

International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, decision on the merits of 10 September 2013
Resolution [CM/ResChS\(2014\)6](#)

Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, decision on admissibility and the merits of 12 October 2015
Resolution [CM/ResChS\(2016\)3](#)

1. Decision of the Committee on the merits of the complaint

519. These two decisions are related to the organisation of sexual and reproductive health services in Italy, particularly the insufficient number of non-objecting doctors in services carrying out voluntary terminations of pregnancy. The Committee has therefore decided to assess jointly the measures taken in the context of the follow-up to these decisions.

International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy, (No. 87/2012)

Violation of Article 11§1 and violation of Article E read in conjunction with Article 11 of the Charter

520. The Committee found that there was:

a) a violation of Article 11§1 of the Charter, because with respect to the women who decide to terminate their pregnancy, the competent authorities did not take the necessary measures to ensure that, as provided by Section 9§4 of Law No. 194/1978, abortions requested in accordance with the applicable rules are performed in all cases, even when the number of objecting medical practitioners and other health personnel is high;

b) a violation of Article E read in conjunction with Article 11 of the Charter because of the discrimination suffered by women wishing to terminate their pregnancy, who are forced, at risk to their health, to move from one hospital to another within the country or to travel abroad because of a lack of non-objecting health staff in a number of hospitals in Italy.

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

Violation of Articles 11§1, E read in conjunction with Article 11, 1§2 (i) first ground and 26§2 of the Charter

521. The Committee found that there was:

a) a violation of Article 11§1 of the Charter because of shortcomings in the services for the termination of pregnancies in Italy, which make access to these services difficult for the women concerned despite the applicable legislation, and force them in some cases to seek alternative solutions, at risk to their health;

b) a violation of Article E read in conjunction with Article 11 of the Charter because of the discrimination suffered by women wishing to terminate their pregnancy, who are forced, at risk to their health, to move from one hospital to another within the country or to travel abroad because of shortcomings in the implementation of Law No. 194/1978.

c) a violation of Article 1§2 of the Charter, first ground, because of the difference in treatment between objecting and non-objecting medical practitioners;

d) a violation of Article 26§2 of the Charter because of the failure of the government to take any preventive training or awareness-raising measures to protect non-objecting medical practitioners from moral harassment.

522. It also found that there was no violation of Article 1§2 (ii), second ground, Article 2§1 and Article 3§3 of the Charter and that no separate issue arose under Article E read in conjunction with Articles 2§1, 3§3 and 26§2 of the Charter.

2. Information provided by the Government

523. In its [report](#), registered on 16 February 2018, the Government stated that it was fully committed to the implementation of Law No. 194 of 22 May 1978, thus ensuring, in accordance with the law, that all women who so requested would have access to voluntary termination of pregnancy and that all medical staff would enjoy the right to conscientious objection provided for in Article 9 of the Law.

524. The Government draws particular attention to the constant decline in the number of voluntary terminations since the implementation of Law No. 194/1978, which has resulted in a decrease in non-objecting gynaecologists' workload. According to a report by the Italian parliament on the application of this Law, sent on 7 December 2016, between 1983 and 2014 the number of terminations per week by non-objecting gynaecologists decreased by half at national level, from 3.3 per week per gynaecologist to 1.6.

525. The Government points to the establishment in 2013 of a Ministry of Health technical committee, in which all regional councillors and the National Health Institute were invited to participate, to monitor the full application of the law throughout the country through a specific survey on abortion activities and the exercise of the right to conscientious objection by gynaecologists, at the level of each hospital and the family planning services, in order to identify any problems. This committee's work continued in 2016. Common parameters were set and all the authorities concerned were invited to draw up regional reports on the application of the law, taking account where appropriate of the specific features of the geographical area in question.

526. From these surveys, it emerged that in 2014 there were 654 hospitals with an obstetrics and/or gynaecology department, of which 390 (or 59.6%) offered abortions (60% in 2013). Only in three cases (the Autonomous Province of Bolzano and the Regions of Molise and Campania) was there an abortion service in fewer than 30% of the establishments surveyed. The number of abortions in 2014 was 96 578, compared to 492 127 live births. According to the Government, if a comparison is made between the number of maternity wards and abortion services in relation to the number of women of reproductive age, the number of abortion services is geared perfectly to the birth/abortion ratio. As to the regions with a particularly low number of abortion services in comparison to maternity wards, the Government states that this should change once the maternity wards overseeing fewer than 500 childbirths per year have been done away with.

527. With regard to the average number of terminations by each non-objecting gynaecologist per week, the Government points out that the average weekly workload has decreased by about one half since 1983 and amounted to about 1.6 abortions per week in 2014 (96 758 terminations for 1 408 non-objecting gynaecologists over 44 working weeks) but rising to 4.7 per week in Molise or 9.4 if the workload is calculated in terms of full time equivalent (FTE) positions. According to the data, the situation is relatively uniform in each region apart from a few health units (three out of a total of 140) where average weekly

termination by non-objecting gynaecologists largely exceed the regional average, reaching figures between 12.2 and 15.8 per week (in Apulia, Piedmont and Sicily). Partial data from 2016 also show that a number of non-objecting gynaecologists did not carry out terminations (11% at national level in the regions surveyed) because they were assigned to other services, but could be redeployed to abortion services if needed.

