



European
Social
Charter

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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

DECISION ON THE MERITS

Adoption: 6 December 2019

Notification: 28 February 2020

Publicity: 29 June 2020

University Women of Europe (UWE) v. Bulgaria

Complaint No. 125/2016

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 310th session in the following composition:

Giuseppe PALMISANO, President
Karin LUKAS, Vice-President
François VANDAMME, Vice-President
Eliane CHEMLA, General Rapporteur
Petros STANGOS
József HAJDU
Krassimira SREDKOVA
Raul CANOSA USERA
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 19 mars, 12 September, 16 and 17 October, 2,3 and 6 December 2019,

On the basis of the report presented by Eliane CHEMLA,

Delivers the following decision, adopted on the latter date:

PROCEDURE

1. The complaint lodged by University Women of Europe (UWE) was registered on 24 August 2016.
2. UWE alleges that the situation in Bulgaria is in violation of Articles 1, 4§3, 20 and E of the Revised European Social Charter ("the Charter") having regard to the pay gap between men and women in Bulgaria.
3. On 4 July 2017, referring to Article 6 of the 1995 Protocol providing for a system of collective complaints ("the Protocol") the Committee declared the complaint admissible.
4. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 13 October 2017.
5. In application of Article 7§1 of the Protocol, the Committee invited the States Parties to the Protocol and the States that had made a declaration in accordance with Article D§2 of the Charter, to submit any observations they wished to make on the merits of the complaint by 13 October 2017.
6. In application of Article 7§2 of the Protocol, the Committee invited the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter to make observations by 13 October 2017.
7. On 14 September 2017, the European Confederation of Trade Unions (ETUC) asked for an extension of the deadline for presenting its observations on the complaint. The President of the Committee extended this deadline until 3 November 2017. ETUC's observations were registered on 3 November 2017.
8. On 18 October 2017, the Government asked for an extension to the deadline for presenting its submissions on the merits. The President of the Committee extended this deadline until 3 November 2017. The Government's submissions on the merits were registered on 3 November 2017.
9. The deadline set for UWE's response to the Government's submissions on the merits was 9 February 2018. UWE's response was registered on 9 February 2018.

10. Pursuant to Rule 31§3 of the Committee's Rules ("the Rules"), the Government was invited to submit a further response by 5 April 2018. On 29 March 2018, the Government asked for an extension of the deadline for presenting its further response. The President of the Committee extended this deadline until 20 April 2018. The Government's further response was registered on 20 April 2018.

11. Pursuant to Rule 32A of the Rules, the President invited the European Network of Equality Bodies (EQUINET) to submit observations by 30 March 2018. On 30 March 2018, EQUINET asked for an extension of the deadline for presenting its observations on the complaint. The President of the Committee extended this deadline until 4 May 2018. EQUINET's observations were registered on 4 May 2018.

12. Pursuant to Rule 32A of the Rules, the President invited the European Union to submit observations by 15 April 2018. On 20 April 2018, the European Union asked for a new deadline for presenting its observations on the complaint. The President of the Committee set 25 May 2018 as a new deadline. The European Union's observations were registered on 28 May 2018.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

13. UWE asks the Committee asks the Committee to hold that the situation in Bulgaria constitutes a violation of Articles 1, 4§3, 20 and E of the Charter on the following grounds:

- Firstly, UWE alleges that a pay gap between women and men still persists and is unfavourable to women. UWE maintains that Bulgaria has not achieved equal pay for equal work and that it has not ensured that the relevant legislation is enforced in practice.
- Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies, as there is no legislation requiring gender equality on decision-making boards within private enterprises.

14. UWE further asks for the payment of €10,000 for costs incurred during the proceedings.

B – The respondent Government

15. The Government asks the Committee to reject UWE's allegations as unfounded and dismiss the complaint in its entirety. The Government further requests the Committee to reject UWE's request to award costs concerning the proceedings.

OBSERVATIONS BY WORKERS' ORGANISATIONS

The European Trade Union Confederation (ETUC)

16. The ETUC, making reference to various instruments of International Law and Eurostat statistics, concludes that the pay gap between men and women lies above 5.5% in all the countries concerned. The ETUC therefore observes that, as the statistics highlight, the principle of equal pay for work of equal value is not guaranteed in practice. It also indicates that this is even more true when the lack of clarity in relation to the calculation is taken into account (for example, to what extent do they reflect other discriminatory elements, such as career differences which can lead to an increase in the pay gap or issues related to the source of data (for instance, undocumented work or the informal economy, both of which are sectors in which the gender pay gap is probably even higher).

17. The ETUC further refers to data of the European Institute for Gender Equality (EIGE), with regard to the representation of women in decision-making positions within private companies, and concludes that only two countries achieved the European Commission's proposed 40% objective for the representation of women on Boards, namely France and Norway. The ETUC points out in its conclusion, however, that the data in question only refers to the 'largest listed companies', and not to other listed companies and non-listed companies which represent, quantitatively, a much higher share. The ETUC therefore assumes that none of the countries considered reach the threshold of 40%.

18. The ETUC indicates that the two main elements raised in the complaint differ from a legal point of view. Equal pay is a classic fundamental principle, and despite States traditionally providing for it in legislation, they do not enforce it sufficiently. The second ground, which concerns the under-representation of women on decision-making boards in private companies, is a fairly new element appearing at international and national level as a problem to be seriously dealt with. Nevertheless, both elements are covered by Article 20 of the Charter which guarantees "the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex".

19. With respect to the pay gap between men and women, the ETUC raises the point that, in order to assess the conformity or non-conformity of the situation in each country with regard to the Charter, it is necessary to examine both substantive and procedural dimensions.

20. At the substantive level, there is a quantitative and a qualitative dimension to be considered. According to the ETUC, only a 'zero' pay gap should be permitted. However, on the basis that the interpretation of 'equal' does not apply in the strict sense of the word, a reasonable threshold could be a maximum of 5%. With respect to the qualitative dimension, as the statistics show, the pay gap between men and women continues to exist. The ETUC considers that it is no longer sufficient that States are free to choose the means by which they ensure equal pay, and point to the need to go further by taking into account the evolution of international case law. Accordingly, it would appear important to require a clear and comprehensive legislation, which should at least ensure that:

- the coverage of all workers is guaranteed;
- the general legal concept also includes indirect discrimination;

- the term 'pay' contains all elements of remuneration as well as supplementary pension;
- the comparison comprises as a minimum:
 - transparency
 - the reach of comparison between jobs performed by women and men being construed as wide as possible;
 - a wide definition of 'equal value', also encompassing work that is of an entirely different nature, which is nevertheless of equal value;
 - the necessity to evaluate the respective jobs with criteria excluding any kind of discrimination, even indirect;
 - the assessment concerned is followed by effective consequences in cases where the results show that there is discrimination.

21. With respect to the under-representation of women in decision-making positions within companies, as a consequence of the decision of admissibility of the Committee, it follows that this aspect falls within the scope of Article 20.

22. At the substantive level, the ETUC considers that it is necessary to provide for a minimum threshold for representation of both sexes in decision-making positions. Although perfect equality, that is to say 50% of representation of both sexes, would not be a requirement, the ETUC considers that a percentage close to this, for example 40%, would be appropriate, as proposed by the European Commission.

23. The same procedural elements as those listed for equal pay between men and women are applicable.

24. ETUC takes note of the conclusions of the Committee as well as the reports, recommendations and observations of other international bodies concerning gender equality in Bulgaria (CCPR, CESC, CEDAW and CEACR). It observes that the Committee has found a violation in its Conclusions concerning Article 4§3 of the Charter on the ground that there is a predetermined upper limit on compensation for employees who are dismissed as a result of gender discrimination which may preclude damages from making good the loss suffered and from being sufficiently deterrent. On other aspects related to (achieving) equal pay for equal work, the ECSR asked only certain questions. However, this situation does not exclude that - after a more detailed examination - the ECSR might come to a different assessment. In the view of the ETUC, this would be necessary.

25. ETUC maintains that from a substantive perspective, statistical evidence shows that there is still a gender pay gap. Moreover, the official statistics are still excluding small (micro) seized enterprises. It is therefore most probable that the gender pay gap is even higher in these enterprises. From a procedural perspective, it appears evident that the general framework for the supervision of the satisfactory application of the principle of equal pay is insufficient. In particular, according to ETUC, the Labour Inspectorate does not properly ensure the satisfactory application of this important principle.

