

# Addressing Medical Professionals' Refusals to Provide Abortion Care on Grounds of Conscience or Religion:



European Human Rights  
Jurisprudence on State Obligations  
to Guarantee Women's Access to  
Legal Reproductive Health Care

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# INTRODUCTION

In almost all European countries abortion is legal upon a woman's request, for reasons of distress, or on broad socio-economic grounds, at least in the first trimester of pregnancy. In most countries, laws also allow abortion later in pregnancy on certain exceptional grounds—for example, to protect a woman's physical or mental health or where there is a severe or fatal fetal anomaly.<sup>1</sup> Only a very small minority of European jurisdictions retain highly restrictive abortion laws and do not allow women's access to abortion on request or on broad socio-economic grounds.<sup>2</sup>

However, although abortion is legal across most of Europe, at times a range of procedural and practical barriers continue to impede and undermine women's access to legal services and some European states fail to guarantee women's timely access to legal abortion care. Examples of remaining barriers can include third party authorization requirements, mandatory waiting periods, biased counseling requirements prior to abortion, a lack of appropriate health insurance coverage for abortion care, and high costs for abortion services.<sup>3</sup>

In some contexts, obstacles arise for women as a result of a state's failure to effectively regulate and oversee the practices of medical professionals to ensure that they do not impede women's access to legal abortion care. For example, in a range of jurisdictions, domestic laws and regulations allow medical professionals to refuse to provide abortion care, or other forms of reproductive health care, on grounds of conscience or religion, yet in some cases state authorities fail to ensure that these refusals of care do not jeopardize women's access to abortion care.

Evidence indicates that in some countries, the state's failure to effectively regulate and monitor such refusals and to take proactive measures and enforce safeguards designed to guarantee access to legal services have undermined women's ability to obtain timely, safe and legal abortion care. These include failures: to ensure adequate numbers and dispersal of medical professionals willing and able to provide abortion care; to establish effective referral systems and require mandatory referral to accessible and willing providers; to clearly prohibit institutional refusals of care and refusals to provide pre- and post-abortion care or emergency care; to monitor and oversee refusals of care and to enforce regulations and sanction non-compliance.<sup>4</sup>

When left unaddressed, these deficits can have a wide range of harmful effects on women's health and well-being. Women may face severe delays in accessing legal abortion care and may be repeatedly subject to high levels of stigma and intersecting forms of discrimination while trying to obtain legal services. Women who decide to end their pregnancies may often have to travel long distances, at their own cost, in order to access care from a willing provider. At times, women may have no option but to seek abortion care in another country, even though abortion is legal in their home jurisdiction. When they cannot travel they may resort to clandestine abortion or may have no option but to carry a pregnancy to term against their wishes.<sup>5</sup>

Failures on the part of European governments to ensure that medical professionals' refusals of care do not impede women's access to legal reproductive health care contravene international human rights law and standards. When states do not ensure that such refusals of care do not jeopardize women's access to legal services, they fail to discharge their international obligations to guarantee women's access to legal reproductive health care.

Many international human rights mechanisms have repeatedly articulated the content of these obligations and have spelled out the measures that states must take in order to ensure that medical professionals' refusals of care on grounds of conscience or religion do not undermine women's access to legal services. For example, European human rights mechanisms have clearly underlined that states are not obliged under regional human rights treaties to allow medical professionals to refuse legal abortion care, or other forms of reproductive health care, on grounds of conscience or religion.<sup>6</sup> Simultaneously, human rights mechanisms have underscored that when states choose to allow such refusals as a matter of domestic law or policy, they must take effective measures to guarantee women's access to relevant services.<sup>7</sup>

The purpose of this fact sheet is to clarify and summarize these obligations and to present an overview of European human rights jurisprudence on this subject:

- Section I synthesizes the measures required of state authorities under international human rights law.
- Sections II and III summarize the case-law of the European Court of Human Rights and the European Committee of Social Rights on this issue, presenting case-studies of six key decisions.

## International Human Rights Standards and Refusals of Abortion Care

A number of international human rights mechanisms have underlined that international human rights law and standards *do not require* states to allow medical professionals to refuse to provide legal reproductive health care, including abortion, on grounds of conscience or religion.<sup>1</sup>

Instead, they have repeatedly stated that where, as a matter of domestic law and policy, states *choose* to allow medical professionals to refuse to provide legal abortion care or other forms of reproductive health care on grounds of conscience or religion, they must establish and implement effective regulatory, oversight and enforcement frameworks so as to ensure that such refusals do not undermine or hinder women's access to legal reproductive health care in practice.<sup>2</sup>

At a minimum this means that they must:

- Ensure the adequate availability and dispersal of willing providers.<sup>3</sup>
- Prohibit institutional refusals of care.<sup>4</sup>
- Establish effective referral systems.<sup>5</sup>
- Disseminate information on legal entitlements to abortion care.<sup>6</sup>
- Impose clear limits on the legality of refusals.<sup>7</sup>
- Implement adequate monitoring, oversight, and enforcement mechanisms to ensure compliance with relevant regulations.<sup>8</sup>



# I. INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS: STATE OBLIGATIONS TO ENSURE WOMEN'S ACCESS TO LEGAL ABORTION CARE

International human rights law and standards require states to ensure that where abortion is legal under domestic law it is also available and accessible in practice and that women have timely and effective access to legal abortion care. To achieve this, states must remove legal, policy, financial or other barriers that hinder timely access to abortion and must take a range of proactive measures to guarantee that abortion care is available, accessible, of good quality and delivered in a way that respects women's dignity, needs and perspectives.<sup>8</sup>

Many international human rights mechanisms have underlined that these obligations give rise to particular responsibilities when domestic law allows medical professionals to refuse to provide abortion care on grounds of conscience or religion. They have noted that such refusals may jeopardize women's health and well-being, hinder women's timely access to safe abortion services, reinforce stigma regarding abortion, and lead to discrimination against marginalized groups of women.<sup>9</sup>

A number of these human rights mechanisms have underlined that international human rights law and standards *do not require* states to allow medical professionals to refuse to provide legal abortion care or other reproductive health care on grounds of conscience or religion.<sup>10</sup> They have also stressed that when states *choose* to permit such refusals as a matter of domestic law and policy, they must establish and implement an effective regulatory, oversight and enforcement framework so to guarantee that these refusals of care do not undermine or hinder women's access to legal reproductive health care in practice.<sup>11</sup>

Human rights mechanisms have outlined that, at a minimum, such measures must include:

- **Adequate numbers and dispersal of willing providers:** Where domestic law allows refusals of care on grounds of conscience or religion, states must organize their health system in a manner that will ensure the sufficient dispersal and availability of an adequate number of medical professionals who are willing and able to provide abortion services, throughout both public and private health facilities and within reasonable geographical reach.<sup>12</sup>
- **Prohibition on institutional refusals of care:** If states choose to allow refusals of abortion care on grounds of conscience or religion, they must confine the legality of such refusals to individual medical professionals and must not allow refusals of care as a matter of institutional policy or practice.<sup>13</sup> This means that public and private hospitals and all other health-care institutions must be clearly prohibited from refusing to perform abortions and state authorities must monitor and enforce compliance with this prohibition in practice.
- **Establishment of an effective referral system:** Where domestic law allows refusals of care on grounds of conscience or religion, states must ensure that any medical professional who refuses to provide abortion care immediately refers a patient to another accessible medical professional who is willing and able to provide abortion care.<sup>14</sup> States should establish a mandatory duty of timely referral and impose a corresponding requirement on medical professionals to record the refusal in a patient's medical records and to provide patients with a written record of the refusal. It also requires state authorities to oversee implementation of the referrals system to ensure it is functioning effectively in practice.
- **Provision of information on legal access to abortion care:** States must ensure that all women can access accurate and evidence-based information on abortion, including when abortion is legal and where it can be accessed.<sup>15</sup> When a medical professional refuses to provide abortion care, all patients must have access to accurate information regarding the legality of abortion and where abortion care can be obtained.
- **Imposition of clear limits on the legality of refusals:** Where domestic law allows medical professionals to refuse to provide abortion care on grounds of conscience or religion, states must ensure that the entitlement to refuse care extends only to the abortion procedure itself and is not permitted in relation to pre- or post-abortion care.<sup>16</sup> For example, this includes preparing patients for the procedure or providing post-procedure care. In addition, states must ensure that refusals of care are not permitted in urgent or emergency situations.<sup>17</sup>
- **Implementation of adequate monitoring, oversight and enforcement mechanisms:** If states allow medical professionals to refuse to provide abortion care on grounds of conscience or religion, they must establish and implement effective systems to monitor the number and location of refusing medical professionals and to oversee compliance with laws and policies regulating the practice of refusals. They must also establish and implement meaningful enforcement procedures to address, sanction, and prevent non-compliance.<sup>18</sup>





## II. EUROPEAN COURT OF HUMAN RIGHTS

On a number of occasions, the European Court of Human Rights (the ‘Court’) has addressed the obligations of European states to ensure that refusals of care on grounds of conscience or religion by medical professionals do not jeopardize women’s access to legal reproductive health care. The Court has considered these obligations in relation to pharmacists’ refusals to provide contraceptives (*Pichon and Sajous v. France*<sup>19</sup>), doctors’ refusals to ensure access to timely prenatal diagnostic services and abortion care (*R.R. v. Poland*<sup>20</sup>), and medical professionals’ refusals to provide or enable access to abortion care (*P. and S. v. Poland*<sup>21</sup>).

In *Pichon and Sajous v. France* the Court rejected two pharmacists’ claims that the right to freedom of thought, conscience and religion as enshrined in the European Convention on Human Rights<sup>22</sup> (the ‘Convention’) required French authorities to allow them to refuse to sell oral contraceptives on grounds of their religious beliefs. In *R.R. v. Poland* and *P. and S. v. Poland*, the Court rejected the Polish government’s contention that refusals to provide abortion care or prenatal diagnostic testing on grounds of conscience or religion are protected by the right to freedom of thought, conscience and religion as enshrined in the Convention. Additionally, the Court clearly established that when state parties to the Convention *choose* to allow medical professionals to refuse certain forms of reproductive health care, they must adopt effective safeguards that will enable pregnant women and girls to obtain timely access to such care.

## *Pichon and Sajous v. France (2001)*

Mr. Pichon and Ms. Sajous were pharmacists practicing in France who refused, on the grounds of religion, to sell contraceptives covered by doctors' prescriptions. In 1995, a court challenge was filed by three women for whom they had refused to fill prescriptions for contraceptive pills. The French courts ruled that French law prohibited the pharmacists from refusing to fill the prescriptions.<sup>23</sup> Eventually the pharmacists filed a complaint with the European Court of Human Rights claiming that by sanctioning them for refusing to sell contraceptives France had violated their right to freedom of religion.<sup>24</sup>

In 2001, the European Court dismissed the pharmacists' complaint, finding that their claims were manifestly ill-founded because by prohibiting them from refusing to sell contraceptives French law did not interfere with their rights to freedom of thought, conscience and religion as protected under Article 9 of the Convention. The Court explained that Article 9 does not protect each and every act or form of behavior motivated or inspired by a religious or personal belief or matter of individual conscience. It underscored that Article 9 "does not always guarantee the right to behave in public in a manner governed by that belief," and that the word "practice," used in Article 9 § 1 to refer to the outward manifestation of a religion or a belief, "does not denote each and every act or form of behaviour motivated or inspired by a religion or a belief."<sup>25</sup>

The Court concluded that the pharmacists' refusal to sell contraceptives on the grounds of their religious beliefs was not a protected practice within the meaning of Article 9 and established that as a result there had been no interference with their rights under Article 9. In particular, the Court held that:

*As long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products, since they can manifest those beliefs in many ways outside the professional sphere.<sup>26</sup>*

## *R.R. v. Poland (2011)*

Poland has one of the most restrictive abortion laws in Europe and abortion is permitted only to protect the life or health of a pregnant woman, where there is a high risk of a severe or fatal fetal anomaly, or where the pregnancy results from an unlawful act.<sup>27</sup> However, in practice, access to abortion care even in these limited circumstances is difficult and women are often unable to obtain the abortion services to which they are legally entitled.<sup>28</sup>

In 2002, during the 18th week of R.R.'s pregnancy, an ultrasound performed by her gynecologist detected a potential fetal anomaly. Although further tests were needed to determine whether this indicated a severe fetal anomaly, medical professionals in Poland repeatedly refused to perform these diagnostic tests, including for reasons of conscience or religion. While eventually the tests were performed in her 23rd week of pregnancy, R.R. did not receive the results until the 25th week of pregnancy. She then requested an abortion but was informed that the time frame for a legal abortion had passed.<sup>29</sup> In 2004, R.R. filed a complaint with the European Court of Human Rights.<sup>30</sup>

