

II. EUROPEAN COMMITTEE OF SOCIAL RIGHTS**FEDERATION OF CATHOLIC FAMILIES IN
EUROPE (FAFCE) v SWEDEN**

(Article 11; right to conscientious objection to abortion)

Complaint No.99/2013

17 March 2015¹

(2015) 61 E.H.R.R. SE12

DECISION ON THE MERITS**SUBMISSIONS OF THE PARTIES****I. The complainant organisation**

- 1 FAFCE asks the Committee to find that Sweden is in violation of art.11 of the Charter. It invokes the said Article either separately or taken together with art.E.

II. The respondent Government

- 2 In its submissions, the Government rejects the complainant organisation's assertions in their entirety and asks the Committee to declare the complaint unfounded in all respects.

THIRD PARTY OBSERVATIONS**I. Alliance Defending Freedom**

- 3 The Alliance Defending Freedom (ADF) “is an alliance-building legal organization that advocates for the right of people to freely live out their faith” and is an alliance of Christian lawyers all devoted to litigation surrounding the issues of the right to life and religious freedom.
- 4 ADF submits that while the Charter does not contain a right to conscientious objection Article 11 of the Charter should be read as encompassing such a right.
- 5 ADF highlights the importance of a right to conscientious objection for health care workers. It states that Sweden is one of the few European countries not to recognise such a right in the context of induced abortion. It argues that requiring healthcare workers to perform or participate in abortions against their conscience would have a serious effect of the medical community, in essence the medical community would be closed to people solely on the basis of their beliefs.

¹ Paragraph numbers have been added by the publisher.

- 6 ADF cites, inter alia, case law of the European Court of Human Rights under art.9 (Freedom of thought, conscience and religion) of the European Convention on Human Rights concerning conscientious objection. It argues that Sweden has in the context of health care providers failed to strike a balance between the interests of society and the right of conscientious objection of health care providers.

II. Swedish Association for Sexuality Education and Center for Reproductive Rights

- 7 The Swedish Association for Sexuality Education (RFSU) is a Swedish NGO which seeks to promote rights to sexual and reproductive health services, including abortion. It also promotes sexuality education in order to ensure a healthier and more equitable society.
- 8 The Center for Reproductive Rights (CRR) is an international legal advocacy organisation that promotes and defends the reproductive rights of women worldwide
- 9 RFSU and CRR argue that there is no basis in international law for a freestanding right to conscientious objection in the reproductive health field.
- 10 RFSU and CRR argue that too often, the right to health is violated by the non-availability or refusal to make lawful health services available, due to the personal beliefs of health providers. The right to health, including women's rights to access reproductive health services, such as legal abortion services, is a valid, justified, and necessary limitation to health providers' practice of conscientious objection. As such, women's right to health in general, and to sexual and reproductive health in particular, is a legitimate aim to limit health providers' rights to manifest religion or belief.
- 11 The intervening organisations also cite case law of the European Court of Human Rights in support of their arguments, *RR v Poland* (2013) 56 E.H.R.R. 33; and *P v Poland* (57375/08) 30 October 2012.
- 12 RFSU and CRR state that there is no evidence that there is widespread discrimination against health care personnel or medical students related to their conscientious objection to abortion. According to RFSU and CRR there have been no cases before the Labour Court in which medical providers claim discrimination or harassment related to their conscientious objection to abortion, nor have been there any known negotiations between employers and labour unions on behalf of employees claiming discrimination on such grounds.

III. Ordo Iuris Institute

- 13 The *Ordo Iuris* Institute is an independent Polish civic organisation which through litigation, training and academic publications, seeks to promote the rule of law and human rights. *Ordo Iuris* works to secure religious freedom, family and parental rights, freedom of speech.
- 14 The *Ordo Iuris* Institute argues that Sweden's failure to enact a clear and comprehensive policy framework governing the practice of conscientious objection by healthcare providers amounts to a breach of art.11(2) read alone or in conjunction with art.E of the Charter.
- 15 The legal recognition of conscientious objection must also be recognised as an instrument protecting employees from being placed under undue, discriminatory pressure by their employer.

