



Supplemental Information on Italy for the Periodic Review by the Human Rights Committee

by International Planned Parenthood Federation European Network, Laiga - Libera Associazione Italiana Ginecologi per Applicazione Legge 194, Vita di Donna and the Center for Reproductive Rights

February 2017

1. Introduction

The International Planned Parenthood Federation European Network (IPPF EN), Laiga - *Libera Associazione Italiana Ginecologi per Applicazione Legge 194, Vita di Donna* and the Center for Reproductive Rights, respectfully present this submission to the Human Rights Committee (the Committee) in advance of its periodic review of Italy's compliance with the International Covenant on Civil and Political Rights. This submission highlights concerns regarding Italy's compliance with its obligations under Articles 2, 3, 7, 17 and 26 of the International Covenant on Civil and Political Rights (ICCPR) as a result of its failures to ensure that health-care personnel's refusals to provide abortion care on grounds of conscience do not jeopardize women's access to safe and legal abortion services.

In its list of issues, the Committee asked Italy to provide information about difficulties faced by women in obtaining legal abortion services due to health-care personnel's refusals to provide abortion care on grounds of conscience (hereinafter conscience-based refusals).¹ This submission provides information regarding these difficulties, clarifies aspects of the Government's responses to the Committee's question, and highlights relevant ongoing regulatory, implementation and oversight shortcomings that continue to jeopardize women's access to legal abortion services. Section 2 provides an overview of Italian law and regulations concerning abortion and conscience-based refusals. Section 3 describes the manner in which in practice state authorities have failed to ensure such refusals do not undermine women's access to legal abortion services. Section 4 outlines the impact that these failures have on women in practice. Section 5 summarizes relevant international human rights law and standards.

All of the shortcomings outlined below were recognized by the European Committee of Social Rights in two decisions against Italy in which it held that the Italian authorities' failures to effectively regulate and monitor conscience-based refusals of care gave rise to violations of

¹ Human Rights Committee, List of issues in relation to the sixth periodic report of Italy, U.N. Doc. CCPR/C/ITA/Q/6, para. 11.

women's rights to health and non-discrimination under the European Social Charter.² However, the Italian Government has yet to adopt effective measures to implement those decisions and bring its law and practice into line with its international human rights obligations.

2. Domestic Regulation of Abortion and Conscience-Based Refusals of Care

Act No. 194 of 1978 outlines that a woman in Italy can legally access abortion services during the first 90 days of pregnancy if she is of the view that continuing the pregnancy would have serious consequences for her health or her economic, social or family circumstances. The law imposes a seven day mandatory waiting period between when a doctor authorizes an abortion and when the procedure can be performed. After the first 90 days of pregnancy abortion is legal when there is a serious threat to a woman's life or to her physical or mental health.³

Conscience-based refusals to provide legal abortion services are regulated by Article 9 of Act No. 194 which provides that, on grounds of personal conscience, health-care personnel may refuse to take part in abortion procedures, except where there is an imminent danger to the life of the woman.⁴ The law only permits health-care personnel to refuse to provide care specifically intended to terminate a pregnancy; they may not refuse to provide care prior to, or after, the procedure, or associated care such as anesthesia.⁵ The law states that health-care personnel should register their refusal to perform legal abortions with the health authority.⁶

The law also specifies that hospitals and authorized health centers (hereafter public health facilities) must ensure that, although conscience-based refusals of care are allowed, women are still able to access legal abortion services in practice.⁷ Regional authorities have an explicit legal duty to guarantee the availability of non-objecting health-care personnel in all public health facilities, including, if necessary, by moving relevant personnel to ensure the provision of legal abortion services.⁸ However, the law does not specify the concrete measures that regional and federal authorities should adopt to ensure that women can access legal abortion services in practice. This lack of guidance is accompanied by the absence of guidelines and procedures intended to facilitate women's access to legal abortion services.

As outlined in detail in Section 3, these regulatory shortcomings are compounded by serious failures to ensure compliance with the law in practice. Together they routinely undermine women's timely access to legal abortion services, compelling them to travel to seek abortion

² International Planned Parenthood Federation – European Network (IPPF EN) v. Italy (2014), Decision of the European Committee of Social Rights on Complaint No. 87/2012); Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Decision of the European Committee of Social Rights on Complaint No. 91/2013 (2016).

³ In particular, the Act states that “In order to undergo 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 borne with abnormalities or malformations, shall apply to a public counselling centre [...] or to a fully authorised medical social agency in the region or to a physician of her choice.” (Art. 4), and that “the voluntary termination of pregnancy may be performed after the first 90 days: a) where the pregnancy or childbirth entails a serious threat to the women's life; b) where the pathological processes constituting a serious threat to a women's physical or mental health, such as those associated with serious abnormalities or malformations of the fetus, have been diagnosed.” See Act No. 194 of 1978, Art. 9, para. 6.