528. According to the Government, these data prove that problems with access to abortion services are not generally the result of a lack of non-objecting doctors but probably stem from the situation in specific establishments or regional health policy choices. In this connection, the Government points out that waiting times are not necessarily longer in regions with fewer non-objecting doctors. According to the figures provided, which confirm the disparities between regions, waiting times decreased overall between 2006 and 2014 whereas the number of objecting gynaecologists increased slightly (from 69.2% to 70.7%) and the rate and number of abortions fell.

529. Based on data for 2016 covering 85% of family planning clinics, family planning activities in respect of abortions have improved, according to the Government, which reports nonetheless that there is significant diversity between regions in the use of family planning services for abortion-related matters. Although account needs to be taken of the survey's limitations, the data show that the number of conscientious objectors working for family planning clinics is much lower than in hospitals (15% compared to 70.7%) and that the number of pre-abortion interviews (76 855 in total) is lower than the number of abortion certificates delivered (31 277), which could indicate, in the Government's view, that practical measures have been taken to help women "to eradicate the causes prompting them to terminate their pregnancy".

3. Assessment of the follow-up

A) Discrimination against women wishing to terminate their pregnancy and violation of their right to health because of problems with access to abortion services (Article 11§1 and Article E, read in conjunction with Article 11§1)

530. The Committee takes note of the Government's undertaking to ensure that Law No. 194/1978 is fully implemented together with the figures it provides on the number of facilities conducting abortions, the number of doctors involved and waiting times.

531. With regard to the decrease in the numbers of terminations of pregnancies carried out, the Committee considers that these data cannot be interpreted in any certain terms [as the decrease could also reflect problems with access to these services]. In this connection it notes that in its [concluding observations of May 2017 on the sixth periodic report of Italy](#), the UN Human Rights Committee expressed concern about the poor access to abortion services because of the large number of objecting doctors and their distribution throughout the country, and the risk that this may give rise, in significant proportions, to recourse to clandestine abortions. This Committee recommended that Italy should "take the measures necessary to guarantee unimpeded and timely access to legal abortion services in its territory, including by establishing an effective referral system for women seeking such services".

532. The Committee also notes that although the situation seems to be improving, there are still major disparities at local level. It asks for information in the next report on the measures taken to reduce the remaining disparities at local and regional level and the

results obtained, in the light of updated data.

533. It considers in the meantime that the situation has not yet been brought entirely into conformity with the Charter with regard to discrimination against women wishing to terminate their pregnancy and the violation of their right to health because of problems accessing abortion services (Article 11§1 and Article E, read in conjunction with Article 11§1 for Complaints Nos. 87/2012 and 91/2013).

534. The Committee will next assess the situation on the basis of the information to be submitted in October 2019.

B) Discrimination against non-objecting gynaecologists and failure to protect such doctors from moral harassment (Articles 1§2 and 26§2 of the Charter)

535. The Committee takes note of the information provided by the Government, particularly the information on the numbers of objecting and non-objecting practitioners, their geographical distribution and the average workload of non-objecting practitioners.

536. It notes that the situation has clearly improved with regard to the average workload of non-objecting practitioners given the comparison between the national average in 1983 and 2014, which constitutes a positive development in respect of the situation previously assessed.

537. It notes however that there are still major disparities at local level, especially as a number of non-objecting doctors are not assigned to abortion services or do not work full time. The Committee asks for information in the next report on the measures taken to ensure that non-objecting practitioners are more evenly spread throughout the country and are actually available in abortion services.

538. The Committee also notes that no information has been provided about any awareness-raising or prevention measures concerning harassment. Under Article 26§2 States Parties are required to take appropriate preventive measures against moral harassment. In particular, they should inform workers about the nature of the behaviour in question and the available remedies (Conclusions 2010, Albania, Article 26§2; Conclusions 2007, Statement of Interpretation on Article 26§2). States Parties are required to take all necessary preventive and reparatory measures to protect employees against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work. From a procedural standpoint, the effective protection of employees may require a shift in the burden of proof to a certain extent, making it possible for a court to find in favour of the victim on the basis of sufficient prima facie evidence and the conviction of the judge or judges (Conclusions 2007, Statement of Interpretation on Article 26§2). The Committee asks for information in the next report on the preventive and reparatory measures adopted to protect non-objecting staff against this type of harassment, any policy measures introduced and the practical application of existing laws by the relevant authorities or courts which secures the necessary protection in practice.

539. It considers in the meantime that the situation has not been brought into conformity with the Charter with regard to discrimination against non-objecting doctors (Articles 1§2 and 26§2 of the Charter for Complaint No. 91/2013).

540. The Committee will next assess the situation on the basis of the information to be submitted in October 2019.