26. Despite this existing regulatory framework, (recent) statistics show that there still exists a gender pay gap in Bulgaria. According to the Commission, based on Eurostat 2014 figures, in Bulgaria the gender pay gap stands at 14.2% (the average gender pay gap in the EU is 16.7%) and the gender overall earnings gap in Bulgaria stands at 22.8% (the average gender overall earnings gap in the EU is 39.8%).

27. As regards the representation of women in decision-making positions within private companies, according to ETUC, as regards substance, statistical evidence shows that there is still an underrepresentation of women in decision-making bodies within private companies. Even if there might be relevant legislation and even if the degree of representation of women would have increased it is not to be disputed that women are not sufficiently represented within these bodies.

28. From a procedural point of view, it would appear that there are no effective legislative measures in order to ensure the sufficient representation of women in decisions-making bodies within private enterprises. In practice, there is even less supervision and enforcement.

29. For these reasons, the ETUC believes that the situation represents a violation of Article 20 of the Charter on both counts.

OTHER OBSERVATIONS

A – The European Union

30. In its observations regarding Complaints No 124-138/2016, University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, the European Union, through the European Commission, highlights the European Union's legal framework and policy action of relevance to the matters raised in the complaints.

31. As regards the legal framework, the European Commission recalls that the principle of equal pay between women and men has been enshrined in the Treaties since 1957. The principle of equal pay for men and women for equal work and work of equal value was laid down in the original European Economic Community Treaty of 1957, more precisely in its Article 119, which later became Article 141 of the European Community Treaty. Since the entry into force of the Treaty of Lisbon (2009), the principle is embodied in Article 157 of the Treaty on the Functioning of the European Union (TFEU).

32. As regards non-legislative policy initiatives, according to the European Commission, closing the gender pay gap remains a major objective to achieve gender equality and it is a political priority. The gender pay gap in the EU still averages around 16%. This is socially unfair as well economically inefficient, equal pay being an obvious prerequisite for equal participation in the labour market. Across the EU, women have better educational outcomes than men (44% of women aged 30-34 in the EU attained tertiary education, compared with 34% of men). This factor does not prevent, however,

women in the EU from being overrepresented in industries with low pay levels. Sectoral segregation continues to be one of the most important contributing factors to the gender pay gap in the EU.

33. In November 2017, the Commission adopted a Communication: EU Action Plan 2017-2019, tackling the gender pay gap. The Action Plan presents ongoing and upcoming measures taken by the Commission to combat the gender pay gap in 2018-2019. It identifies eight areas for action:

- Improving the application of the equal pay principle
- Combating segregation in occupations and sectors
- Breaking the ceiling: initiatives to combat vertical segregation
- Tackling the care penalty
- Better valorising women's skills, efforts and responsibilities
- Fighting the fog: unveiling inequalities and stereotypes
- Alerting and informing about the gender pay gap
- Enhancing partnerships to tackle the gender pay gap

34. Moreover, several other Commissions' actions directly relate to some of the elements of the complaints, such as to combating segregation in occupation and sectors, by supporting transnational projects to tackle stereotypes and segregation in education, and patriarchal attitudes. Besides, the European Commission monitors the national legislation and policies of Member States regarding the gender pay gap and raises awareness about it. The Commission reports regularly about the evolution of the gender pay gap, earnings and pensions gap in Europe. The Commission aims at combating vertical segregation, by working towards the adoption of a proposal for a Directive in this field.

35. The Commission considers that one way of determining work of equal value is by using gender-neutral job evaluation and classification systems. However, Directive 2006/54/EC does not oblige Member States to put such systems in place and their availability at national level varies significantly. To attain its purpose, Directive 2006/54/EC requires that Member States ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished.

36. The European Commission concludes by indicating that the complexity of the issues in question and the numerous elements that, in the end, lead to the gender pay gap can be seen from many different angles, from the sociological to economic and legal. Therefore, according to the European Commission, it is necessary to take all of these into account.

B – European Network of Equality Bodies (EQUINET)

37. The Commission for Protection against discrimination submitted to Equinet the following observations concerning the situation in Bulgaria.

38. The Commission was established in compliance with the provisions of the Law on Protection against Discrimination, which entered into force on 1 January 2004, and contributes to the formation and effective implementation of the anti-discrimination policy. The principle of equal remuneration for the same or equal work, is part of the tasks of the Commission, and the legislator has introduced specific provisions in Article 14 of the Law on Protection against Discrimination. The scope of protection covers both employers in the private sector and state and public authorities and local authorities.

39. As the only specialised equality body of Bulgaria, the Commission systematically and consistently improves its capacity to guarantee more effectively the right to equal pay for the same or equal work. The CPD members and employees have participated in trainings on this topic and moreover, the issue of equal pay for the same or equivalent work has been developed as a training module in the CPD's activity on prevention of discrimination.

40. In response to UWE, it should be noted that the network of 22 Commission for Protection against Discrimination regional representatives working on the territory of the whole country, including remote and isolated regions of the country, provide free legal assistance by consulting citizens when filing complaints under the Law on Protection against Discrimination.

41. A special Administrative Legal Service Directorate has been set up at the Commission for Protection against Discrimination, whose legal advisers provide free legal assistance and counseling to citizens who consider themselves to be victims of discrimination.

42. Regarding the allegations that Bulgaria does not provide any data on the number of complaints submitted and the type of complaints, for the last six years, during the period 2012-2017, the Commission for Protection against Discrimination registered 138 files on the protected sign "sex". In 64% of these cases, they involve multiple discrimination on the grounds of sex. After the complexity of the "personal situation", the signs most often present in combination with the "sex" sign are "disability", "education" and "marital status". During the same period, 13 trials for sexual harassment have been initiated.

43. There are no specific statistics about cases of complaints of discrimination under Article 14 of the Law, where the applicant is a woman, but it is clear from the analysis of the Commission's practice that cases of complaints introduced by women are prevalent in the files examined on the basis of gender. Complaints have been introduced about pregnancy dismissal, warnings from employers to young women entering the workplace that pregnancy is undesirable, change to work conditions for those confessing they are pregnant, lack of lunch break, harassment, discontent, not being considered worthy as employees, or even accusations that pregnancy is a betrayal against the management. Sometimes this ends up in redundancy, for

example, with the motive that the applicant does not have the necessary qualities for the effective performance of the work obligations.

44. With regard to ensuring equal pay for the same or equal work, the Bulgarian courts often interpret the non-fulfillment of the obligation under Article 14, para 1 of the Law on Protection against Discrimination as an independent violation under the Law on Protection against Discrimination. Despite the freedom to negotiate wages, the employer cannot disregard the principle of equal pay under Article 243 of the Labour Code, reproduced in the provision of Article 14 of the Law on Protection against Discrimination.

45. According to the Bulgarian case law, equal work, if different in nature, but with the same value, should receive equal pay. Equal pay is determined by the equivalence of education qualifications, the duration of labour, the productivity and the conditions under which the work is done.

RELEVANT DOMESTIC LAW

A – The Constitution

46. Article 6 establishes the principle of gender equality. In paragraph 2, sentence 2, it provides that “there shall be no restriction of rights or privileges on the grounds of ... sex”.

47. Article 5 covers the CEDAW and effectively incorporates it into domestic legislation.

48. Article 48, par. 3 and 4 sets forth the following:

“Article 48

...

(3) Everyone shall be free to choose an occupation and place of work.

(4) No one shall be compelled to do forced labour.

...”

B – The Law on Protection against Discrimination of 2003, in force since 1 January 2004 and amended in December 2016

49. The aim of this Law, according to Article 2, is the provision of everyone’s right to equality before the law, equality in treatment and opportunities to take part in public life and effective protection against discrimination. It includes explicitly among the prohibited discriminatory criteria, in the first place, gender. According to Article 4, par. 1, “any direct or indirect gender-based discrimination is prohibited, ...”.

50. Chapter 2, Article 1 of the Law explicitly provides for the protection from discrimination upon exercising of the right of labour.

51. With the reform, the provision on the shifting of the burden of proof was changed to establish that the claimant does not have to produce conclusive evidence, but a *prima facie* violation. This norm (Article 9 of the Law) reads now as follows:

“In proceedings for protection against discrimination, after the party claiming to have been discriminated against, produces (presents) facts from which an inference that discrimination is at hand can be made, the respondent party has to prove that the principle of equal treatment was not breached.”