⁴ Act No. 194 of 1978, Art. 9, para. 5.

⁵ Act No. 194 of 1978, Art. 9, para. 3.

⁶ Act No. 194 of 1978, Art. 9, para. 1.

⁷ Act No. 194 of 1978, Art. 9, para. 4.

⁸ Id.

services in other parts of the country or in foreign countries, undergo clandestine abortions or carry the pregnancy to term. These impacts are described below in Section 4.

3. Implementation and Oversight Failures to Ensure Conscience-Based Refusals Do Not Jeopardize Women's Access to Legal Abortion Services

Despite provisions in its law requiring that regional and federal authorities ensure that conscience-based refusals of care do not undermine women's access to legal abortion services, Italy has failed to take effective measures to implement and enforce these provisions and ensure that throughout the country legal abortion services are available and accessible to women.

(a) Failures to ensure adequate numbers of non-objecting medical personnel throughout the country

Official data clearly shows an insufficient number of non-objecting health-care personnel available to provide legal abortion services.⁹ According to the most recent annual report from the Italian Ministry of Health on the implementation of Act No. 194, the national proportion of gynecologists refusing to provide legal abortion services has increased from 58.7% in 2005 to 70.7% in 2013.¹⁰ There are significant regional disparities and in some regions of Italy almost 90% of health-care personnel refuse on grounds of conscience to perform legal abortions.¹¹

As a result of these very high rates of conscience-based refusals certain hospitals do not provide abortion services to women within the first 90 days of pregnancy, contrary to their legal obligation under Act No. 194. The latest data from the Ministry of Health confirms that legal abortions are only provided in 59.6% of public health facilities and indicates a reduction in the number of facilities performing legal abortions.¹² This means that 40% of all public health facilities are failing to comply with Act No. 194 which requires every facility to guarantee the availability of abortion service at all times. Since 2013 the Ministry of Health has stopped gathering data on the number of health personnel who have registered as refusing to provide legal abortion care on grounds of conscience.¹³

⁹ Ministero della Salute, RELAZIONE DEL MINISTRO DELLA SALUTE SULLA ATTUAZIONE DELLA LEGGE CONTENENTE NORME PER LA TUTELA SOCIALE DELLA MATERNITÀ E PER L'INTERRUZIONE VOLONTARIA DI GRAVIDANZA, (LEGGE 194/78) DATI DEFINITIVI 2014 e 2015, (Hereinafter Ministry of Health 2016 report on implementation of law 194/78), p. 44. See also http://www.salute.gov.it/imgs/C_17_pubblicazioni_2552_allegato.pdf and http://www.salute.gov.it/imgs/C_17_pubblicazioni_2552_ulterioriallegati_ulterioreallegato_0_alleg.pdf, Table 28.

¹⁰ During this period the percentage of objecting anaesthesiologists increased from 45.7 % in 2005 to 48.4% in 2013, while the percentage of objecting non-medical personnel increased from 38.6% in 2005 to 45.8%. See http://www.salute.gov.it/imgs/C_17_pubblicazioni_2552_ulterioriallegati_ulterioreallegato_0_alleg.pdf, Table 28.

¹¹ According to the latest data from the Ministry of Health in 2013 the proportion of registered gynecologists who refuse to provide legal abortions was as follows by region: 88.1% in Basilicata, 89.7% in Molise, 89.1% in Sicily and 85.9% in Bolzano. This represented a significant increase on rates from 2011: 85.2% of gynecologists in Basilicata refused to provide legal abortions, while the rates were 83.9% in Molise, 81.7% in Sicily, and 81.3% in Bolzano. See http://www.salute.gov.it/imgs/C_17_pubblicazioni_1824_allegato.pdf, Table 28.

¹² Ministry of Health 2016 report on implementation of law 194/78, p. 4.

¹³ Ministry of Health 2016 report on implementation of law 194/78, p. 1, http://www.salute.gov.it/imgs/C_17_pubblicazioni_2552_allegato.pdf.