In 2011, the European Court found that the Polish authorities' failure to ensure that R.R. had effective and timely access to legal reproductive health care and information resulted in inhuman and degrading treatment in violation of Article 3 of the Convention. It considered that R.R. experienced acute anguish, distress and humiliation as a result of the prolonged denial of prenatal diagnostic services and the failures of doctors and medical staff to adequately acknowledge or address her concerns.<sup>31</sup> It also found that Poland had failed to put in place any effective mechanisms to guarantee women's ability to access diagnostic services in a timely manner, and to exercise the right to make an informed decision about whether or not to access a legal abortion.<sup>32</sup> It held that this was a violation of Article 8 of the Convention.<sup>33</sup>

With respect to refusals of care on the grounds of conscience or religion, the Court rejected the Polish government's contention that refusals of reproductive health care on grounds of conscience or religion are necessarily relevant to the right to freedom of thought, conscience and religion as enshrined in Article 9 of the Convention. Referring to *Pichon and Sajous* the Court underlined that "the word 'practice' used in Article 9 § 1 does not denote each and every act or form of behaviour motivated or inspired by a religion or a belief."<sup>34</sup> The Court outlined that if state parties to the Convention *choose* to allow refusals of reproductive health care on grounds of conscience or religion, they must organize their health services in such a way as to ensure that such refusals do not prevent patients from obtaining access to health services to which they are entitled under domestic law.<sup>35</sup>

## *P. and S. v. Poland (2013)*

In 2008, a fourteen-year-old girl (P.) became pregnant after being raped by a classmate and decided that she did not wish to continue the pregnancy. Although she was entitled to an abortion under Polish law,<sup>36</sup> she faced a range of severe barriers and obstructions while seeking access to legal abortion services. For example, hospital staff repeatedly gave her and her mother (S.) deliberately distorted information about the legal requirements for access to abortion care. Medical personnel disclosed her personal and medical data to the press and she and her mother were harassed by doctors, anti-abortion organizations, and representatives of the Catholic Church. Doctors refused to perform an abortion and failed to provide a referral to a provider who would. At one point she was removed from her mother's custody and detained in a juvenile center. Eventually, the Ministry of Health intervened and abortion services were provided.<sup>37</sup> In 2008, P. and S. filed a complaint with the European Court of Human Rights.<sup>38</sup>

In 2013, the European Court found violations of the rights to freedom from inhuman and degrading treatment, to respect for private life, and to liberty under the Convention. The Court made a number of important findings with respect to Poland's obligations to guarantee effective access to lawful abortion care, to respect adolescents' personal autonomy in the sphere of reproductive health, and to ensure the effective protection of information that is personal and confidential.<sup>39</sup>

Specifically, on the question of medical professionals' refusals of care on grounds of conscience or religion, the Court again rejected the Polish government's contention that such refusals are necessarily relevant to the right to freedom of thought, conscience and religion as articulated in Article 9 of the Convention. Once again, the Court underlined that "the word 'practice' used in Article 9 § 1 does not denote each and every act or form of behaviour motivated or inspired by a religion or a belief." It reaffirmed that if state parties to the Convention *choose* to allow refusals of reproductive health care on grounds of conscience or religion, they must organize their health system in such a way as to ensure that such refusals do not impede patients' access to lawful health care services.<sup>40</sup> It highlighted that in the case of P. and S. the Polish authorities had failed to ensure that medical professionals' refusals to provide lawful reproductive health services did not interfere with P.'s access to legal services. It observed that relevant medical staff had not considered themselves to be under any obligation to carry out the lawful services requested by the applicants and noted that there had been a complete failure to abide by Polish legal requirements that refusals of care be made in writing, included in the patient's medical record, and that refusing medical professionals must refer patients to another competent physician.<sup>41</sup>



### III. EUROPEAN COMMITTEE OF SOCIAL RIGHTS

The European Committee of Social Rights (the ‘Committee’) has also addressed the obligations of European states to ensure that refusals of reproductive health care by medical professionals do not jeopardize women’s access to care in three cases, all of which relate to lawful abortion services. In *FAFCE v. Sweden*<sup>42</sup>, the Committee held that there is no obligation on state parties to the European Social Charter<sup>43</sup> (the ‘Charter’) to allow health care workers to refuse to provide abortion care on the grounds of conscience or religion. In *IPPF-EN v. Italy*<sup>44</sup> and *CGIL v. Italy*<sup>45</sup>, the Committee specified that if, under its domestic law, a state party to the Charter *chooses* to allow medical professionals to refuse to provide legal abortion care, it must take effective measures to ensure that such refusals do not jeopardize women’s timely and effective access.

# *Federation of Catholic Families in Europe (FAFCE) v. Sweden (2015)*

Swedish law allows abortion on request up to 18 weeks of pregnancy and thereafter abortion can be performed on exceptional grounds when certain criteria are met. Under Swedish law medical professionals do not have a legal entitlement to refuse to provide abortion care on grounds of conscience or religion.<sup>46</sup>

In 2013, FAFCE filed a collective complaint to the Committee claiming that Sweden's failure to establish a legal and policy framework allowing medical professionals to refuse to provide abortion care on grounds of conscience or religion violated the right to health under the Charter and discriminated against medical providers and medical students who wished to refuse to provide abortion care. FAFCE alleged that allowing medical professionals to refuse to perform abortion services was necessary to protect the right to health of health care workers.<sup>47</sup>

In 2015, the Committee rejected FAFCE's claims and refused to recognize any 'right to conscientious objection' in relation to abortion care under the Charter. Instead, it ruled that the Charter "does not impose on states a positive obligation to provide a right to conscientious objection for healthcare workers," and "does not confer a right to conscientious objection on the staff of the health system of a State Party." The Committee explained that Article 11 of the Charter is "primarily concerned with the [*sic*] guaranteeing access to adequate health care, and this means in cases of maternity that the primary beneficiaries are the pregnant women."<sup>48</sup> Article 11 was thus not applicable to FAFCE's claims. The Committee also dismissed the related claim concerning discrimination against medical professionals who wish to refuse to provide abortion care.<sup>49</sup>

## *International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy (2014)*

Italian abortion law provides that a woman can access abortion during the first 90 days of pregnancy if she decides that continuing the pregnancy would have serious consequences for her economic, social, or family circumstances. After the first 90 days abortion is legal when there is a serious threat to a woman's life or to her physical or mental health.<sup>50</sup> The law allows medical practitioners to refuse to provide abortion care on grounds of conscience or religion.<sup>51</sup>