- 16 According to the *Ordo Iuris* Institute conscientious objection allows a professional in particular circumstances to avoid the performance of an act which that person understands as intrinsically evil, without questioning the law in force or the procedure in itself. The aim of conscientious objection is to prevent acts which may be deemed evil, therefore it must not be used to condone a refusal to perform acts which are urgently needed for the protection of a patient's life.
- 17 The protection of the right to health must be considered jointly with the obligation to ensure respect for the right of freedom of thought, conscience, and religion of healthcare providers, which creates an obligation on the part of States Parties to guarantee the right to conscientious objection in the performance of medical procedures. For this reason, the facilities enabling professionals to take individual responsibility in matters of healthcare services, as required by art.11(2) of the Charter, include the legal recognition of conscientious objection.

RELEVANT DOMESTIC LAW AND PRACTICE

I. The Abortion Act (1974:595)

“Section 1: If a woman requests termination of her pregnancy, an abortion may be performed if the procedure is performed before the end of the eighteenth week of pregnancy and it may not be assumed that it will entail serious danger to the woman's life or health on account of her having an illness. Act (1995:660).

Section 2: If a woman has requested an abortion or if the question of termination of pregnancy has arisen under the provisions of Section 6, she must be offered counselling before the procedure is performed. Act (1995:660).

Section 3: After the end of the eighteenth week of pregnancy an abortion may be performed only if the National Board of Health and Welfare has granted the woman permission for the procedure. Such permission may only be granted if exceptional grounds exist for the abortion.

Permission under the provisions of the first section of this paragraph may not be granted if there is reason to assume that the foetus is viable.

Section 4: If an abortion in a case referred to under Section 1 is refused, the matter shall be immediately referred to the National Board of Health and Welfare for review. Act (1995:660).

Section 5: Only a person authorised to practise medicine may perform an abortion or terminate a pregnancy under the provisions of Section 6.

The procedure must be performed at a general hospital or other medical institution approved by the Health and Social Care Inspectorate Act (2012:936).

Section 6: If it may be assumed that the pregnancy entails grave danger to the life or health of the woman, on account of her having an illness or bodily defect, the National Board of Health and Welfare may give permission to terminate the pregnancy after the end of the eighteenth week of pregnancy, regardless of how far the pregnancy has progressed.

If, due to illness or bodily defect of the woman, the termination of a pregnancy can not be postponed the procedure may be performed notwithstanding the provisions of the first paragraph and Section 5, second paragraph. Act (2007:998).

Section 7: The decisions of the National Board of Health and Welfare regarding permission for abortion or termination of pregnancy under the provisions of Section 6 may not be appealed. Act (1995:660).

Section 8: After an abortion or termination of pregnancy under the provisions of Section 6 the woman must be offered counselling. The person in charge at the hospital or health care facility where the procedure has been performed must ensure that such an offer is made. Act (1995:660).

Section: 9 Any person who, without being authorised to practise medicine, intentionally performs an abortion on another person shall be fined or imprisoned for a maximum of one year for illegal abortion.

If an offence referred to in the first paragraph is gross, a prison sentence of a minimum of six months and a maximum of four years shall be imposed. When assessing whether the offence is gross special consideration shall be given to whether the act was habitual or for profit or involved particular danger to the woman's life or health."

- 18 An attempt to bring about an illegal abortion is punishable under Ch.23 of the Penal Code:

"Section 10: The intentional disregard by a medical practitioner of the provisions of Section 4 or, subject to Section 6, second paragraph, of Section 3 or Section 5, shall be punishable by a fine or imprisonment of a maximum of six months."

"Section 11: The proceeds of an offence under this Act shall be declared forfeited, unless this is manifestly unreasonable. Act (2005:294)."

II. Discrimination Act 2008:567

"Discrimination

Section 4

In this Act discrimination has the meaning set out in this Section.