Evidence also demonstrates that very few hospitals in Italy provide abortions after the first 90 days of pregnancy making it exceedingly difficult for women whose health or lives are at risk later in pregnancy to access legal abortion services.¹⁴

High rates of conscience-based refusals also mean that in some locations legal abortion services are not provided during certain periods, for example when non-objecting doctors are sick or on vacation, and as a result women must wait until the doctor returns.¹⁵ In some hospitals, abortion services could no longer be provided after the non-objecting doctor retired or died.¹⁶

In its response to the list of issues the Government asserts that “the number of non-objector-physicians is adequate given the number of abortions, per Region.”¹⁷ However, this contention has been rejected by the European Committee of Social Rights in its 2016 ruling, which noted that there is no data on the number of requested abortions that have not been carried out due to the lack of available providers.¹⁸ In fact, the collection of official data on the provision of abortion services is currently exclusively based on forms filled in by public health facilities regarding abortions actually performed.¹⁹ The Government does not gather information on the numbers of women who have requested abortions and/or who have encountered refusals of care.

(b) Failures to establish an effective referral system

Act No. 194 does not oblige health-care personnel when refusing abortion care on grounds of conscience to refer the woman to other health care providers or facilities where legal abortion services are provided. There is no referral system in place to ensure that when women are refused legal abortion services they are referred in a timely manner to a facility of medical professional who will provide the care.

Furthermore, there is currently no official or centralized source of information for women who are seeking access to legal abortion services. Instead some civil society organizations provide women with information about where they can access legal abortion services both in Italy and abroad.

(c) Oversight and enforcement failures

In many hospitals gynecologists, anesthetists and non-medical personnel refuse on grounds of conscience to provide pre- and post-abortion care to women although Italian law does not permit the refusal of these forms of care.²⁰ The Government has failed to enforce the law and

¹⁴ Decision on the European Committee of Social Rights on the Complaint No. 87/2012 International Planned Parenthood Federation – European Network (IPPF EN) v. Italy (2014), para. 107.

¹⁵ Id., para. 110.

¹⁶ Id.

¹⁷ List of issues in relation to the sixth periodic report of Italy, Addendum, Replies of Italy to the list of issues, U.N. Doc. CCPR/C/ITA/Q/6/Add.1, para. 23.

¹⁸ Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013 (2016), para. 187.

¹⁹ Ministry of Health 2016 report on implementation of law 194/78, p. 8.

²⁰ Refusals to provide care that fails to comply with the requirements set out in Article 9 of the Act is subject to liability under Article 328 of the Criminal Code. The Civil Court of Ancona in 1979 ruled in the case of a cardiologist who refused on grounds of conscience to perform an electrocardiogram that preceded an abortion. The court held that the health care provider can only refuse "activities indissolubly linked, in spatial and chronological and technical sense to the abortive intervention", considering the electrocardiogram not a connected activity because theoretically the woman can still decide not to have an abortion. The cardiologist was convicted. *See* Pret. Ancona, 9 ottobre 1979, in *Giur. it.*, 1980, II, 184 ss. In 1983, the District Court Penne

prevent health-care personnel from refusing to provide such care to women. It is unclear whether any measures have been taken to ensure that such breaches of the law are sanctioned.

(d) Failures to address abortion stigma and its chilling effect

The strong levels of stigma surrounding abortion in Italy generate a punitive and stigmatizing environment that undermines effective implementation of Italy's abortion law and that further deters medical personnel from providing legal abortion services. Due to the large numbers of conscience-based refusals, most abortions in Italy are performed by a small number of doctors. According to independent research these doctors often experience harassment, discrimination, isolation, psychological pressure and even threats of criminal prosecution (following denouncements by objecting colleagues and ultra-conservative groups).²¹

4. Conscience-based Refusals Result in Multiple Harms to Women in Italy

The Italian authorities' failure to ensure that conscience-based refusals of care are not allowed to jeopardize women's timely access to legal abortion services harms women's health and wellbeing in a number of ways:

- Government estimates indicate that at least 5,000 foreign women undergo clandestine abortions in Italy every year and that there are around 15,000 Italian women undergo clandestine abortions.²² These numbers are likely to be underreported. Given that legal abortion should be accessible to all women residing in Italy the high numbers of clandestine abortions are a clear indicator of the difficulties women face in accessing legal services. The number of women presenting at hospitals with spontaneous abortions and miscarriages is increasing and this is believed to be linked to increases in women seeking clandestine abortions.²³ The Government's response to the increase in clandestine abortions has been to impose heightened administrative sanctions on women who undergo clandestine abortion.²⁴ A recent legislative decree decriminalized illegal abortions but introduced heightened administrative fines of between €5,000 and €10,000 for women who have had a clandestine abortion, replacing a previous symbolic fine of approximately €50. Women and girls who resort to illegal abortions are those in the most vulnerable situations.
- As a result of the barriers women face in accessing legal abortion services in Italy many women, especially those seeking legal abortions after the first 90 days of pregnancy, travel to other European countries to access abortion services and bear the financial, and other, burdens this entails. However, there is no official data on the number of women traveling out of Italy to seek abortion services in other countries.

condemned the refusal of some midwives to perform activities related to disinfection and found their refusal of care to fall outside the scope of the law. *See* Pret. Penne, 6 dicembre 1983, in *Giur. it.*, 1984, II, 314.