In 2012, IPPF-EN filed a collective complaint to the Committee specifying that due to failures to appropriately regulate and oversee medical professionals' refusals of care, Italian authorities had failed to guarantee women's timely and effective access to legal abortion care.<sup>52</sup> The complaint referred to official data from the Italian Ministry of Health indicating that approximately 70% of gynecologists, 51% of anesthesiologists and 44% of non-medical staff refused to provide legal abortion care and related services. In some regions of Italy these rates were even higher and many hospitals did not provide abortion care at all.<sup>53</sup> In this context, the complaint noted that many women in Italy had faced extreme obstacles when seeking access to lawful abortion care. In particular, the complaint referred to the fact that women seeking legal abortion care often encounter significant delays. This can create enormous pressure and distress for women given the law imposes a 90-day limit for abortions on request. The complaint outlined that in some cases women had to travel at their own cost within the country or to other countries in Europe to access legal abortion care. Moreover, there are high numbers of clandestine abortions which give rise to significant concerns for women's health and well-being.<sup>54</sup>

The complaint outlined that the respective authorities had failed to take adequate and effective measures to respond to the high numbers of medical personnel refusing to provide care and to ensure that women throughout the country had effective access to legal abortion care.<sup>55</sup> It claimed that these failures violated women's right to health pursuant to Article 11 of the Charter.<sup>56</sup> The complaint also specified that the Italian authorities' failures to effectively address these shortcomings resulted in intersecting forms of discrimination against women based on their geographic location and/or socio-economic status, as well as on grounds of gender and health status, in violation of Article E of the Charter.<sup>57</sup>

In its 2014 decision, the Committee upheld the complaint, finding that Italy had violated women's right to health because Italian authorities had failed to establish effective measures that would ensure refusals of abortion care by medical professionals did not jeopardize women's access to legal abortion. It highlighted the authorities' failures to implement and enforce existing regulatory safeguards regarding medical professionals' refusals of care. It underlined that the government had failed to address a series of shortcomings in the effective and timely provision of legal abortion care.<sup>58</sup> It emphasized that under the Charter states are obliged "to make health care available as it is needed, which applies with particular force to time-sensitive procedures such as abortion."<sup>59</sup>

In order to ensure women's enjoyment of the right to health, the Committee held that:

*The provision of abortion services must be organised so as to ensure that the needs of patients wishing to access these services are met. This means that adequate measures must be taken to ensure the availability of non-objecting medical practitioners and other health personnel when and where they are required to provide abortion services, taking into account the fact that the number and timing of requests for abortion cannot be predicted in advance.*<sup>60</sup>

The Committee found that the Italian authorities had failed to guarantee women's access to lawful abortion care and implement and enforce domestic laws on abortion.<sup>61</sup> It held that the measures the authorities had taken to regulate the high numbers of refusing medical personnel were wholly ineffective and inadequate and did not guarantee effective access to abortion services throughout the country.<sup>62</sup> It held that the authorities had failed to address a decrease in the number of health facilities where abortions are carried out, the high number of health personnel refusing to provide care prior to, or following, an abortion, the inadequate dispersal of willing medical professionals, and the fact that many women face excessive and prohibitive waiting times prior to abortion.<sup>63</sup>

The Committee also found that the state's failure to ensure women's effective access to lawful abortion care resulted in intersectional discrimination, in violation of the principle of non-discrimination. The Committee outlined that as a result of these failures many women were forced to travel to other countries, or within Italy, in order to access legal abortion care, often incurring substantial economic costs. It noted that "the time factor is also crucial: women who are denied access to abortion facilities in their local region may in effect be deprived of any effective opportunity to avail of their legal entitlement to such services."<sup>64</sup>



# *Confederazione Generale Italiana del Lavoro* *(CGIL) v. Italy (2016)*

In 2013, CGIL also filed a collective complaint to the Committee, again specifying that Italian authorities had failed to establish effective regulatory, monitoring and enforcement measures to ensure refusals of abortion care by medical professionals did not jeopardize women's access to legal health care. The facts of this complaint are similar to those in *IPPF-EN v. Italy* and relate to the fact that very high numbers of medical professionals in Italy refuse to provide legal abortion care and that the state has failed to take responsive and effective measures to ensure that these refusals do not jeopardize women's access to lawful abortion services.

CGIL outlined that although these failures had been confirmed by the Committee's findings in *IPPF-EN v. Italy*, since that decision the relevant violations of the Charter had continued because Italian authorities had failed to address the Committee's findings and remedy the situation.<sup>65</sup> CGIL's complaint outlined that these failures not only had a considerable impact on women's ability to obtain timely abortion care but also had implications for the working conditions of medical professionals who do not refuse to provide abortion care. The complaint specified that Italy had violated the rights of medical professionals who were willing to provide abortion care by failing to protect them from discrimination and harassment in the workplace.<sup>66</sup> For example, CGIL outlined that the career development of medical practitioners who were willing to provide abortion care suffered, that the burden of travel and excessive work hours necessary to meet women's needs for abortion care fell exclusively on these practitioners and that career advancement opportunities went primarily to those medical professionals who refused to perform abortions, discriminating against practitioners who were willing to provide abortion care.<sup>67</sup> CGIL also pointed to instances where the authorities had failed to protect medical practitioners who were willing to provide abortion care from "intense pressure" and "genuine 'mobbing.'"<sup>68</sup>

In its 2016 decision, the Committee reaffirmed its findings in *IPPF-EN v. Italy*, holding that the Italian authorities had failed to address the deficiencies in abortion service provision and that women continued to face significant difficulties in accessing abortion care in practice.<sup>69</sup> The Committee underlined that Italy's failures to ensure that women's access to legal abortion care was not jeopardized by medical professionals' refusals of care had resulted in a situation where women had to travel to obtain care, or in some cases were prevented from obtaining care altogether, resulting in intersecting forms of discrimination on the grounds of geographic, socio-economic, and/or health status. As a result, the Committee again found violations of the right to health as well as the obligation to ensure protection from discrimination.<sup>70</sup>

In relation to the impact of the authorities' failures on abortion service providers, the Committee held that Italy was obliged to ensure that medical professionals who were willing to provide abortion care were not disadvantaged at work "simply on the basis that [they] provide abortion services in accordance with the law."<sup>71</sup> The Committee outlined that Italy must take "all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work."<sup>72</sup> It found that medical professionals who are willing to provide abortion care face cumulative disadvantages in terms of workload, distribution of tasks, and career development opportunities, and that as a result the government had violated their rights to non-discrimination in employment and to dignity at work.<sup>73</sup>