C – The Labour Code

52. The right to work is explicitly set forth in the Labour Code. According to Article 8.1 of the Labour Code, “upon the exercising of the labour rights and obligations there may be no direct or indirect discrimination based on ... gender, sexual orientation, ...”. Chapter XVI of the Labour Code “Special Protection of Certain Categories or Workers and Employees” contains a separate section on “Special Protection of Women”. Article 8 of the Labour Code further prohibits any privilege, discrimination or restriction in connection with the exercise of labour rights and obligations on the grounds of nationality, origin, gender, sexual orientation, race, colour, age, political or religious convictions, affiliation to trade unions or other public organisations or movements, material or family circumstances, physical or mental disability or the length of employment contracts or working hours.

D – Law on Equality between Women and Men of 26 April 2016

53. The Law regulates State policy on gender equality, the main principles of this policy, the positive measures for promoting gender equality, namely the institutional structure, respective bodies, and the mechanisms of State policy on gender equality.

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. Committee of Ministers

54. The Committee of Ministers adopted several recommendations, such as Recommendation Rec(1985)2 on legal protection against sex discrimination, in which it exhorts member states to take or reinforce measures for the promotion of equality between women and men, including through legislation in the field of employment, social security and pensions, taxation, civil law, the acquisition and loss of nationality and political rights. In its Recommendation Rec(1996)51 on reconciling work and family life the Committee of Ministers further calls on member states to take action to enable women and men to better reconcile their working and family lives. In its Recommendation Rec(1998)14 on gender mainstreaming, the Committee sets out the

conceptual framework for gender mainstreaming and a methodology for its implementation, accompanied by examples of good practices.

55. More recently, in its Recommendation Rec(2017)9 on gender equality in the audiovisual sector the Committee of Ministers invites the Member States to collect, monitor and publish data on gender equality. In particular, it asks the member States to adopt monitoring methods and performance indicators, highlight causal relationships using qualitative analysis of the data.

2. Parliamentary Assembly of the Council of Europe (PACE)

56. In its Resolution 1715(2010), the PACE observed that discrimination against women in the labour market has a long history. Several factors are put forward to explain the pay gap between women and men: horizontal and vertical segregation in the labour market (commonly referred to as “glass walls” and “glass ceilings”), women’s supposedly lower qualifications and lesser experience, and their atypical working hours and career structures due to childbirth and care responsibilities.

57. The PACE recommends that member states:

- ensure that the right to equal pay for work of equal value is enshrined in their domestic legislation, if this is not already the case; that employers are obliged to respect this right (and incur penalties if they do not) and that employees can have recourse to the judicial process to pursue their claims with regard to this right, without incurring risks to their employment;
- collect reliable and standardised statistics on women’s and men’s wages, not only on the basis of gross hourly earnings, but also over the lifecycle;
- promote fair job classification and remuneration systems, including in the private sector,
- aim to increase women’s labour market participation rate and work against the pitfall of part-time work by encouraging all measures seeking to improve the care of children and the elderly outside the home, and a more equal sharing of care and household responsibilities between women and men;
- follow the Norwegian and Icelandic models, and a recent French initiative, which require that a minimum of 40% of members of certain companies’ boards be female, as an enabling factor.

58. The PACE calls on the social partners, employers’ associations and trade unions, to respect and defend the right to equal pay for work of equal value, *inter alia* by promoting and adopting fair and transparent job classification systems and wage scales.

59. In its Resolution 1921(2013) Gender equality, reconciliation of private and working life and co-responsibility the PACE observed that although progress has been made along the path towards gender equality, a traditional division of roles between women and men remains widespread in Europe.

3. European Court of Human Rights (ECtHR)

60. Article 14 (prohibition of discrimination) of the European Convention on Human Rights of 4 November 1950 provides:

Article 14

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

61. In *Konstantin Markin v. Russia* - Application No. 30078/06, Grand Chamber, judgment of 22 March 2012, the Court has pointed out that:

“127 [T]he advancement of gender equality is today a major goal in the member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention ... In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex.”

4. Commissioner for Human Rights

62. In his end-of-the-year statement (December 2017) the Commissioner for Human Rights, Nils Muižnieks, noted that:

“Gender equality in employment is still a distant promise in Europe.” (...)

Women in Europe effectively worked without pay during the last two months in comparison to men. In addition, they continued to face underrepresentation in decision-making bodies and positions. This is a gross injustice and a human rights violation. European states must tackle it much more forcefully than has been the case so far.

Although the situation varies from country to country, it is clear that women suffer everywhere on our continent from unequal treatment and opportunities in the workplace. It would be wrong to believe that this situation is the result of employment dynamics only. In reality, discrimination against women, be it direct or indirect, in this sphere of life results from deep-rooted societal attitudes that keep women in a subordinate role. Tackling this problem therefore requires a comprehensive approach from Council of Europe member states, from laws to be changed to political, cultural and economic measures to be implemented.”

63. In his position on women’s rights (2011), the Commissioner underlined that there are widespread and serious violations of the rights of women across Europe. With respect to women’s equality in the employment sector, there is a strong need to take steps to ensure that women have equal opportunities in the labour market at all levels, including senior and managerial-level positions, and that the principle of “equal pay for equal work” becomes a reality.

64. Wages in the private sector are often governed by collective agreements between social partners, without much room for state intervention. However, governments should step in and define the frameworks within which negotiations are possible. In order to ensure gender neutral job evaluation and grading systems, they can, for instance, specify the rules for applying the principle of equal pay for equal work between different sectors of employment. Authorities could also make use of awareness raising measures in the private sector, such as providing information to employers, employees and the public about their rights and duties.

B – United Nations

1. UN Convention on the Elimination of all forms of Discrimination (CEDAW) and its Committee

Gender pay gap

65. In its General Recommendation No. 13/12 1989, the CEDAW defined in more detail the content of 'Equal remuneration for work of equal value' by recommending to the States Parties that:

“2. They should consider the study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate, and they should include the results achieved in their reports to the Committee on the Elimination of Discrimination against Women;

3. They should support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value.”

Women on decision-making boards in enterprises

66. The CEDAW has also criticised the (under-)representation of women in decision-making bodies in enterprises. Although it has not (yet) provided a 'General Recommendation' on this issue, it has assessed the issue in these 'Concluding Observations': (Estonia (2016)29; Slovakia (2015); Spain (2015); Denmark (2015)16.

2. International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Committee on Economic, Social and Cultural Rights

67. In its General Comment No. 23 concerning Article 7, ICESCR defined in more detail the content of para. (a)(i) as follows:

11. Not only should workers receive equal remuneration when they perform the same or similar jobs, but their remuneration should also be equal even when their work is completely different but nonetheless of equal value when assessed by objective criteria. This requirement goes beyond only wages or pay to include other payments or benefits paid directly or indirectly to workers. [...]

12. The extent to which equality is being achieved requires an ongoing objective evaluation of whether the work is of equal value and whether the remuneration received is equal

13. Objective job evaluation is important to avoid indirect discrimination when determining rates of remuneration and comparing the relative value of different jobs

3. Principles relating to the Status of National Institutions (The Paris principles)

68. Adopted by the General Assembly resolution 48/134 of 20 December 1983, the Paris principles set out six main criteria that National Human Rights Institutions should meet: a) Mandate and competence: a broad mandate, based on universal human rights norms and standards; b) Autonomy from Government; c) Independence guaranteed by statute or Constitution; d) Pluralism; e) Adequate resources; and f) Adequate powers of investigation.

C – International Labour Organisation

ILO Equal Remuneration Convention 100:

69. In its General Survey 2012, the ILO Committee on the Application of Conventions and Recommendations (CEACR) described the requirements which derive from Convention No. 100 in relation to the gender pay gap as follows:

Pay differentials

“668. Pay differentials remain one of the most persistent forms of inequality between women and men. Although explicit policies of providing lower pay for women have for the most part been relegated to the past, the gender pay gap remains one of the most obvious examples of structural gender discrimination

669. The continued persistence of significant gender pay gaps requires that governments, along with employers' and workers' organizations, take more proactive measures to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value. Collecting, analysing and disseminating this information is important in identifying and addressing inequality in remuneration. [...]“

Equal value

“673. The concept of “work of equal value” is fundamental to tackling occupational sex segregation in the labour market, which exists in almost every country, as it permits a broad scope of comparison, including, but going beyond equal remuneration for “equal”, “the same” or “similar” work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value.