1. *Direct discrimination*: that someone is disadvantaged by being treated less favourably than someone else is treated, has been treated or would have been treated in a comparable situation, if this disadvantaging is associated with sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.
2. *Indirect discrimination*: that someone is disadvantaged by the application of a provision, a criterion or a procedure that appears neutral but that may put people of a certain sex, a certain transgender identity or expression, a certain ethnicity, a certain religion or other belief, a certain disability, a certain sexual orientation or a certain age at a particular disadvantage, unless the provision, criterion or procedure has a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose.

Prohibition of discrimination

Section 1

An employer may not discriminate against a person who, with respect to the employer,

1. is an employee,
2. is enquiring about or applying for work,
3. is applying for or carrying out a traineeship, or
4. is available to perform work or is performing work as temporary or borrowed labour.

The prohibition of discrimination also applies in cases where the employer, by taking reasonable support and adaptation measures, can see to it that an employee, a job applicant or a trainee with a disability is put in a comparable situation to people without such a disability. A person who has the right to make decisions on the employer's behalf in matters concerning someone referred to in the first paragraph shall be equated with the employer.

Section 2

The prohibition in Section 1 does not prevent

1. differential treatment based on a characteristic associated with one of the grounds of discrimination if, when a decision is made on employment, promotion or education or training for promotion, by reason of the nature of the work or the context in which the work is carried out, the characteristic constitutes a genuine and determining occupational requirement that has a legitimate purpose and the requirement is appropriate and necessary to achieve that purpose,
2. measures that contribute to efforts to promote equality between women and men and that concern matters other than pay or other terms of employment,
3. the application of age limits with regard to the right to pension, survivor's or invalidity benefits in individual contracts or collective agreements, or
4. differential treatment on grounds of age, if there is a legitimate purpose and the means that are used are appropriate and necessary to achieve that purpose."

RELEVANT INTERNATIONAL MATERIALS

I. The Council of Europe

- 19 The European Convention of Human Rights (the Convention) includes the following provision:

“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.”

A. Relevant judgments of the European Court of Human Rights

- *Vo v France* (2005) 40 E.H.R.R. 12;
- *A v Ireland* (2011) 53 E.H.R.R. 13;
- *RR v Poland* (2011) 53 E.H.R.R. 31; and
- *P v Poland* (57375/08) 30 October 2012.

B. Other materials

20 The Parliamentary Assembly of the Council of Europe has adopted the following text:

“Resolution 1763 (2010), The right to conscientious objection in lawful medical care

1. No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason.
2. The Parliamentary Assembly emphasises the need to affirm the right of conscientious objection together with the responsibility of the state to ensure that patients are able to access lawful medical care in a timely manner. The Assembly is concerned that the unregulated use of conscientious objection may disproportionately affect women, notably those with low incomes or living in rural areas.
3. In the vast majority of Council of Europe member states, the practice of conscientious objection is adequately regulated. There is a comprehensive and clear legal and policy framework governing the practice of conscientious objection by health-care providers ensuring that the interests and rights of individuals seeking legal medical services are respected, protected and fulfilled.
4. In view of member states’ obligation to ensure access to lawful medical care and to protect the right to health, as well as the obligation to ensure respect for the right of freedom of thought, conscience and religion of health-care providers, the Assembly invites Council of Europe member states to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, and which:
 - 4.1. guarantee the right to conscientious objection in relation to participation in the medical procedure in question;
 - 4.2. ensure that patients are informed of any conscientious objection in a timely manner and referred to another health-care provider;
 - 4.3. ensure that patients receive appropriate treatment, in particular in cases of emergency.”

II. Other international materials

21 World Health Organisation (WHO)—Department of Reproductive Health and Research, *Safe Abortion, The Technical and Policy Guidance for Health Systems* 2nd edn, (2012), indicates that:

“Health-care professionals sometimes exempt themselves from abortion care on the basis of conscientious objection to the procedure, while not referring

the woman to an abortion provider. Individual health-care providers have a right to conscientious objection to providing abortion, but that right does not entitle them to impede or deny access to lawful abortion services because it delays care for women, putting their health and life at risk. In such cases, health-care providers must refer the woman to a willing and trained provider in the same, or another easily accessible health-care facility, in accordance with national law. Where referral is not possible, the health-care professional who objects, must provide safe abortion to save the woman's life and to prevent serious injury to her health. Women who present with complications from an unsafe or illegal abortion must be treated urgently and respectfully, as any other emergency patient, without punitive, prejudiced or biased behaviours (see also Chapter 4)."