## European Convention on Human Rights: Relevant Provisions

The Convention for the Protection of Human Rights and Fundamental Freedoms recognizes the following human rights:

### Article 3. Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### Article 8. Right to respect for private and family life

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

### Article 9. Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.



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## European Social Charter (Revised): Relevant Provisions

The European Social Charter (Revised) recognizes the following human rights:

### Article 1. The right to work

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

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

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

### Article 11. The right to protection of health

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

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

### Article 26. The right to dignity at work

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

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

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

### Article E. Non-discrimination

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

## Endnotes

- 1 COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE, Women's Sexual and Reproductive Health and Rights in Europe 33 (2017), available at <https://rm.coe.int/women-s-sexual-and-reproductive-health-and-rights-in-europe-issue-pape/168076dead> [hereinafter COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe]; see also CENTER FOR REPRODUCTIVE RIGHTS, *The World's Abortion Laws 2018* (Wallchart, 2018), available at <http://worldabortionlaws.com/>.
- 2 COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe, *supra* note 1, at 33 (listing Andorra, Ireland, Liechtenstein, Malta, Monaco, Northern Ireland in the United Kingdom, Poland and San Marino as the eight European jurisdictions retaining highly restrictive laws that forbid women's access to abortion outside of extremely limited circumstances); see also CENTER FOR REPRODUCTIVE RIGHTS, *The World's Abortion Laws 2018* (Wallchart, 2018), available at <http://worldabortionlaws.com/>.
- 3 COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe, *supra* note 1, at 37-38; see also, e.g., Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Germany*, paras. 37(b), 38(b), U.N. Doc. CEDAW/C/DEU/CO/7-8 (2017); *Slovakia*, paras. 30-31, U.N. Doc. CEDAW/C/SVK/CO/5-6 (2015); *Hungary*, paras. 30-31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); *Russia*, paras. 35(b), 36(a), CEDAW/C/RUS/CO/8 (2015); *Croatia*, paras. 30(b), 31(b), U.N. Doc. CEDAW/C/HRV/CO/4-5 (2015); *Turkey*, paras. 18(b), 19(b), U.N. Doc. CEDAW/C/TUR/CO/7 (2016); CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, paras. 14, 21, U.N. Doc. A/54/38/Rev.1, chap. I (1999) [hereinafter CEDAW Committee, *Gen. Recommendation No. 24*]; WORLD HEALTH ORGANIZATION (WHO), SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 94 (2<sup>nd</sup> ed. 2012) [hereinafter WHO, 2012 SAFE ABORTION GUIDANCE].
- 4 See, e.g., Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Interim rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, paras. 24, 65(m), U.N. Doc. A/66/254 (2011) [hereinafter SR Health, 2011 *Interim Report*]; CEDAW Committee, *Concluding Observations: Croatia*, paras. 30-31, U.N. Doc. CEDAW/C/HRV/CO/4-5 (2015); *Romania*, para. 22, U.N. Doc. E/C.12/ROU/CO/3-5 (2014); Committee against Torture (CAT Committee), *Concluding Observations: Poland*, para. 23, U.N. Doc. CAT/C/POL/CO/5-6 (2013); Committee on Economic, Social and Cultural Rights (ESCR Committee), *Concluding Observations: Italy*, paras. 48-49, U.N. Doc. E/C.12/ITA/CO/5 (2015); *Spain*, para. 24, U.N. Doc. E/C.12/ESP/CO/5 (2012); Committee on the Rights of the Child (CRC Committee), *Concluding Observations: Slovakia*, paras. 40-41, U.N. Doc. CRC/C/SVK/CO/3-5 (2016); International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., paras. 169, 174-177 (2014); Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, Eur. Comm. Soc. R., paras. 174, 190-193 (2016); International Planned Parenthood Federation European Network, Laiga - Libera Associazione Italiana Ginecologi per Applicazione Legge 194, Vita di Donna, and the Center for Reproductive Rights, *Supplemental Information on Italy for the periodic review by the Committee on the Elimination of All Forms of Discrimination Against Women*, pp. 3-5 (June 2017), available at [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ITA/INT\\_CEDAW\\_NGO\\_ITA\\_27805\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ITA/INT_CEDAW_NGO_ITA_27805_E.pdf) [hereinafter *Supplemental Information on Italy for the CEDAW Periodic Review*]; see also CEDAW Committee, *General Recommendation No. 24*, *supra* note 3, para. 11; ESCR Committee, *General Comment No. 22 on the right to sexual and reproductive health* (article 12 of the International Covenant on Economic, Social and Cultural Rights), para. 43, U.N. Doc. E/C.12/GC/22 (2016) [hereinafter ESCR Committee, *Gen. Comment No. 22*].
- 5 See, e.g., International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., paras. 169, 175, 191-193 (2014); Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, Eur. Comm. Soc. R., paras. 174, 207-213 (2016); P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R., paras. 157-169 (2013); R.R. v. Poland, App. No. 27617/04, Eur. Ct. H.R., paras. 153-162 (2011); Human Rights Committee, *Concluding Observations: Poland*, paras. 23-24, U.N. Doc. CCPR/C/POL/CO/7 (2016); *Italy*, paras. 16-17, U.N. Doc. CCPR/C/ITA/CO/6 (2017); CEDAW Committee, *Concluding Observations: Italy*, paras. 41(d), 42(d), U.N. Doc. CEDAW/C/ITA/CO/7 (2017); *Romania*, paras. 32(c), 33(c), U.N. Doc. CEDAW/C/ROU/CO/7-8 (2017); *Supplemental Information on Italy for the CEDAW Periodic Review*, *supra* note 4; Center for Reproductive Rights, Centar za edukaciju, savjetovanje i istraživanje (Center for Education, Counselling and Research - CESI), and Roditelji u akciji (Parents in Action - RODA), *Joint submission for the Committee on the Elimination of Discrimination Against Women's 61st session Periodic Review of Croatia*, at 2-3 (July 2015), available at [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CRO/INT\\_CEDAW\\_NGO\\_CRO\\_20902\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CRO/INT_CEDAW_NGO_CRO_20902_E.pdf); Autonomous Women's House Zagreb, Centre for Women War Victims-ROSA Zagreb, Centre for Civic Initiatives Poreč, Dominoes Split, Lesbian group Kontra Zagreb, in cooperation with PETRA Network of NGOs for the prevention and elimination of trafficking in women and Women's Network of Croatia, *Written Statement on Croatia: 61st Session of the Committee on the Elimination of Discrimination Against Women*, at 9-10 (June 2015), available at [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CRO/INT\\_CEDAW\\_NGO\\_CRO\\_20861\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CRO/INT_CEDAW_NGO_CRO_20861_E.pdf).
- 6 Federation of Catholic Families in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, para. 70, Eur. Comm. Soc. R. (2015); Pichon and Sajous v. France [English translation], App. No. 49853/99, Eur. Ct. H.R. (2001); see also R.R. v. Poland, App. No. 27617/04, Eur. Ct. H.R., para. 206 (2011); P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R., para. 106 (2013).
- 7 ESCR Committee, *Gen. Comment No. 22*, *supra* note 4, paras. 14, 42-43; R.R. v. Poland, App. No. 27617/04, paras. 205-206, 213-214, Eur. Ct. H.R. (2011); P. and S. v. Poland, App. No. 57375/08, paras. 106-108, 111-112, Eur. Ct. H.R. (2013); see also International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, paras. 68-70, 161 et seq., Eur. Comm. Soc. R. (2014); Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, paras. 165, 168, 179, Eur. Comm. Soc. R. (2016); CEDAW Committee, *Gen. Recommendation No. 24*, *supra* note 3, para. 11; CEDAW Committee, *Concluding Observations: Slovakia*, paras. 42-43, contained in U.N. Doc. A/63/38 (2008); ESCR Committee, *Concluding Observations: Romania*, para. 22, U.N. Doc. E/C.12/ROU/CO/3-5 (2014); Human Rights Committee, *Concluding Observations: Poland*, para. 12, U.N. Doc. CCPR/C/POL/CO/6 (2010); *Poland*, paras. 23-24, U.N. Doc. CCPR/C/POL/CO/7 (2016).
- 8 See, e.g., ESCR Committee, *Gen. Comment No. 22*, *supra* note 4, paras. 13-21, 28, 34, 40-43, 45; CEDAW Committee, *Gen. Recommendation No. 24*, *supra* note 3, paras. 11, 14, 21; COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe, *supra* note 1, at 59-60; WHO, 2012 SAFE ABORTION GUIDANCE, *supra* note 3, at 64; Tysiac v. Poland, App. No. 5410/03, Eur. Ct. H.R., paras. 109-113, 117-130 (2007).
- 9 See, e.g., SR Health, 2011 *Interim Report*, *supra* note 4, para.