Comparing jobs, determining value

“695. The concept of “equal value” requires some method of measuring and comparing the relative value of different jobs. There needs to be an examination of the respective tasks involved, undertaken on the basis of entirely objective and non-discriminatory criteria to avoid the assessment being tainted by gender bias. While the Convention does not prescribe any specific method for such an examination, Article 3 presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions.”

D. – European Union

1. Primary Law

70. After the entry into force of the Treaty of Lisbon in 2009 several sources are relevant:

71. The Treaty on European Union itself:

Article 2

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

72. The Treaty on the Functioning of the European Union (TFEU):

Article 8

“In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.”

Article 157

“1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, ‘pay’ means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job. [...]”

73. The Charter of Fundamental Rights of the European Union (CFREU), legally binding on all EU Member States when they apply EU law, by virtue of Article 6(1)(3) of the Treaty on the European Union (TEU), provides:

Article 21 - Non-discrimination

"1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. [...]"

Article 23 - Equality between women and men

"Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex."

2. Secondary law

74. Directive 2006/54/EC (the Equal Pay directive) of 5 July 2006, Chapter 1 ('Equal pay') of Title II, Article 4 provides:

"Article 4 - Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex."

75. Also, the Directive requires that the Member States shall ensure that all employment-related arrangements, including provisions in individual or collective agreements and contracts, internal company rules, rules governing independent professions and rules governing employees' and employers' organisations contradicting the principle of equal pay shall be or may be declared null and void or may be amended (Article 23).

76. Directive 2008/104/EC on temporary agency work requires that the basic working and employment conditions, including pay, of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job. In addition, the rules on equal treatment between men and women in force at a user undertaking must be applicable to temporary agency workers.

77. The Capital Requirements Directive (2013/36/EU) legislation addresses directly the female under-representation:

"[*Recital*] 60. [...] To facilitate independent opinions and critical challenge, management bodies of institutions should therefore be sufficiently diverse as regards age, gender, geographical provenance and educational and professional background to present a variety of views and experiences. Gender balance is of particular importance to ensure adequate representation of population. In particular, institutions not meeting a threshold for representation of the underrepresented gender should take appropriate action as a matter of priority. [...] Therefore, diversity should be one of the criteria for the composition of management bodies [...]"

Article 88

"[...] 2.(a) [...] Furthermore, the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target. [...]"

Article 91 [...]

"10. Member States or competent authorities shall require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body."

3. European Pillar of Social Rights

78. The European Pillar of Social Rights was proclaimed and signed in November 2017 by the Council of the European Union, the European Parliament and the European Commission during the Göteborg Social Summit for fair jobs and growth.

79. Principle No. 2 of the Pillar refers to:

Gender equality

"a. Equality of treatment and opportunities between women and men must be ensured and fostered in all areas, including regarding participation in the labour market, terms and conditions of employment and career progression.

b. Women and men have the right to equal pay for work of equal value."

80. The gender pay gap is one of the three indicators for gender equality included in the social scoreboard that the Commission uses to monitor the implementation of the Pillar.

4. Other institutions

a) European Commission

81. See the Recommendation of the European Commission on strengthening the principle of equal pay between men and women through transparency (2014/124/EU). Also, in its report to the European Parliament and the Council (COM/2013/0861) on the application of Directive 2006/54/EC the Commission concluded:

"Although estimates vary as to how much of the total gender pay gap arises from pay discrimination as prohibited by Article 157 TFEU and Article 4 of the Directive, it appears to be consensual that a considerable part of it can be traced back to discriminatory practices.

Proposed 40% objective for the representation of women on Boards – under Gender balance in decision-making positions."

b) Court of Justice of the European Union

82. The issue of equal pay raises complex legal questions, as demonstrated by the case law before the CJEU. The main findings of the CJEU in this regard are set out below.

83. Article 157(1) of the TFEU and Article 4 of Directive 2006/54/EC provide for the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration for the same work or for work to which equal value is attributed (see cases C-96/80, EU:C:1981:80, Jenkins, paragraph 22); C-237/85, EU:C:1986:277, Rummler, paragraph 11; C-17/05, EU:C:2006:633, Cadman, paragraphs 27-29).

84. The scope of Article 157(1) TFEU and Directive 2006/54/EC covers not only direct but also indirect discrimination (see to that effect, cases Jenkins, *op. cit.* paragraphs 14 and 15; C-285/02, EU:C:2004:320, Elsner-Lakeberg, paragraph 12; Cadman, *op. cit.*, paragraph 30).

85. The fundamental principle laid down in Article 157(1) of the Treaty and elaborated by the Directive precludes unequal pay between men and women for the same job or work of equal value, whatever the mechanism which produces such inequality (see, for example, C-381/99, EU:C:2001:358, Brunnhofer, paragraph 30). The source of discriminatory pay may be: a contract of employment, the legislative provisions, collective agreement (C-400/93, EU:C:1995:155, Royal Copenhagen paragraph 45) or pay provided on a voluntary basis (4557/93, EU:C:1996:33, Lewark paragraph 21.). The source of unequal pay must be unique or single, because if the differences identified in the pay conditions of workers performing the same work or work of equal value cannot be attributed to a single source, there is nobody which is responsible for the inequality and which could restore equal treatment. Such a situation does not come within the scope of Article 157(1) TFEU (Lawrence, C-320/00, EU:C:2002:498, paragraph 18 ; Allonby, C-256/01, EU:C:2004:18, paragraph 46).

86. The concept of equal pay includes any consideration paid immediately or in the future (see, for example, Barber, C-262/88, EU:C:1990:209, point 12 ; Bilka-Kaufhaus, 170/84, EU:C:1986:204, paragraph 15 ; Seymour-Smith, C-167/97, EU:C:1999:60, paragraph 23 ; Garland, 12/81, EU:C:1982:44, paragraph 5 ; Brunnhofer, *op. cit.*, paragraph 34). The concept of pay also includes payments which a worker receives from an employer even not performing any work provided in their contracts of employment (Gillespie, C-324/93, EU:C:1996:46, paragraph 13 ; Bötzel, C-360/90, EU:C:1992:246, paragraph 15 ; Rinner-Kühn, 171/88, EU:C:1989:328, paragraph 7). The concept of pay does not include statutory social security benefits (Defrenne, 80/70, EU:C:1971:55, paragraph 7).

87. The terms 'the same work', 'the same job' and 'work of equal value' are entirely qualitative in character in that they are exclusively concerned with the nature of the work actually performed (see Macarthys, 129/79, EU:C:1980:103, paragraph 11 ; Rummler, *op. cit.* , paragraphs 13 et 23 ; Brunnhofer, *op. cit.*, paragraph 42). In order to determine whether the work being done by different persons is the same, it is necessary to ascertain whether, taking account of a number of factors such as the

nature of the work, the training requirements and the working conditions, those persons can be considered to be in a comparable situation (see to that effect C-400/93 Royal Copenhagen, *op.cit.*, paragraphs 32 and 33).

88. As regards the method to be used for comparing the pay of the workers concerned in order to determine whether the principle of equal pay is being complied with genuine transparency permitting an effective review is assured only if that principle applies to each aspect of remuneration granted to men and women, excluding any general overall assessment of all the consideration paid to workers (C-285/02 Elsner-Lakenberg, *op. cit.*, paragraph 13).

89. Pay systems must be based on criteria which are of importance for the performance of specific tasks entrusted to the employee' (C-109/88 Danfoss, paragraph 22).

90. The EU Member States are obliged to take the necessary measures to enable all persons who consider themselves wronged by discrimination, to pursue their claims by judicial process. Such an obligation implies that the measures in question should be sufficiently effective to achieve the objective pursued by the directive and should be capable of being effectively relied upon by the persons concerned before national courts (see judgments in C-271/91 Marshall, C-271/91, UE:C:1993:335, paragraph 22 et Paquay, C-460/06, EU:C:2007:601, paragraph 43). EU law does not prescribe a specific measure to be taken by Member States, however, the measures appropriate to restore genuine equality of opportunity must guarantee real and effective judicial protection and have a genuine deterrent effect on the employer (see judgments in, von Colson et Kamann, 14/83, UE:C:1984:153, paragraphs 23 et 24 ; Draehmpaehl, C-180/95, EU:C:1997:208, paragraph 25 ; Paquay, C-460/06, EU:C:2007:601, paragraph 45).