(cf. Ch.3.3.6—"Conscientious objection by health-care providers").

THE LAW

22 Article 11 of the Charter reads as follows:

“Article 11 – The right to protection of health

Part I: Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

Part II: 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.”

I. Arguments of the parties

A. The complainant organisation

23 FAFCE alleges that Sweden is responsible for the violation of art.11 of the Charter on the grounds that it has failed to enact legislation, enacted insufficient legislation or insufficiently supervised the implementation of legislation.

24 FAFCE firstly alleges that the lack of a comprehensive and clear legal and policy framework governing the practice of conscientious objection by health care providers amounts to a violation of art.11 of the Charter and leads to the situation whereby they are subject to discrimination in breach of art.E. In certain cases hospital management may exempt objecting health care personnel from having to participate in abortion procedures. However according to FAFCE such exemptions are rare and in general there is no right to be exempt on grounds of conscience. It alleges that health care workers who have strong objections to abortion, especially late term abortion, have been forced to participate in these procedures. If they fail to do so they may be reprimanded or put at a disadvantage.

- 25 FAFCE refers to Resolution 1763 (2010) of the Parliamentary Assembly of the Council of Europe in this regard, in particular para.1 and para.4 (see above). It states that Resolution 1763 (2010) explicitly calls on member states to ensure the right to conscientious objection in lawful medical care and holds that no person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason.
- 26 It also refers to art.9 of the European Convention on Human Rights and to the case law of the European Court of Human Rights as well as the relevant provisions at the international level and art.10 of the Charter of Fundamental Rights of the European Union in support of its arguments.
- 27 It maintains that freedom of conscience and the right to conscientious objection at the workplace is a right guaranteed under international and European human rights law.
- 28 The International Federation of Gynaecology and Obstetrics (FIGO), of which the Swedish Society of Obstetrics and Gynaecology (SFOG) is a member, have developed ethical guidelines that regulate conscientious objection. They provide, inter alia, that health care workers have a right to respect for their ethical beliefs and that no one shall be discriminated against because of their beliefs. The International Confederation of Midwives (ICM), of which the Swedish Midwives Association is a member, has developed a Code of Ethics with a guide for midwives where freedom of conscience is enshrined. The World Health Organization (WHO) has stated that the right to freedom of conscience must be regulated. If woman's health or life is at risk, the conscientious objectors should refer to caregivers who do not oppose abortion.
- 29 FAFCE argues that granting health care workers' rights to conscientious objection would not threaten patients' access to health care, rather it would enhance it by enabling those who oppose abortion to be treated by similar minded health care workers.
- 30 FAFCE cites the Committee's decision in *International Planned Parenthood European Network (IPPF EN) v Italy* (2014) 58 E.H.R.R. SE17, [68]. It argues that by corollary states must recognise a right to conscientious objection for health care workers.
- 31 A right of conscientious objection is necessary to promote good health for health care workers. FAFCE cites an academic study which indicated that nearly half of all gynaecologists and midwives believed that there should be permitted to refuse to participate in abortion procedures on grounds of conscience. Many expressed disquiet about late term abortions and stated that these contribute to stress amongst health care workers.
- 32 FAFCE cites a decision of 10 April 2014 by the Swedish Discrimination Ombudsman, *Midwife Ellinor Grimmark v Jonköping County Council*. The case concerned a midwife who had been dismissed as a midwife at three hospitals due to her refusal to participate in abortion procedures. However, the Ombudsman concluded that the applicant had not been discriminated against and that her refusal to participate in abortion procedures would impact on the "availability of abortion care" and the right to health of women requiring an abortion.
- 33 Further, FAFCE makes a number of other allegations, namely that:

- a) the rights of pregnant women have been infringed in that a number of women have been incorrectly informed that the foetus was no longer living/viable and recommended abortions, amounting to a breach of the Swedish Patients Safety Act. An investigation was promised by the National Board of Health and Welfare and guidance to ensure that such mistakes would not be made again. However according to FAFCE further cases were revealed in 2012. FAFCE maintains that this failure to ensure that women are being correctly informed about the health of their foetus is an infringement of the right to health of pregnant women;
- b) the state has failed to protect foetuses and infants born viable in that the Swedish Board of Health and Welfare has unlawfully permitted late term abortions where the foetus was viable. FAFCE refers in this respect to allegations made in 2011 by healthcare workers that babies were left to die after late term abortions in breach of Swedish law. FAFCE argues in this respect that foetuses or babies born viable have a right to life and a right to health care. It cites in this respect the United Nations Convention on the Rights of the Child (art.6) read in conjunction with the Preamble;
- c) the state has failed to draw up guidelines on how to reduce the high number of abortions amongst young persons without parental consent, more generally the failure of the state to take any measures to reduce or eliminate the need for abortion in fact, according to FAFCE, the existing medical and educational framework has done the opposite in Sweden, in clear violation of art.11 of the Charter and other international documents; and
- d) the state has failed to actively prevent eugenic and sex selected abortion; FAFCE cites an example of where an individual sought an abortion on the grounds of the sex of the foetus. The healthcare workers sought guidance from the Swedish National Board of Health and Welfare. The Board stated that “such requests cannot be refused” and that “it is not possible to deny a woman an abortion up to the 18th week of pregnancy even if the sex of the foetus is the only basis for the abortion request.”

B. The respondent Government

- 34 The Government argues that the allegation relating to Sweden’s inadequate recognition of conscientious objection in the health field does not fall within the scope of art.11 of the Charter, rather it raises an issue under art.9 of the European Convention on Human Rights which does not fall within the jurisdiction of the Committee. *International Planned Parenthood European Network (IPPF EN) v Italy*, cited above, concerned the right to healthcare and not the right to conscientious objection. The issue of conscientious objection is only relevant to art.11 of the Charter in cases where it prevents patients from accessing healthcare services to which they are legally entitled to.
- 35 The Government describes the legal framework surrounding the provision of health care and in particular abortion in Sweden.
- 36 The Health and Medical Services Act (1982:763; HMSA) regulates the health care system. The overall objective is the best possible health and care on an equal basis for the whole population. Care and services are to be provided so that the equal value and dignity of the individual is respected. Further care should be

accessible and be based on respect for the patient's right to self-determination and integrity.

- 37 The Patient Safety Act (2010:659; PSA) contains provisions necessary for ensuring the highest degree of patient safety.
- 38 Abortion legislation in Sweden is based on the principle of a woman's right to decide what to do with her own body and the importance of planned parenthood. It also seeks to minimise the health risks for women who wish to terminate their pregnancy.
- 39 Abortion however is to be regarded as a measure of last resort and not to be considered as an alternative to contraception.
- 40 Abortion is available until the end of the 18th week of pregnancy in Sweden. After this an abortion may only be performed if the National Board of Health and Welfare grants permission. Such permission must only be granted in exceptional circumstances and never if there are reasons to believe that the foetus is viable.
- 41 Health care providers have a duty to provide abortions to anybody who requests them within the terms of the Abortion Act.
- 42 The Government argues that healthcare workers opposed to abortion will not normally seek employment in a facility which provides abortions. However should such a person be so employed it is a matter for those responsible for the organisation of the health services whether or not a person can be exempt from participating in the procedure. Should the issue not be resolved to the satisfaction of the employee, he/she may pursue the matter through the courts—on the basis of art.9 of the European Convention on Human Rights (which has been incorporated into Swedish law) and on the basis of the legislation protecting individuals from discrimination. The Parliamentary Ombudsman and the Equality Ombudsman may also investigate allegations of discrimination.
- 43 The Government states that in the course of preparing its submissions it contacted the relevant employer organisation (the Swedish Association of Local Authorities and Regions) and the trade union the Swedish Association of Health Professionals and the Swedish Medical Association as well as the Swedish Society of Obstetrics and Gynaecology: none of the organisations could give an examples of where freedom of conscience had been raised with respect to the provision of abortion services. The Government maintains therefore that this allegation is purely theoretical.
- 44 As regards the case of *Midwife Ellinor Grimmark v Jönköping County Council*, the Government submits that FAFCE incorrectly states that the complainant lost her job as a result of her beliefs. In fact the complainant was never employed by the hospitals mentioned. She had sought employment but was not recruited.
- 45 As regards the allegations that incorrect information over the viability of foetuses has occurred the Government again raises the issue as to the applicability of art.11 of the Charter. It contends that art.11 of the Charter is not applicable.
- 46 However, it nonetheless states that while such incidents are regrettable there is no evidence that the doctors concerned did not act in good faith or contrary to accepted medical practice. Medical guidelines on ultra sound in pregnancy exist and must be followed. Where mistakes are found to have occurred, investigations and recommendations will ensue by the Inspectorate. An inspectorate is responsible for monitoring the health service and its staff, as well as investigating allegations of wrongdoing or negligence. It may order measures to be taken to remedy any