- 24; Human Rights Committee, *Concluding Observations: Poland*, para. 8, U.N. Doc. CCPR/CO/82/POL (2004); ESCR Committee, *Concluding Observations: Poland*, para. 28, U.N. Doc. E/C.12/POL/CO/5 (2009); *Romania*, para. 22, U.N. Doc. E/C.12/ROU/CO/3-5 (2014); Human Rights Committee, *Concluding Observations: Romania*, paras. 25-26, U.N. Doc. CCPR/C/ROU/CO/5 (2005); *Italy*, paras. 16-17, U.N. Doc. CCPR/C/ITA/CO/6 (2017); P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R., paras. 99, 108, 111-112, 157-169 (2013); International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., paras. 169, 174-177, 191-194 (2014); Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, Eur. Comm. Soc. R., paras. 174, 190-193, 207-213 (2016).
- 10 Federation of Catholic Families in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, para. 70, Eur. Comm. Soc. R. (2015); Pichon and Sajous v. France [English translation], App. No. 49853/99, Eur. Ct. H.R. (2001); see also R.R. v. Poland, App. No. 27617/04, Eur. Ct. H.R., para. 206 (2011); P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R., para. 106 (2013); ESCR Committee, *Gen. Comment No. 22*, supra note 4, para. 43.
- 11 See, e.g., ESCR Committee, *Gen. Comment No. 22*, supra note 4, paras. 14, 43; CEDAW Committee, *Gen. Recommendation No. 24*, supra note 3, paras. 11, 13; SR Health, *2011 Interim Report*, supra note 4, para. 65(m); CEDAW Committee, *Concluding Observations: Hungary*, paras. 30, 31(d), U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); *Poland*, para. 37(b)-(c), U.N. Doc. CEDAW/C/POL/CO/7-8 (2014); *Argentina*, para. 33(c), U.N. Doc. CEDAW/C/ARG/CO/7 (2016); *Italy*, paras. 41(d), 42 (d), U.N. Doc. CEDAW/C/ITA/CO/7 (2017); Human Rights Committee, *Concluding Observations: Argentina*, paras. 11-12, U.N. Doc. CCPR/C/ARG/CO/5 (2016); see also International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, paras. 68-70, 161 et seq., Eur. Comm. Soc. R. (2014); Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, paras. 165, 168, 179, Eur. Comm. Soc. R. (2016); R.R. v. Poland, App. No. 27617/04, paras. 206, 213-214, Eur. Ct. H.R. (2011); P. and S. v. Poland, App. No. 57375/08, paras. 106-108, 111-112, Eur. Ct. H.R. (2013).
- 12 See, e.g., ESCR Committee, *Gen. Comment No. 22*, supra note 4, para. 14; COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe, supra note 1, at 11-12.
- 13 CEDAW Committee, *Concluding Observations: Romania*, para. 33(c), U.N. Doc. CEDAW/C/ROU/CO/7-8 (2017); *Hungary*, paras. 30-31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); CRC Committee, *Concluding Observations: Slovakia*, para. 41(f), U.N. Doc. CRC/C/SVK/CO/3-5 (2016); COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe, supra note 1, at 11.
- 14 ESCR Committee, *Gen. Comment No. 22*, supra note 4, para. 43; SR Health, *2011 Interim Report*, supra note 4, para. 65(m); CEDAW Committee, *Gen. Recommendation No. 24*, supra note 3, para. 11; CEDAW Committee, *Concluding Observations: Romania*, para. 33(c), U.N. Doc. CEDAW/C/ROU/CO/7-8 (2017); *Slovakia*, para. 43, U.N. Doc. A/63/38 (2008); ESCR Committee, *Concluding Observations: Poland*, para. 28, U.N. Doc. E/C.12/POL/CO/5 (2009); P. and S. v. Poland, App. No. 57375/08, paras. 107, 111, Eur. Ct. H.R. (2013); COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe, supra note 1, at 11.
- 15 P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R., paras. 108, 111 (2013); ESCR Committee, *Gen. Comment No. 22*, supra note 4, para. 18.
- 16 COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe, supra note 1, at 11.
- 17 ESCR Committee, *Gen. Comment No. 22*, supra note 4, para. 43; COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe, supra note 1, at 11.
- 18 See COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe, supra note 1, at 11-12; CEDAW Committee, *Concluding Observations: Hungary*, paras. 30-31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); CRC Committee, *Concluding Observations: Slovakia*, para. 41(f), U.N. Doc. CRC/C/SVK/CO/3-5 (2016); CEDAW Committee, *Concluding Observations: Poland*, para. 37(b), U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).
- 19 Pichon and Sajous v. France [English translation], App. No. 49853/99, Eur. Ct. H.R. (2001).
- 20 R.R. v. Poland, App. No. 27617/04, Eur. Ct. H.R. (2011).
- 21 P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R. (2013).
- 22 Convention for the Protection of Human Rights and Fundamental Freedoms, adopted Nov. 4, 1950, 213 U.N.T.S. 222, Eur. T.S. No. 5 (entered into force Sept. 3, 1953).
- 23 See Arts. L 122-1 and L 645 of the Consumer Code and Public Health Code, respectively. Pichon and Sajous v. France [English translation], App. No. 49853/99, Eur. Ct. H.R., at 1-3 (2001).
- 24 Pichon and Sajous v. France [English translation], App. No. 49853/99, Eur. Ct. H.R., at 3-4 (2001).
- 25 *Id.*
- 26 *Id.*
- 27 See Law of Jan. 7, 1993 on Family Planning, Human Embryo Protection, and Conditions of Legal Pregnancy Termination, amended as of Dec. 23, 1997, art. 4a § 1; COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women's SRHR in Europe, supra note 1, at 33 (listing Andorra, Ireland, Liechtenstein, Malta, Monaco, Northern Ireland in the United Kingdom, Poland and San Marino as the eight European jurisdictions retaining highly restrictive laws that forbid women's access to abortion outside of extremely limited circumstances).
- 28 See, e.g., COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE, Commissioner concerned about human rights backsliding in Poland (February 2018), <https://www.coe.int/en/web/commissioner/-/commissioner-concerned-about-human-rights-backsliding-in-poland>; COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE, Report by Nils Muižnieks, following his visit to Poland from 9 to 12 February 2016, section 4.5.3, CommDH (2016)23.
- 29 R.R. v. Poland, App. No. 27617/04, Eur. Ct. H.R., paras. 9-37 (2011); see also Law of Jan. 7, 1993 on Family Planning, Human Embryo Protection, and Conditions of Legal Pregnancy Termination, amended as of Dec. 23, 1997, art. 4a.1(2), 4a.2 ("4a. 1. An abortion can be carried out only by a physician where [...] 2) pre-natal tests or other medical findings indicate a high risk that the foetus will be severely and irreversibly damaged or suffering from an incurable life-threatening ailment; [...] 2. In the cases listed above under 2), an abortion can be performed until such time as the foetus is capable of surviving outside the mother's body.").
- 30 R.R. v. Poland, App. No. 27617/04, Eur. Ct. H.R., para. 1 (2011).
- 31 *Id.*, paras. 159-162.
- 32 *Id.*, paras. 197, 200, 203-204, 208.
- 33 *Id.*, para. 214.
- 34 *Id.*, para. 206.
- 35 *Id.*
- 36 The law required a prosecutor's certificate asserting that the pregnancy resulted from rape, which legally authorized P. to access abortion services. See P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R., paras. 5-10 (2013); Law of Jan. 7, 1993 on Family Planning, Human Embryo Protection, and Conditions of Legal Pregnancy Termination, amended as of Dec. 23, 1997, art. 4a.1

