervision of maternity and voluntary termination of pregnancy is to guarantee the right to planned and responsible parenthood and, above all, recognise the social value of motherhood and the protection of human life from its inception.
3. The CGIL's goal, though it accepts and recognises the content and the scope of Article 9 of Law No. 194/1978 (see the response to the Italian Government's submissions), is to show that the law concerned is poorly applied by the Government, solely in respect of the legal situation of non-objecting doctors and their presence in public health institutions.
4. In accordance with its legislation, the Government states that the CGIL's submissions add nothing to its complaint and are ill-founded and without objective justification.
5. The Government also contends that in §§ 150, 151, 153 and 154 of its response, the CGIL purposefully ignores or fails to take proper account of the information provided by the Government in its submissions of 29 May 2013 on the data relating to the application of the law.
6. We must also address section 3.7 of the CGIL's response, in which it is claimed that the Government is mistaken in its assertions on the distribution of powers between the state and the regions under Article 117 of the Constitution.
7. In this respect, the Government must point out and stress to the Committee that the organisation of healthcare facilities including the healthcare guaranteed during a termination of pregnancy is the responsibility of the regions, as provided for and acknowledged in Law No. 194/1978 (Article 1, §3) in connection with the right to health, in accordance with the Italian Constitution and the Social Charter.
8. This organisation is based on the margin of appreciation granted to the state, which supervises the conduct of healthcare activities in accordance with the provisions of the law at issue and international obligations, as asserted by the Committee in the following terms: "the Italian State bears the responsibility in international law of ensuring that obligations arising from the Charter are implemented in full throughout its territory [including the regions]".
9. The Report of 8 October 2013 to the Parliament, appended hereto and criticised by the associations intervening as third parties, shows, together with all the previous reports how much store the state sets by the correct application of Law No. 194/1978, which requires hospitals to provide healthcare in relation to abortion, irrespective of the choice made by the medical staff concerned.
10. In this connection, even though the law provides that healthcare staff may exercise their right to conscientious objection (Article 9), it is also stipulated that objection by the staff should not prevent the institution and the region concerned from carrying out the direct procedures needed to perform terminations and providing assistance before and after such operations.

11. The regulations on termination of pregnancy are based primarily on the fundamental principle of promoting responsible parenthood but nor do they prevent abortion where women have full knowledge of the relevant procedures applied by the state, the regions and local establishments with due regard for the respective responsibilities for promoting and developing the necessary social and healthcare services.

12. In this respect, it should be pointed out that Italian law has not established a right to voluntary termination of pregnancy but deals with it as a possibility to which women may have access and sets out the rules on this clearly and accurately in Articles 4, 5, 6, 7 and 8 of Law No. 194/1978¹.

¹ **Article 4**

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

Article 5

“In all cases, in addition to guaranteeing the necessary medical examinations, counselling centres and socio-medical agencies shall be required, especially when the request for termination of pregnancy is motivated by the impact of economic, social or family circumstances upon the pregnant woman’s health, to examine possible solutions to the problems in consultation with the woman and, where the woman consents, with the father of the conceptus, with due respect for the dignity and personal feelings of the woman and the person named as the father of the conceptus, to help her to overcome the factors which would lead her to have her pregnancy terminated, to enable her to take advantage of her rights as a working woman and a mother, and to encourage any suitable measures designed to support the woman by providing her with all necessary assistance both during her pregnancy and after the delivery.

Where the woman has applied to a physician of her choice, he/she shall: carry out the necessary medical examinations, with due respect for the woman’s dignity and freedom; assess, in conjunction with the woman and, where the woman consents, with the father of the conceptus, with due respect for the dignity and personal feelings of the woman and of the person named as the father of the conceptus, if so desired taking account of the result of the examinations referred to above, the circumstances leading her to request that her pregnancy be terminated; and inform her of her rights and of the social welfare services available to her, as well as regarding the counselling centres and the socio-medical agencies. Where the physician at the counselling centre or socio-medical agency, or the physician of the woman’s choice, finds that in view of the circumstances termination is urgently required, he/she shall immediately issue the woman a certificate attesting to the urgency of the case. Once she has been issued this certificate, the woman may report to one of the establishments authorised to perform pregnancy terminations.

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

Article 6

“A voluntary termination of pregnancy may be performed after the first 90 days:
a) where the pregnancy or childbirth entails a serious threat to the woman's life;

13. Under Law No. 194/1978, healthcare institutions must guarantee the right to treatment and assistance for women undergoing terminations, and the regions must be able to exercise their organisational autonomy to supervise the implementation of the rules through measures including staff mobility or agreements with specialist doctors to provide healthcare services.