breach or order the imposition of punitive measures. In certain circumstances criminal liability may also be incurred.

- 47 As regards the allegations that the state has failed to protect foetuses and infants born viable, in that the Swedish Board of Health and Welfare has unlawfully permitted late term abortions, the Government states that Swedish law considers that the right to life begins at the term of birth. The Government cites case law of the European Court of Human Rights on the issue of when the right to life begins and on abortion, notably to the effect that the issue of when the right to life begins comes within the margin of appreciation enjoyed by States. The Government states that art.11 of the Charter should not be extended to cover the right to health of the foetus, it is within the margin of appreciation of each state to determine to what extent the unborn foetus enjoys the right to health. Therefore, according to the Government, art.11 of the Charter is not applicable.
- 48 The Government points out that under Swedish law abortion is available until the end of the 18th week of pregnancy, after this permission for an abortion will not be granted if this is reason to believe that the foetus is viable. The limit currently set in Sweden for viability is 22 weeks. However, if a woman's life or health is in danger permission to terminate the pregnancy will be granted, however in such cases all measures must be taken to save both mother and child.
- 49 Between 2010 and the end of 2012, 55 applications for termination were made where the pregnancy exceeded 22 weeks, permission was granted for abortion in nine of these cases. In all these cases it was considered that the foetus was not capable of survival outside the uterus due to foetal abnormality. Permission to terminate the pregnancy was granted in four cases, but measures were to be taken to save the child's life.
- 50 The Government maintains that national legislation on late term abortion is in accordance with the Charter as it seeks to balance the right of the mother and the degree of development of the foetus.
- 51 As regards the allegation that Sweden has failed to draw up guidelines on how to reduce the high number of abortions performed on young persons without parental consent of consultation, the Government also here questions the applicability of art.11 of the Charter.
- 52 It points out that there are existing strategies and action plans on reducing the number of unwanted pregnancies in Sweden involving many different actors. All school age children have access to school health care services, sex education in schools is compulsory. Contraceptives for those under 25 years of age are subsidized, the individual must pay no more than 100 SEK (€10.8) per year.
- 53 Further there is provision for counselling to be made available to women before and after abortion. Special measures exist where an abortion has been requested by a woman less than 18 years of age, including requirements concerning the involvement of a social worker.
- 54 Lastly as regards the allegation that the state has failed to prevent eugenic and sex selected abortion, the Government questions whether art.11 of the Charter is applicable. It highlights that the National Board of Health and Welfare has adopted regulations and general advice on prenatal diagnosis and pre-implantation genetic diagnosis. These regulations provide that the health care providers are responsible for ensuring that prenatal diagnosis is only offered if the medical usefulness outweighs the foreseeable risks. Prenatal diagnosis may not be offered for the

purpose of determining the sex of the foetus unless one of the genetic parents has a hereditary sex- linked illness.