- (1-3). For further information and analysis of the case *P. and S. v. Poland*, see CENTER FOR REPRODUCTIVE RIGHTS, P. AND S. V. POLAND: POLAND'S OBLIGATIONS TO PROVIDE LEGAL ABORTION SERVICES TO ADOLESCENTS, available at [https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/crr\\_PS\\_FactSheet\\_6.13.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_PS_FactSheet_6.13.pdf).
- 37 *P. and S. v. Poland*, App. No. 57375/08, Eur. Ct. H.R., paras. 11-41, 102-105 (2013); see also *id.*, paras. 144, 146-149.
- 38 *Id.*, para. 1.
- 39 *Id.*, paras. 148-149, 100-112, 128-137, 157-169.
- 40 *Id.*, para. 106 (citing to *R.R. v. Poland* at para. 206); see also *id.* para. 111.
- 41 *Id.*, paras. 107-108.
- 42 Federation of Catholic Families in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, Eur. Comm. Soc. R. (2015).
- 43 Revised European Social Charter, adopted May 3, 1996, Eur. T.S. No. 163 (entered into force July 1, 1999); European Social Charter, adopted Oct. 18, 1961, Eur. T.S. No. 035 (entered into force Feb. 26, 1965).
- 44 International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R. (2014).
- 45 Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, Eur. Comm. Soc. R. (2016).
- 46 Federation of Catholic Families in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, Eur. Comm. Soc. R. (2015), paras. 29, 54; see also *id.* at para. 31, citing to Discrimination Act 2008:567, §§ 1, 2.1.
- 47 Federation of Catholic Families in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, Eur. Comm. Soc. R., paras. 37, 44, 69 (2015).
- 48 *Id.*, para. 70.
- 49 *Id.*, paras. 70-72.
- 50 International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., para. 36 (2014), citing to Act No. 194/1978 “Norms on the social protection of motherhood and the voluntary termination of pregnancy”, secs. 4-6.
- 51 *Id.*, citing to Act No. 194/1978, sec. 9. The law allows health care personnel to refuse to take part in abortion procedures, except where there is an imminent danger to the woman’s life. The law permits health care personnel to refuse to provide care “specifically and necessarily designed” to terminate a pregnancy, and does not exempt them from providing care prior to, or after, the procedure. It also requires health care personnel to register their refusals to provide abortion care with the health authority. In addition, the law specifies that hospitals and authorized nursing homes must ensure that in all cases women are able to access legal abortion services in practice. Regional authorities have an explicit legal duty to supervise and ensure implementation of this requirement, including, if necessary, by moving relevant personnel to ensure the provision of legal abortion services.
- 52 International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., paras. 1-2, 12, 74-86, 91 (2014).
- 53 *Id.*, paras. 82-85. See also Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, Eur. Comm. Soc. R., paras. 139-140 (2016).
- 54 International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., paras. 110-122, 128-136, 151, 169, 172-175, 193 (2014); see also *Supplemental Information on Italy for the CEDAW Periodic Review*, *supra* note 4.
- 55 International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, Eur. Comm. Soc. R., paras. 86-91 (2014).
- 56 *Id.*, paras. 1-2, 91.
- 57 *Id.*, paras. 189-190.
- 58 *Id.*, para. 161 et seq.; see also *id.* at paras. 78, 107, 111 et seq..
- 59 *Id.*, para. 164.
- 60 *Id.*, para. 163.
- 61 See *id.*, paras. 174, 176.
- 62 *Id.*, paras. 171-174.
- 63 *Id.*, paras. 169, 174.
- 64 *Id.*, paras. 190-194.
- 65 *Id.*, paras. 169, 170-177, 190-194; Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, Eur. Comm. Soc. R. (2016), paras. 131-140, 174, 179, 190-193, 204-213.
- 66 Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, Eur. Comm. Soc. R. (2016), paras. 2, 21-23, 215-223. These allegations concerned Articles 1 (the right to work), 2 (the right to just conditions of work), 3 (the right to safe and healthy working conditions) and 26 (the right to dignity at work), read either alone or in conjunction with Article E (non-discrimination).
- 67 *Id.*, paras. 21-23, 215-223; see also *id.*, para. 283.
- 68 See, e.g., *id.*, paras. 294-295.
- 69 *Id.*, paras. 190-192.
- 70 *Id.*, paras. 191, 193, 204-213.
- 71 *Id.*, paras. 245-246.
- 72 *Id.*, paras. 291, 297.
- 73 *Id.*, paras. 243-246, 296-298.