14. As to the legal status of non-objecting doctors, it should be pointed out that, although the CGIL claims that Article 9 regulates their status, this article neither prevents nor prohibits anyone from being a non-objecting doctor, because the choice is left to each individual doctor.

15. In paragraph 137 of its response, the CGIL states 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”, but, as pointed out above, to demonstrate that there are very few non-objecting doctors working for healthcare facilities and sometimes none at all, and that this would seem to be blocking women’s access to terminations.

b) where pathological processes constituting a serious threat to the woman's physical or mental health, such as those associated with serious abnormalities or malformations of the foetus, have been diagnosed.”

Article 7

“The pathological processes referred to in the preceding article shall be diagnosed and certified by a physician on the staff of the department of obstetrics and gynaecology of the hospital establishment in which the termination is to be performed. The physician may call upon the assistance of specialists. The physician shall be required to forward the documentation on the case as well as his/her certificate to the medical director of the hospital in order for the termination to be performed immediately.

Where the termination of pregnancy is necessary in view of an imminent threat to the woman’s life, it may be performed without observing the procedures referred to in the preceding paragraph and in a place other than those referred to in Article 8. In such cases, the physician shall be required to notify the provincial medical officer. ...”

Article 8

“Pregnancy terminations 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; this physician shall also verify that there are no medical contra-indications.

Pregnancy terminations may likewise 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. 817 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, 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 restricting the capacity of authorised nursing homes to carry out terminations of pregnancy by establishing:

- 1) the percentage of pregnancy terminations that may be performed relative to the total number of surgical operations carried out the preceding year at the particular nursing home;
- 2) the percentage of patient-days allowed for pregnancy-termination cases in relation to the total number of patient-days in the 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 (cf. ministerial decree of 20/10/1978). Nursing homes may select the criterion which they will observe from the two set out above. During the first 90 days, pregnancy terminations may likewise be performed, following the establishment of local socio-medical units, at suitably equipped public outpatient clinics, operating under the hospitals and licensed by the regions. The certificate issued under the third paragraph of Article 5 and, after seven days have elapsed, the document delivered to the woman under the fourth paragraph of the same article shall entitle her to obtain, on an emergency basis, the termination and, where necessary, her admission to hospital.”

16. Consequently, in response to the CGIL's criticisms concerning the limited number, or complete lack, of non-objecting doctors and the problems they face in healthcare facilities, which it attributes to the law cited above, and the impossibility for the state to reduce the number of objecting doctors (see §141), the Government confirms that the state has regulated women's access to terminations and the organisation of the various facilities authorised to receive these women according to the standard-setting and factual criteria set out in the last report to parliament, appended hereto, which the CGIL considers to be ill-founded. The Government would point out that the data included in the report to parliament on the activities of non-objecting doctors derive from information provided by the Regions, which does not raise any doubts.

17. The CGIL concedes that it has had difficulty in obtaining exhaustive information to bear out its complaint (see §177 of its response).

18. The Government believes that no further comment on the CGIL's submissions is necessary bearing in mind that the law in question is properly applied by the state, as it reconciles the interests and rights of everyone concerned, in accordance with what the European Court of Human Rights asserted in its judgment of 20 October 2012 on P. and S. v. Poland, application no. 57375/08:

"99. ... once the State, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations, it must not structure its legal framework in a way which would limit real possibilities to obtain an abortion. In particular, the State is under a positive obligation to create a procedural framework enabling a pregnant woman to effectively exercise her right of access to lawful abortion (Tysic v. Poland, cited above, § 116-124, R.R. v. Poland, cited above, § 200). The legal framework devised for the purposes of the determination of the conditions for lawful abortion should be 'shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention' (A, B and C v. Ireland [GC], ... § 249 [16 December 2010])";

and in the case of R.R. v. Poland, no. 27617/04:

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

19. The Government requests the Committee to examine its submissions of 23 May 2013, which are reiterated in these further submissions, and to declare the CGIL's collective complaint ill-founded because the situation in Italy is in conformity with Article 11 of the revised European Social Charter read alone or in conjunction with Article E, with all the other articles of the Charter mentioned in the complaint and, in particular, with Article G.

Rome, 21 November 2013

Government Agent

Appendix: Report to the Italian Parliament of 3 October 2013