²¹ *See e.g.* Annex – Response from IPPF EN to the list of questions of the European Committee of Social Rights of the Council of Europe (IPPFEN v. Italy, Complaint No 87/2012, para. 47, p. 13:

²² Ministry of Health 2016 report on implementation of law 194/78, p. 13.

²³ Associazione italiana per gli studi di popolazione (Italian Association for Populations studies) Rapporto sulla popolazione Sessualità e riproduzione nell'Italia contemporanea (Report on the population, sexuality and reproduction in the contemporary Italy), <http://www.neodemos.info/pi-aborti-spontanei-ma-non-maggior-rischio-di-aborto-in-italia/>.

²⁴ Decree 8 of 15 January 2016, <http://www.gazzettaufficiale.it/eli/id/2016/1/22/16G00011/sg>.

- The scarcity of health-care personnel willing to provide legal abortion services gives rise to concerns that women accessing legal abortion services (87,639 legal abortions were performed in 2015)²⁵ may often encounter significant waiting times. This can create a situation of stress and pressure for women given that the law imposes a 90 day limit on legal abortion. The mandatory seven day waiting period between when an abortion has been authorized by a doctor and when it can be performed further contributes to unnecessary delays.
- Difficulties faced in accessing legal abortion services has discriminatory impacts on women based on their economic status and place of residence. The most vulnerable women and girls, including those with less financial means, less access to information and limited awareness about their rights, are hit hardest by the implementation shortcomings. The barriers in access to legal abortion services also have a disproportionate impact on foreign women and undocumented migrant women.²⁶

5. The ICCPR Obliges Italy to Ensure that Conscience-Based Refusals do not Undermine Women’s Access to Legal Abortion Services

The human rights violations that women in Italy face as a result of the state party’s failure to ensure conscience-based refusals of care do not undermine their access to legal abortion services has been recognized by the European Committee of Social Rights in *International Planned Parenthood Federation – European Network (IPPF EN) v. Italy* and in *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*.²⁷ In those cases the European Committee of Social Rights found that Italy’s compliance with its obligations to guarantee women’s rights to health and non-discrimination were undermined by a number of serious problems in its implementation of Act No. 194, including: a decrease in the number of hospitals where legal abortions are performed; high numbers of health-care personnel refusing to provide abortion care leading to extensive geographical zones where abortion services are not available and excessive waiting times for women seeking an abortion; non-replacement of medical staff during holiday, sickness and retirement leading to disruptions in the provision of abortion services; cases of deferral of abortion procedures due to absence of non-objecting staff; and refusals of care prior to and post abortion.²⁸ Furthermore, the European Committee of Social Rights found that the barriers faced by women in accessing legal abortion services, which often mean they have to seek services in other parts of Italy or in foreign countries, while bearing financial and health burdens, are discriminatory.²⁹

The European Committee of Social Rights held that the provision of legal abortion services must be organized so as to ensure that the needs of women who seek access to those services are met. As a result it ruled that Italy must adopt effective measures “to ensure the availability of non-objecting medical practitioners and other health personnel when and where they are required to provide abortion services.”³⁰ It underlined that conscience-based refusals “should

²⁵ Ministry of Health 2016 report on implementation of law 194/78, p. 1.

²⁶ See e.g. <http://www.ilfattoquotidiano.it/2016/02/11/aborto-clandestino-la-depenalizzazione-penalizza-le-donne/2452624/>

²⁷ *International Planned Parenthood Federation – European Network (IPPF EN) v. Italy*, Decision of the European Committee of Social Rights on the Complaint No. 87/2012 (2014); *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Decision of the European Committee of Social Rights on Complaint No. 91/2013 (2016).

²⁸ Id., paras. 169, 174.

²⁹ Id., para. 191.

