



Federation of Catholic Families in Europe v. Sweden

Complaint No. 99/2013

Country: Sweden

Region:

Year: 2015

Court: European Committee of Social Rights

Facts

The complainant, Federation of Catholic Families in Europe (FAFCE), had alleged violation of Article 11 of the European Social Charter (hereinafter Charter) on the ground that the government of Sweden (hereinafter respondent) had failed to enact legislation or insufficient/poorly implement legislation governing the practice of conscientious objection by health care providers, which had led to discrimination faced by women under art.E of the Charter. The practice of conscientious observation means that the health care providers can refuse to participate in the abortion practice owing to their religious or personal beliefs, furthermore it would preserve a patients' access to health care by enabling them to be treated by like-minded health care workers. The respondent rejected the complainants' arguments and pleaded before the committee to declare the complaint unfounded.

There were 3 major issues before the Committee to consider:

1. Alleged violation of art.11 and of art.E of the Charter on the grounds that there is no right to conscientious objection for health workers
2. Alleged violation of art.11 of the Charter on the grounds of the abortion of viable fetuses, sex-selective abortions, and eugenic abortions
3. Alleged violation of art.11 of the Charter on the grounds of the alleged high number of abortions

Decision and Reasoning

The Committee on the first issue took note of the complainants' anxiety on Sweden's failure to enact a legal framework governing the practice of conscientious objection by healthcare providers. It considered that under art. 11 there isn't any positive obligation on the state to provide a right to conscientious objection for health care workers. The main concern for art.11 is to guarantee access to adequate health care, which makes pregnant women its primary beneficiary. It held that art.11 is not applicable in this case as it does confer the right to the conscientious obligation on the health workers, hence no discrimination under art.E can occur. On the second issue, it held that it is not called upon to address issues of a medical or ethical nature but to interpret the provisions of the Charter from the legal standpoint and the complainant had tried to expand the personal scope of the Charter by applying it to the unborn, which it can't deal with. It held that there is no violation of art.11 by the respondents as they have struck a balance between the rights of women and the rights of the health of the fetuses through the legislation. On the third issue, the Committee considered that complainant had not proved that the number of abortions in Sweden is manifestly high and that these abortions are the result of a lack of access to contraception and to insufficient sexual and reproductive health education, therefore there is no violation of art.11

Decision Excerpts

“The Committee finds that States Parties enjoy a wide margin of appreciation in deciding when life begins and it is therefore for each State Party to determine, within this margin of appreciation, the extent to which a fetus has a right to health.” (Para 60)

“The Committee finds that it cannot be ruled out that, in a State Party to the Charter, a particularly high number of abortions may be directly attributed to the failure of the competent authorities to make contraception accessible and/or to consider other measures to prevent unwanted pregnancies which could legitimately raise problems with regard to the State Party's compliance with its obligation, under art.11(2) of the Charter, to develop a sense of individual responsibility in health matters.” (Para 64)