91. Whenever there is evidence *prima facie* of discrimination, it is for the employer to prove that the practice at issue is justified by objective factors unrelated to any discrimination based on sex (C-17/05 Cadman, paragraph 31). However, it is clear from the case law of the CJEU that the burden of proof must shift when this is necessary to avoid depriving workers who appear to be the victims of discrimination of any effective means of enforcing the principle of equal pay (C-381/99 Brunnhofer, *op. cit.*, paragraph 53).

92. According to CJEU case law, where financial compensation is the measure adopted in order to achieve the objective of restoring genuine equality of opportunity, it must be adequate in that it must enable the loss and damage actually sustained as a result of the discriminatory dismissal to be made good in full in accordance with the applicable national rules (see judgments in C-271/91 Marshall, *op. cit.*, paragraph 26 ; Paquay, *op. cit.*, paragraph 46 ; Camacho, C-407/14, EU:C:2015:831, paragraph 33).

93. National law may not limit the time-period for a claim on arrears of pay, if an employee did not have access to the information the level of pay for a colleague of an opposite sex performing the same work (Levez, C-326/96, EU:C:1998:577, paragraph 34). An employer who has not provided the information on the level of pay for work performed by a colleague of opposite sex cannot reasonably rely on the principle of legal certainty (C-326/97 Levez, *op. cit.*, paragraphs 31-33).

THE LAW

PRELIMINARY CONSIDERATIONS

94. The right of workers to a fair remuneration is at the heart of the Charter's guarantee of conditions of work that are reasonable and ensure a fair reward for labour performed. Inadequate pay creates poverty traps, which may affect not just individuals and their families, but whole communities. Inadequate pay is also an obstacle to full participation in society and thus a marker for social exclusion. More broadly, pay which lags significantly behind average earnings in the labour market are incompatible with social justice.

95. One of the constituent elements of fair remuneration is the right of women and men to equal pay for equal work or work of equal value. The right of women and men workers to equal pay has a long history in the Charter. Already in the 1961 Charter, under Article 4§3, the States Parties undertook to recognise the right to equal pay, thus going beyond mere promotion of the principle and conferring an absolute character on this provision (Conclusions II (1971)).

96. Article 20 of the Charter (and Article 1 of the 1988 Additional Protocol) guarantees the right to equal opportunities and equal treatment in matters of employment and occupation, without discrimination on the grounds of gender. It embodies the same guarantee of equal pay as Article 4§3, and further encompasses other aspects of the right to equal opportunities and equal treatment in matters of employment, such as access to employment, vocational guidance and career development.

97. All the States Parties to the Charter having accepted Articles 4§3 and/or 20 are aware that this right has to be practical and effective, and not merely theoretical or illusory (International Commission of Jurists (ICJ) against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

98. The Committee notes that UWE also invokes Article 1 of the Charter concerning the right to work. However, it considers that in accordance with its well-established case law the assessment in substance more appropriately belongs under Articles 4§3 and 20 of the Charter. As regards Article E, which is also invoked by UWE, it is clear from the very wording of Articles 4§3 and 20 of the Charter that their scope includes the prohibition of discrimination. The Committee therefore considers that it is not necessary to examine whether there has been a violation of Article E in conjunction with Articles 4§3 and 20 of the Charter.

99. Despite the obligations deriving from the Charter and other international and European instruments to recognise and ensure the right to equal opportunities and equal pay for women and men for equal work or work of equal value, the gender pay gap still persists today. The available statistics reveal both downward and upward trends in gender pay gap indicators in European States as well as insufficient results of States' efforts to ensure a balanced representation of women in decision-making positions.

100. In this respect, the Committee draws attention to the main statistical indicators which it will take into account in the examination of the instant complaint. Firstly, the unadjusted gender pay gap, which is defined as the difference between the average gross hourly earnings of men and women expressed as a percentage of the average gross hourly earnings of men (indicator published by Eurostat). Secondly the gender overall earnings gap measures the impact of three combined factors - the average hourly earnings, the monthly average of the number of hours paid before adjustment for part-time work and the employment rate - on the average earnings of all women of working age, whether employed or not, compared to men (also published by Eurostat). Finally, with respect to the representation of women in decision-making positions, the Committee will rely mainly on statistics on the share of women on supervisory boards of the largest publicly listed companies in a country (indicator published by the European Institute for Gender Equality).

101. The Committee wishes to emphasise that gender pay gap indicators do not measure discrimination as such, rather they reflect a combination of differences in the average pay of women and men. The unadjusted gender pay gap, for example, covers both possible discrimination between men and women (one component of the “unexplained” pay gap) and the differences in the average characteristics of male and female workers (the “explained” pay gap). Differences in the average characteristics result from many factors, such as the concentration of one sex in certain economic activities (sectoral gender segregation) or the concentration of one sex in certain occupations (occupational gender segregation), including the fact that too few women occupy the better paid decision-making positions (vertical segregation).

102. The situation concerning the gender pay gap as well as the diversity of the solutions that the States have proposed to promote women’s right to equal pay, together with a varying degree of success in achieving the ultimate goal – guaranteeing gender equality in practice - have prompted the Committee to take a fresh look at the provisions of the Charter with a view to analysing and clarifying the State obligations arising from in Articles 4§3 and 20 in the light of the current state of international and European law and practice in the area.

103. In this respect, the Committee wishes to recall its approach to the interpretation of the Charter. Thus, in interpreting the provisions of the Charter, it has to take into account not only current conditions and relevant international instruments, but also emerging new issues and situations. In other words, the Charter is a living instrument and therefore the Committee interprets the rights of the Charter in a dynamic manner having regard to present day requirements.

104. In the light of the above considerations and taking into account the allegations presented and the information submitted by the parties as well as the information received from other sources, the Committee will consider the issues at stake in the following order:

(a) First, the Committee will assess UWE's allegations concerning the respect for the right of equal pay for equal work or work of equal value from two angles:

- The obligations of the State as regards the recognition and the enforcement of the right to equal pay under Articles 4§3 and 20.c of the Charter. These obligations include the following:
 - recognition in legislation of the right to equal pay for equal work or work of equal value;
 - ensuring access to effective remedies when the right to equal pay for equal work or work of equal value has not been guaranteed;
 - ensuring pay transparency and enabling job comparisons;
 - maintaining effective equality bodies and other relevant institutions;
- The obligations of the State to adopt measures to promote the right to equal pay for equal work or work of equal value, under Article 20.c of the Charter. These obligations include the following:
 - collection of reliable and standardised data with a view to measuring the gender pay gap;
 - adoption of measures to promote equal opportunities through gender mainstreaming.

(b) Secondly, the Committee will assess the issues arising in relation to the representation of women in decision-making positions within private companies under Article 20.d of the Charter, according to which States Parties have undertaken to ensure and promote the right to equal opportunities and equal treatment in the field of career development, including promotion.

I. ALLEGED VIOLATION OF ARTICLES 4§3 AND 20.C OF THE CHARTER AS REGARDS RECOGNITION AND ENFORCEMENT OF THE RIGHT TO EQUAL PAY

105. Articles 4§3 and 20.c of the Charter read as follows:

Article 4 – Right to a fair remuneration

Part I: “All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.”

Part II: “With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

...

3. to recognise the right of men and women workers to equal pay for work of equal value;

...

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.”

Article 20 – Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

Part I: “All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

Part II: “With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields: (...)

...

c terms of employment and working conditions, including remuneration; ...”

A – Arguments of the parties

1. The complainant organisation

Recognition of the right to equal pay in legislation

106. UWE highlights that most international bodies have requested the adoption of specific legislation to fight discrimination and gender inequalities, in particular in the field of equal pay between women and men. Despite the obligations stemming from the European Union Law in this field and the fact that there have been developments in domestic legislation, the legislative framework is not effective. Bulgaria cannot claim to be meeting its obligations under the Charter with regard to equal pay for women and men for equal work.

Effective remedies

107. UWE states that in Bulgaria women and men do not receive equal pay for equal, similar or comparable work. There is a low number of complaints relating specifically to women’s rights. UWE further alleges that, in any company, not only is it unrealistic to ask employers for evidence of inequalities, but it also leaves the door open to a hurried dismissal on other grounds. There is a clear culture of corporate secrecy. Moreover, the cost of complaint or appeal proceedings, the energy they require and the pressure they place on women raise so many difficulties that no woman would go into such proceedings unless her contract has already been, or is in the process of

being, terminated. There remains an additional obstacle, which is the limitation period that applies in the area of pay disputes.