## Endnotes - Text Box

- 1 Federation of Catholic Families in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, para. 70, Eur. Comm. Soc. R. (2015); Pichon and Sajous v. France [English translation], App. No. 49853/99, Eur. Ct. H.R. (2001); *see also* R.R. v. Poland, App. No. 27617/04, Eur. Ct. H.R., para. 206 (2011); P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R., para. 106 (2013); Committee on Economic, Social and Cultural Rights (ESCR Committee), *General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 43, U.N. Doc. E/C.12/GC/22 (2016) [hereinafter ESCR Committee, *Gen. Comment No. 22*].
- 2 *See, e.g.*, ESCR Committee, *Gen. Comment No. 22, supra* note 1, paras. 14, 43; Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, paras. 11, 13, U.N. Doc. A/54/38/Rev.1, chap. I (1999) [hereinafter CEDAW Committee, *Gen. Recommendation No. 24*]; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Interim rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, para. 65(m), U.N. Doc. A/66/254 (2011) [hereinafter SR Health, *2011 Interim Report*]; CEDAW Committee, *Concluding Observations: Hungary*, paras. 30, 31(d), U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); *Poland*, para. 37(b)-(c), U.N. Doc. CEDAW/C/POL/CO/7-8 (2014); *Argentina*, para. 33(c), U.N. Doc. CEDAW/C/ARG/CO/7 (2016); *Italy*, paras. 41(d), 42 (d), U.N. Doc. CEDAW/C/ITA/CO/7 (2017); Human Rights Committee, *Concluding Observations: Argentina*, paras. 11-12, U.N. Doc. CCPR/C/ARG/CO/5 (2016); *see also* International Planned Parenthood Federation – European Network (IPPF-EN) v. Italy, Complaint No. 87/2012, paras. 68-70, 161 et seq., Eur. Comm. Soc. R. (2014); Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013, paras. 165, 168, 179, Eur. Comm. Soc. R. (2016); R.R. v. Poland, App. No. 27617/04, paras. 206, 213-214, Eur. Ct. H.R. (2011); P. and S. v. Poland, App. No. 57375/08, paras. 106-108, 111-112, Eur. Ct. H.R. (2013).
- 3 *See, e.g.*, ESCR Committee, *Gen. Comment No. 22, supra* note 1, para. 14; COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE, Women’s Sexual and Reproductive Health and Rights in Europe 11-12 (2017), *available at* <https://rm.coe.int/women-s-sexual-and-reproductive-health-and-rights-in-europe-issue-pape/168076dead> [hereinafter COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women’s SRHR in Europe].
- 4 CEDAW Committee, *Concluding Observations: Romania*, para. 33(c), U.N. Doc. CEDAW/C/ROU/CO/7-8 (2017); *Hungary*, paras. 30-31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); Committee on the Rights of the Child (CRC Committee), *Concluding Observations: Slovakia*, para. 41(f), U.N. Doc. CRC/C/SVK/CO/3-5 (2016); COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women’s SRHR in Europe, *supra* note 3, at 11.
- 5 ESCR Committee, *Gen. Comment No. 22, supra* note 1, para. 43; SR Health, *2011 Interim Report, supra* note 2, para. 65(m); CEDAW Committee, *Gen. Recommendation No. 24, supra* note 2, para. 11; CEDAW Committee, *Concluding Observations: Romania*, para. 33(c), U.N. Doc. CEDAW/C/ROU/CO/7-8 (2017); *Slovakia*, para. 43, U.N. Doc. A/63/38 (2008); ESCR Committee, *Concluding Observations: Poland*, para. 28, U.N. Doc. E/C.12/POL/CO/5 (2009); P. and S. v. Poland, App. No. 57375/08, paras. 107, 111, Eur. Ct. H.R. (2013); COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women’s SRHR in Europe, *supra* note 3, at 11.
- 6 P. and S. v. Poland, App. No. 57375/08, Eur. Ct. H.R., paras. 108, 111 (2013); ESCR Committee, *Gen. Comment No. 22, supra* note 1, para. 18.
- 7 COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women’s SRHR in Europe, *supra* note 3, at 11; ESCR Committee, *Gen. Comment No. 22, supra* note 1, para. 43.
- 8 *See* COUNCIL OF EUROPE COMM. FOR HUMAN RIGHTS, Women’s SRHR in Europe, *supra* note 3, at 11-12; CEDAW Committee, *Concluding Observations: Hungary*, paras. 30-31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); CRC Committee, *Concluding Observations: Slovakia*, para. 41(f), U.N. Doc. CRC/C/SVK/CO/3-5 (2016); CEDAW Committee, *Concluding Observations: Poland*, para. 37(b), U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).



# Notes

# Notes



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