- 55 However, the Government states that it is not possible to ensure that a woman who requests an abortion has not gained knowledge of the foetus's sex in another country, consequently it cannot be excluded that an abortion has been performed for sex selective reasons that are not linked to medical factors. Nevertheless, statistics in Sweden do not demonstrate any imbalance of the sexes of new born children.

II. Assessment of the Committee

A. Alleged violation of art.11 and of art.E of the Charter on the grounds there is no right to conscientious objection for health workers

- 56 The Committee notes that the essence of FAFCE's allegations relating to a violation of art.11 of the Charter is Sweden's failure to establish a legal framework governing the practice of conscientious objection by healthcare providers. The complainant organisation also alleges that, as a result of the lack of such a legal framework, both healthcare providers and medical students are discriminated against in the exercise of their functions or their academic duties whereas this is prohibited by art.E of the Charter.

- 57 The Committee considers that art.11 of the Charter does not impose on states a positive obligation to provide a right to conscientious objection for healthcare workers. It recalls that it has considered this issue under art.11 of the Charter only in so far as it affects women's access to abortion services (*International Planned Parenthood European Network (IPPF EN) v Italy* (2014) 58 E.H.R.R. SE17, [68]). In this case it examined the issue of the right to conscientious objection, on the basis of facts arising in a situation which was the opposite of that arising in the instant complaint: healthcare providers were exercising their right to conscientious objection, as provided for in the law in force, but as a result of shortcomings in the application of the law, which was incompatible with the right of women who wished to have an abortion to protection of their health ([176] of the decision on the merits). The Committee points out that art.11 of the Charter is primarily concerned with the guaranteeing access to adequate health care, and this means in cases of maternity that the primary beneficiaries are the pregnant women.

- 58 Consequently, the Committee holds that art.11 of the Charter does not as such confer a right to conscientious objection on the staff of the health system of a State Party. Therefore, art.11 is not applicable.

- 59 FAFCE alleges that healthcare workers, who wish to object on grounds of conscience to abortions and are not entitled to, are therefore discriminated against within the system, on grounds of their beliefs. However in light of the fact that art.11 is not applicable, no question of discrimination under art.E can arise.

B. Alleged violation of art.11 of the Charter on the grounds of the abortion of viable foetuses, sex selective abortions, and eugenic abortions

- 60 As regards the allegations that sex selective and eugenic abortions may take place, that viable foetuses may be unlawfully aborted, and that incorrect information over the viability of foetuses may have been given, as well as the allegations that measures may not be taken to ensure such events do not take place, the Committee

considers that in the instant complaint FAFCE aims, through its allegations, to widen the personal scope of the Charter, by applying it to the unborn. The Committee notes that FAFCE's complaints relate to an issue which is very sensitive for many of the State Parties to the Charter, i.e. the question of when human life begins, which depends on the wide diversity of values and traditions in the different states. The Committee has consistently 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. The Committee finds that, in the context relating to FAFCE's above-mentioned allegations, 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 foetus has a right to health.

- 61 The Committee considers that the Government has not exceeded its margin of appreciation as the legislation strikes an appropriate balance between the rights of the woman and the right to health of the foetus.
- 62 Consequently, there is no violation of art.11 of the Charter

C. Alleged violation of art.11 of the Charter on the grounds of the alleged high number of abortions

- 63 Finally the Committee examines FAFCE's complaint that the number of abortions in Sweden has recently increased, particularly among young women, and that the country has one of the highest abortion rates in Europe, although the complainant organisation also acknowledges that there has been a reduction in the number of abortions involving the youngest age group (however it does not indicate the age group concerned).
- 64 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.
- 65 However the Committee considers that FAFCE has 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.
- 66 Consequently there is no violation of art.11 of the Charter.

CONCLUSION

For these reasons, the Committee concludes unanimously:

- as regards the complaint relating to conscientious objection that art.11 of the
- Charter is not applicable;
- as art.11 of the Charter is not applicable, no question of discrimination can arise;
- as regards the complaint relating to the practice in respect of abortions, that there is no violation of art.11 of the Charter; and

- as regards the complaint relating to the alleged high number of abortions that there is no violation of art.11 of the Charter.