108. UWE considers that all this, together with the cost of such anti-discrimination proceedings for the victims and the fact that a limitation period applies in the area of pay disputes, results in an uncertain and costly process.

Pay transparency and job comparisons

109. UWE refers to the complexities of objective measurement of wages inequalities and the lack of pay transparency. No precise statistics exist in this respect.

110. Concerning the classification systems, UWE also alleges that there is a lack of occupational categories with clearly defined classification criteria, and that there is no information whatsoever on the number of non-neutral classifications or on the possibility of making pay comparisons outside the company.

Equality bodies and other institutions

111. UWE states that the National Council on Gender Equality is an advisory body which establishes the general thrust of gender equality policy in Bulgaria through annual national programmes to promote gender equality and related monitoring reports. However, UWE alleges that this Council does not have sufficient information on equality issues on which to base its work, or financial or human resources. There are no formal institutional focal points for gender equality issues or key contact persons within ministries. Moreover, according to UWE, no resources are allocated for the supervision of gender mainstreaming activities by ministries. UWE questions whether such activities exist and indicates that it cannot be established that there is a national co-ordinating body.

112. UWE further states that, in 2005, a Commission for Protection against Discrimination was set up to act as the specialist state body for the implementation of gender equality and anti-discrimination policies. However, few gender mainstreaming methods, such as consultations with the relevant players or gender-differentiated statistics, are used. There are plans to use evaluation, indicators and the progress of regulatory activities in the future. Funding for further training for public employees has been provided by external programmes such as MATRA and PROGRESS.

113. In 2003, Bulgaria set up the Office of the Ombudsperson. The Ombudsperson's task is to make use of all the means provided for by the law to defend citizens' rights and freedoms when they are infringed or simply threatened by the actions or inaction of the state or municipal authorities, or their administrative departments, or by persons employed to provide public services. The Ombudsperson acts independently. He/she

complies only with the Constitution, the law and the international agreements signed by Bulgaria. He/she does not impose their decisions on other institutions. He/she may only issue decisions which repeal, amend or replace the acts of state authorities and local authorities. The Ombudsperson's tasks are most certainly not confined to equality issues. According to UWE, a woman, who is a former member of parliament, occupies the post, and she has neither been granted the means to properly fulfil the objectives inherent in the office nor been provided with the necessary training. At local level, there are also ombudspersons officers in each of the larger municipalities. In Sofia, this is also a woman who has no specialisation in equality issues or specific training. UWE states that the ombudsperson and its ombudspersons officers at the local level should be trained in equality issues, if progress is to be achieved.

114. The General Labour Inspectorate has access to the register of employment contracts and is managed by the government revenue office. The Inspectorate does not check that the principle of equal pay for women and men is applied. In a growing number of cases, specific data on undeclared work are collected through the inspection process, then entered in the common labour inspectorate register. This process does not cover pay equality issues. The General Labour Inspectorate carries out joint inspections with other public authorities such as the government revenue office, the employment office, the national social security institute, the national police force and the authorities in charge of migration. From 2007 to 2009, between 3,000 and 4,000 joint inspections were carried out, showing the potential to work in co-operation with other public authorities with responsibility for equality. However, UWE regrets the lack of figures referring to the actual effectiveness of the actions of the Labour Inspectorate.

2. The respondent Government

General remarks

115. The Government states, firstly, that the complaint is not founded, as it does not refer to sufficiently specific facts and circumstances documenting the unequal position of working women in Bulgaria. UWE does not present the situation in a systematic way but describes, in a superficial and schematic way, general problems about which the Bulgarian state, and probably other respondent states, are not able to express a specific position.

Recognition of the right to equal pay in legislation

116. Furthermore, the Government states that the Bulgarian legislation guarantees in a sufficiently effective way the equality of women on the labour market, and it disagrees with UWE's allegation that the legislation is obsolete and ineffective. The Law on Protection against Discrimination of 2003, last amended and supplemented in December 2016, provides, according to Article 2, for everyone's right to equality before the law, equality in treatment and opportunities to take part in public life and effective protection against discrimination, and explicitly includes gender among the prohibited discriminatory criteria.

117. According to Article 4.1 of the Law on Protection against Discrimination, “any direct or indirect gender-based discrimination is prohibited (...)”. Chapter 2, Article 1 of the Law explicitly provides for the protection from discrimination in employment, a principle also explicitly set forth in the Labour Code. Moreover, in 2016, the Law on Equality between Women and Men was adopted, which, in addition to laying down the principle of equality, sets out the specific rights and obligations of the state authorities for its practical implementation.

118. As regards any violations of the labour legislation (including with respect to equality), workers, as well as their trade unions, can file a case with the Labour Inspectorate. By virtue of Article 404 of the Labour Code, when violations are found, the Inspectorate may issue mandatory prescriptions for the violation and impose administrative penalties under Article 413.1 of the Labour Code. It is bound to keep secret the source that disclosed the violation.

Effective remedies

119. Efficient protection against violations of the principle of equality may be achieved before the court. Apart from cases when the violation is declared a criminal offence, each and every labour dispute, including the ones concerning a violation of the principle of equality in employment, falls within the jurisdiction of the civil courts. Court protection against discrimination is also provided for in Article 71 of the Law on Protection against Discrimination.

120. In relation to the allegations that Bulgaria does not provide any data on the number of complaints lodged and the types of grounds, the Commission for Protection against Discrimination initiated during the period 2012-2017 168 files based on gender. Of these files, 64% concern multiple discrimination based on gender. The grounds that are most frequently present in combination with gender in cases of multiple discrimination are “disability”, “education” and “marital status.” During the same period, the Commission for Protection against Discrimination initiated 13 sexual harassment procedures. Sexual harassment cases are delicate and frequently there are no witnesses. For this reason, there have not been many complaints lodged to the Commission, which contain such grounds. It is important to point out that the Commission considers different forms of discrimination as well as cases of multiple discrimination.

121. The Government further states that there are no specific statistics about the cases of discrimination under Article 14 of the Law on Protection against Discrimination, in which the complainant is a “woman”. However, an analysis of the practice of the Commission for Protection against Discrimination makes it clear that the prevailing part of the files heard by the Second Standing Panel of the Commission for Protection against Discrimination based on gender are raised by women. They are

discriminated against due to unequal pay, as a result of being neglected as employees, and, moreover, they are sometimes subject to mockery. The Commission frequently receives complaints concerning dismissal during pregnancy, as well as harassment, sometimes in the context of pregnancy.

122. In relation to guaranteeing equal pay for equal or comparable work, Bulgarian courts frequently interpret the failure to fulfil the obligation referred to in Article 14, paragraph 1 of the Law on Protection against Discrimination, as an independent violation under the law. Regardless of the freedom of negotiation pertaining to remuneration, the employer cannot ignore the principle of equal pay referred to in Article 243 of the Labour Code, which is also stated in Article 14 of the Law on Protection against Discrimination.

123. According to the Bulgarian case law, work of equal value must be remunerated with the same wage, no matter who performs it. Equality is determined by an equivalent educational qualification, duration of the work effort, productivity and conditions under which the work is being performed. As examples of good case law, in view of encouraging equality between men and women, including the provision of equal pay for equal work or work of equal value, the Government quotes the decision in case No. 82 of 2016 of the Commission for Protection against Discrimination (administrative case No.185/2015) and Judgment No. 4950 of 2016 of the Sofia City Administrative Court (administrative case No. 3949/2016). The complainant worked as a kinesiologist in a municipal day-care centre for social integration. During the relevant period, she received a basic monthly remuneration of BGN 360. The other workers holding the same position were two men, who received basic monthly remunerations within a range from BGN 550 to BGN 640. The job descriptions were the same. The decision took into account that the higher degree of higher education of the other two workers cannot be a criterion substantiating a difference in the work being performed, as long as it is not a precondition required to hold the job position. The Commission imposed a sanction in the decision and issued an order to set the remunerations at an equal level.

Pay transparency and job comparisons

124. The Government does not provide any information on this issue.

Equality bodies and other institutions

125. The Commission for Protection from Discrimination, which comprises highly qualified lawyers, can act in cases of pay discrimination. When violations are identified, it may issue mandatory prescriptions to the employers and officials to remedy the discrimination, as well as to stop the execution of unlawful decisions or orders of the employer, which result or may result in discrimination. The Commission may also impose administrative and criminal liability.