³⁰ Id., para. 163.

neither limit or hamper” women’s ability to access reproductive health services to which they are legally entitled.³¹

Furthermore, the Committee on Economic, Social and Cultural Rights has expressed concern regarding conscience-based refusals in Italy and the “limited availability of, and accessibility to, abortion services ... that ... is exacerbated by the increased number of health personnel conscientiously objecting to carrying out such operations, leading pregnant women to undergo unsafe abortions.”³² It called on Italy to “adopt a procedure common to all provinces in order to guarantee access to abortion services and appropriate referral services, and ensure that the exercise of conscientious objection by health-care personnel does not pose an obstacle for women who wish to terminate a pregnancy.”³³

This Committee has affirmed that states parties must ensure that medical professionals’ refusals to provide abortion care on grounds of conscience do not impede women’s access to legal abortion services.³⁴ Similar findings have also been reached by other human rights bodies.³⁵ The European Court of Human Rights has also found that states are obliged to organize health services in such a way as to ensure that conscience-based refusals do not prevent women from obtaining reproductive health services, including abortion services, to which they are legally entitled.³⁶

In order to comply with this requirement, treaty monitoring bodies have explicitly specified that at a minimum regulatory frameworks must ensure an obligation on healthcare providers to refer women to alternative health providers in a timely manner,³⁷ must not allow institutional refusals of care,³⁸ and must guarantee that an adequate number of health care providers willing and able

³¹ Id., para. 165.

³² Committee on Economic, Social and Cultural Rights, *Concluding Observations: Italy*, U.N. Doc. E/C.12/ITA/CO/5, para. 48.

³³ Id., para. 49.

³⁴ Human Rights Committee, *Concluding Observations: Poland*, U.N. Doc. CCPR/C/POL/CO/6, para. 12; *Concluding Observations: Poland*, U.N. Doc. CCPR/C/POL/CO/7, paras. 23-24.

³⁵ CEDAW Committee, General Recommendation No. 24: Article 12 of the Convention (women and health), (20th Sess., 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); CEDAW Committee, *Concluding Observations: Poland*, para. 25, U.N. Doc. CEDAW/C/POL/CO/6 (2007); *Slovakia*, para. 29, U.N. Doc. CEDAW/C/SVK/CO/4 (2008); *Hungary*, paras. 30- 31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); Peru, para. 36, U.N. Doc. CEDAW/C/PER/CO/7-8 (2014). See also Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, para. 65m, UN Doc. No. A/66/254 (2011); Committee on Economic, Social and Cultural Rights, *Concluding Observations: Poland*, para. 28, U.N. Doc. E/C.12/POL/CO/5 (2009); INTERNATIONAL FEDERATION OF GYNECOLOGY & OBSTETRICS: ETHICAL GUIDELINES ON CONSCIENTIOUS OBJECTION (2005),

<http://www.ifo.org/sites/default/files/uploads/wgpublications/ethics/English%20Ethical%20Issues%20in%20bstetrics%20and%20Gynecology.pdf>.

³⁶ See *R.R. v. Poland*, No. 27617/04 Eur. Ct. H.R. (2011); *P. and S. v. Poland*, No. 57375/0 Eur. Ct. H.R. (2012).

³⁷ See, e.g., CEDAW, General Recommendation No. 24: Article 12 of the Convention (Women and Health), para. 11, U.N. Doc. A/54/38/Rev.1, chap. I; CESCR, *Gen. Comment No. 22*, paras. 14, 43; CEDAW, *Concluding Observations: Croatia*, para. 31, U.N. Doc. CEDAW/C/HRV/CO/4-5 (2015); *Hungary*, paras. 30-31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); CESCR, *Concluding Observations: Poland*, para. 28, U.N. Doc. E/C.12/POL/CO/5 (2009).

³⁸ See, e.g., CEDAW, *Concluding Observations: Hungary*, para. 31(d), U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013); CRC, *Concluding Observations: Slovakia*, paras. 41(f), U.N. Doc. CRC/C/SVK/CO/3-5 (2016).

to provide abortion services are available at all times in health facilities and within reasonable geographical reach.³⁹

6. Recommendations

In order to bring its laws and practice into compliance with its obligations under the ICCPR Italy should:

- Guarantee that women have unimpeded access to legal abortion services in all parts of Italy, including by:
 - Taking effective measures to ensure that abortion services are available in all public health facilities in Italy.
 - Establish an effective referral system to guarantee that women seeking legal abortion services are promptly referred to alternative and easily accessible health care providers willing to perform abortion services.
 - Effectively monitoring the number of women requesting legal abortion services so as to ensure that adequate numbers of medical professionals are in place to meet the need for abortion services as quickly as possible, as well as the number of conscience-based refusals of care.
 - Adopting national guidelines and protocols to clarify the extent to which medical professionals can refuse care on grounds of conscience, enforcing implementation of those guidelines to ensure that only medical professionals directly involved in the termination of pregnancy are allowed to refuse care, and monitoring and sanctioning failure by medical professionals to comply with those obligations.
 - Ensure effective remedies are available and accessible to women who have been denied access to legal abortion services.

³⁹ CESCR, General Comment No. 22, para. 14.