126. In its further response to UWE's submissions, the Government specifies that the network of 22 regional representatives of the Commission for Protection against Discrimination, who work on the territory of the entire country, including remote and isolated areas, may provide free legal aid and consultation to citizens who lodge complaints under Law on Protection against Discrimination. A special directorate is also set up in the Commission for Protection against Discrimination, the "Administrative Legal Service". Their legal advisers provide free legal aid and consultation to citizens who see themselves as victims of discrimination.

127. The powers of the Ombudsperson and the Ombudsperson officers within the local administrations also include protection of gender equality.

B – Assessment of the Committee

Recognition of the right to equal pay in legislation

128. The Committee recalls that under Articles 4§3 and 20.c of the Charter (and Article 1.c of the 1988 Additional Protocol), the right of women and men to equal pay for work of equal value must be expressly provided for in legislation. The equal pay principle applies both to equal work and work of equal or comparable value. The concept of remuneration must cover all elements of pay, that is basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment.

129. The States Parties are obliged to enact legislation explicitly imposing equal pay. It is not sufficient to merely state the principle in the Constitution. States must ensure that there is no direct or indirect discrimination between men and women with regard to remuneration.

130. The principle of equal pay precludes unequal pay irrespective of the mechanism that produces such inequality. The source of discriminatory pay may be the law, collective agreements, individual employment contracts, internal acts of an employer.

131. Any legislation, regulation or other administrative measure that fails to comply with the principle of equal pay must be repealed or revoked. The non-application of discriminatory legislation is not sufficient for a situation to be considered in conformity with the Charter. It must be possible to set aside, withdraw, repeal or amend any provision in collective agreements, individual employment contracts or internal company regulations that is incompatible with the principle of equal pay (Conclusions XIII-5, Statement of Interpretation on Article 1 of the 1988 Additional Protocol).

132. The Committee notes that, in Bulgaria, the Constitution establishes the principle of equality (Article 6) and Article 5 refers to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as part of its domestic legislation. Article 243(1) of the Labour Code guarantees that women and men shall be entitled to equal pay for equal work or work of equal value. Moreover, Section 14 of the Law on Protection against Discrimination, which entered into force on 1 January 2004, provides that the employer shall ensure equal remuneration for equal or equivalent

work. It applies to all types of remuneration, regardless of whether paid directly or indirectly, in cash or in kind.

133. The Committee also takes note that the Law on Equality between Women and Men Act was adopted in 2016. In addition to laying down the principle of equality, the Law provides for specific rights and obligations of state authorities to ensure its practical implementation. The Committee notes that, according to the European Network of Legal Experts on Gender Equality and Non-Discrimination, Country Report on gender equality: Bulgaria 2018, this legislation has not yet been fully implemented, as a result of the 2016 political crisis. The Committee considers that the adoption of this law is nevertheless a positive development concerning the obligations stemming from the Charter in this respect.

134. In view of the above, the Committee considers that the obligation to recognise the right to equal pay for work of equal value is satisfied.

Effective remedies

135. The Committee recalls that domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court. Effective access to courts must be guaranteed for victims of pay discrimination. Therefore, proceedings should be affordable and timely.

136. Anyone who suffers pay discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and to act as a deterrent. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter.

137. The burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes she or he has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of non-discrimination (Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol).

138. Retaliatory dismissal in cases of pay discrimination must be forbidden. Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason. In this case, the employer must reinstate her/him in the same or a similar post. If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer.

139. The Committee observes that there are no data on the number of cases related to gender pay discrimination in Bulgaria. According to the European Network of Legal Experts in Gender Equality and Non-Discrimination, Country Report on Gender Equality: Bulgaria 2018, the equality body, the Commission for Protection against Discrimination (CPD), is the preferred forum for women who seek protection against pay discrimination. There are certain barriers faced by women with respect to litigating before courts on this issue. If a victim has introduced its complaint before the CPD first (although legally the victim could submit it afterwards to a court to obtain compensation), this does not happen in practice. The Committee also notes that courts are the only bodies authorised to award compensation and order the defendant to stop the discrimination and abstain from future violations. However, cases do not often arrive to the courts, as a court does not always accept that the decision of the CPD is sufficient ground to grant compensation. The above-mentioned Country Report also states that there is no specific category of legal aid available to victims of gender discrimination in general. Legal aid is available based on the general eligibility criteria and the required means test under the Legal Aid Act, which is provided based on the income of the person and her/his family; a declaration on the income status and property of the person; family status; health status; employment status; age; or other circumstances (Article 23 paragraph 3).

140. The current Bulgarian legislation as interpreted in case law, has redefined the situation regarding the shift in the burden of proof in cases relating to pay discrimination. Before the reform of the Anti-Discrimination legislation, victims of discrimination had to prove their claim and not simply state the facts indicating a prima facie violation. The former situation made it very difficult for women to bring successful discrimination complaints. The legislation has changed this aspect and the obligation to shift the burden of proof is now satisfied.

141. As regards compensation, the Committee recalls that it has previously concluded that the situation in Bulgaria was not in conformity with the Charter on the ground that there was (and still is) a predetermined upper limit on compensation for workers who are dismissed as a result of discrimination which may preclude damages from making good the loss suffered and from being sufficiently dissuasive (Conclusions 2014, Bulgaria, Article 4§3). The Committee further notes from the above-mentioned Country Report that the existing compensations are very low and neither dissuasive nor commensurate with the damages suffered by the victim.

142. In view of the above, the Committee considers that the obligation to ensure access to effective remedies is not satisfied.

Pay transparency and job comparisons

143. The Committee considers that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities.

144. States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender. The Committee regards such measures as indicators of compliance with the Charter in this respect.

145. In order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, educational and training requirements must be taken into account. The Committee further observes that the notion of equal work or work of equal value has a qualitative dimension and may not always be satisfactorily defined, thus undermining legal certainty. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination. Moreover, such systems must consider the features of the posts in question rather than the personal characteristics of the workers (Conclusions XV-2, Article 4§3, Poland).

146. The Committee considers that the possibility of making job comparisons is essential to ensuring equal pay. Lack of information on comparable jobs and pay levels could render it extremely difficult for a potential victim of pay discrimination to bring a case to court. Workers should be entitled to request and receive information on pay levels broken down by gender, including on complementary and/or variable components of the pay package. However, general statistical data on pay levels may not be sufficient to prove discrimination. Therefore, in the context of judicial proceedings it should be possible to request and obtain information on the pay of a fellow worker while duly respecting applicable rules on personal data protection and commercial and industrial secrecy.

147. Moreover, national law should not unduly restrict the scope of job comparisons, e.g. by limiting them strictly to the same company. Domestic law must make provision for comparisons of jobs and pay to extend outside the company concerned where necessary for an appropriate comparison. The Committee views this as an important means of ensuring that the equal pay principle is effective under certain circumstances, particularly in larger companies or specific sectors where the workforce is predominantly, or even exclusively, of one sex (see Statement of interpretation on Article 20, Conclusions 2012). The Committee considers notably that job comparisons should be possible across companies, where they form part of a group of companies owned by the same person or controlled by a holding or a conglomerate.

148. As regards pay transparency, the Committee notes that there is no specific information in the submissions of the Government or in domestic legislation. According to the above-mentioned Country Report, national case law has not dealt with the principle of transparency. The Committee further notes from the above-mentioned Report that Bulgaria has not yet taken the necessary measures to ensure application of Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency.

149. According to the same Report, there is no legal provision that lays down parameters for establishing the equal value of work performed, such as the nature of the work, training and working conditions.

150. The Committee notes that, according to UWE, there is no job classification system with clearly defined occupational categories and classification criteria, and no information on the possibility of making job comparisons outside the company. The Government does not submit any information on this issue. The Committee recalls that in its previous conclusions, it had asked whether job comparisons beyond individual firms are possible in Bulgaria (Conclusions 2012, Bulgaria, Article 4§3; Conclusions 2014, Bulgaria, Article 20; Conclusions 2016, Bulgaria, Article 4§3). None of the national reports submitted to the Committee provided any information on this point.

151. The Committee considers that there is no evidence that job classification systems are applied and used effectively in practice to prevent pay discrimination and no evidence that the notion of “equal value” is adequately defined in domestic law.

152. Moreover, there is no information on whether job comparisons across companies are possible. The Committee considers that it has not been demonstrated that a potential victim of pay discrimination may have access to all the necessary information with a view to effectively bringing a case to court.

153. On the basis of the above, the Committee considers that the obligation to ensure pay transparency and to enable job comparisons is not satisfied.

Equality bodies and other institutions

154. The Committee considers that the satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (ICJ v. Portugal, Complaint No. 1/1998, op.cit., §32). The Committee has considered that measures to foster the full effectiveness of the efforts to combat discrimination include setting up of a specialised body to monitor and promote, independently, equal treatment, especially by providing discrimination victims with the support they need to take proceedings (Conclusions XVI-1, Article 1§2, Iceland). The status of such equality bodies in terms of their mandate, their independence and resources must be clearly defined. In this context, the Committee also has regard to the criteria for national human rights institutions set out in the so-called Paris Principles adopted in 1993 by the United Nations General Assembly.

155. As regards the mandate of equality bodies, the Committee considers that it should include provision for functions such as the following:

- monitoring and promotion: in cooperation with labour inspectorates or other relevant bodies, monitor the situation regarding gender discrimination, including in respect of pay, and produce regular reports; conduct inquiries at their own initiative and make recommendations; raise awareness of the equal pay principle across society.
- decision-making: receive, examine, hear cases of discrimination; issue binding or authoritative decisions on complaints concerning alleged discrimination and ensure the implementation of such decisions.
- assistance to victims: provide personal and legal support to complainants; mediate settlements in cases of discrimination; represent victims in cases of discrimination; and monitor the implementation of decisions in such cases.

156. The Committee further considers that in addition to having a clear and comprehensive mandate, these specialised equality bodies must be equipped with the necessary human and financial resources as well as infrastructure to ensure that they can effectively combat and eliminate pay discrimination.

157. The Committee wishes to emphasise that it is not within the scope of the examination of this complaint to conduct an exhaustive analysis of the conformity of the situation with the above criteria. The Committee will restrict its examination to assessing in light of the information available to it the effectiveness of equality bodies and other relevant institutions in ensuring equal pay for equal work or work of equal value.

158. The Committee notes the existence in Bulgaria of the Commission for Protection against Discrimination (CPD). It was established pursuant to the provisions of the Law on Protection against Discrimination and contributes to the formation and implementation of the anti-discrimination policy of Bulgaria. The CPD, in its observations via EQUINET, provided information on its active contribution to the development of the national policy for socio-economic inclusion of women, including by ensuring equal pay for equal work or work of equal value. The Committee further notes the existence of the possibility of providing free legal aid to citizens when filing complaints in the field of discrimination and of the existence of a network of 22 regional representatives working on the territory of the whole country, as well as legal counsels.

159. The Committee observes that the CPD has broad functions, combining monitoring and promotion functions, assistance to victims as well as litigation in any case of discrimination. It can initiate discrimination cases on its own and assist the victims of discrimination in bringing a claim. The role and competences of the CPD are

regulated in Chapter 3 of the Law on Protection against Discrimination: if the Commission finds violations, it is responsible for the halting of the violations and the restoration of the initial situation, issues coercive prescriptions, imposes sanctions, makes suggestions to national and local governmental bodies, provides independent support to victims of discrimination, gives opinions on drafts for normative acts, and carries out independent research and monitoring.

160. The Committee further observes however that according to the European Network of Legal Experts in Gender Equality and Non-discrimination, Report on "Equality bodies making a difference" (2018), the Bulgarian CPD operates in a context of political hostility. The Report states that this has an impact in the ability of CPD to exercise its functions, as there is weak follow-up to the actions and discrimination cases brought and advocated by the CPD.

161. Concerning CPD's budget, the Committee notes that it has been increasing in recent years. In 2014, it was BGN 2,000,000 (approx. €1,000,000). In 2018, it increased to BGN 2,570,000 (approx. €1,285,000). However, the above-mentioned Report on Bulgaria points out that in its public annual reports to Parliament CPD has repeatedly advocated for funding to adequately back its activities. In addition, CPD has stated that three of its regional offices are not operational due to a lack of funds needed to staff them. According to CPD, the 21 operational CPD regional offices are each staffed by a single employee. In four of the country's 28 regions, CPD has yet to establish a regional office, not having the means to secure local office space. Where CPD regional offices do exist, they are hosted in the respective regional governor offices (rather than in facilities of CPD's own).

162. The Committee notes that the CPD has broad functions in the field of discrimination, which includes supervising the right to equal pay. However, in view of the limited impact in practice of the follow up of the CPD's activities and the resources at its disposal, the Committee considers that the obligation to maintain effective equality bodies with a view to guaranteeing the right to equal pay is not satisfied.

Concluding assessment

163. Firstly, as regards the recognition of the right to equal pay, the Committee observes that the principle of non-discrimination is enshrined in the Constitution and Bulgaria has adopted several laws which recognise the principle of equal pay for women and men. The Committee considers that the legislation recognises the right to equal pay.

164. Secondly, the Committee considers that there is no information on the number of relevant cases on gender pay discrimination. Also, there are obstacles to accessing judicial proceedings in this respect, such as the existing costs and the difficulties to access the necessary evidence. Moreover, there is a predetermined upper limit on compensation for workers who are dismissed as a result of gender discrimination, which may preclude damages both from making good the loss suffered and from being

sufficiently deterrent. Therefore, the obligation to ensure access to effective remedies is not satisfied.

165. Thirdly, the Committee notes that there is no explicit definition of pay in the law, the principle of transparency does not appear in the legislation and there is no information on whether individual workers have access to relevant data concerning wages in their organisation or outside their own company. Moreover, the Committee considers that there is no information about the scope of job comparisons, i.e. whether it is wide enough to extend outside the company directly concerned to include a group of companies owned by the same person or controlled by a holding or a conglomerate. In addition, there is a lack of clear and gender neutral job classification systems. Therefore, the obligation to ensure pay transparency and enable job comparisons is not satisfied.

166. Lastly, as regards the role of the CPD, the Committee notes that, even though it has a rather broad mandate, it has insufficient means and its decisions are not always followed up. The Committee considers therefore that the obligation to maintain an effective equality body with a view to guaranteeing the right to equal pay is not satisfied.

167. The Committee therefore holds that there is a violation of Article 4§3 and 20.c of the Charter.

II. ALLEGED VIOLATION OF ARTICLE 20.C OF THE CHARTER AS REGARDS MEASURES TO PROMOTE EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN IN RESPECT OF EQUAL PAY

168. Article 20.c of the Charter reads as follows:

Article 20 – Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

Part I: “All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

Part II: “With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields: (...)

...

c terms of employment and working conditions, including remuneration; ...”

A – Arguments of the parties

1. The complainant organisation

169. UWE states that in 2015, the EU indicated that the figures for the gender pay gap were 13.5% in Bulgaria, and 16.3% in the EU. It also indicated that the gender overall earnings gap stood at 34.7% in Bulgaria (the average gender overall earnings gap in the EU stood at 41.1%, according to Eurostat figures 2010). In 2016, the EU published a new country-by-country report on the gender pay gap. According to UWE,

Bulgaria has an unexplained gender pay gap of 7.3% and an explained gender pay gap of 1.3%.

170. UWE also alleges the complexities of objective measurement of wages inequalities. Very few figures and statistics exist in this respect in Bulgaria and UWE points out that the Committee itself has declared this lack of data collection in breach of the Charter (Conclusions 2016, Bulgaria, Article 20).

171. Concerning equal pay of equal or comparable value, UWE states that the legislation is not effective in practice and the relevant provisions are not actually implemented. Likewise, explicit or implicit references to integrated policies, synergies or networks do not mean that such approaches are actually working.

172. Referring to the Government submissions in this respect, UWE also alleges that they merely take the form of a description of the legal and institutional framework, there being a general lack of clarifications which could serve to determine whether the policies actually implemented regarding the right to equal pay conform to the Charter.

173. Concerning the National Strategy on Promotion of Gender Equality for 2009-2015, it is being implemented and includes the planned gender mainstreaming activities, but UWE states that nothing is yet known about the outcome. Although annual plans are published, there has not been a review of the strategy. In 2000, the Ministry of Labour and Social Policy was designated as the institution in charge of devising, co-ordinating and implementing the State's gender equality policy. The Department of Equal Opportunities for Women and Men was set up within the Ministry of Labour at the beginning of 2004 and has expanded and evolved since then.

174. In reply to the Government's statement that the policies adopted are vital, UWE states that there is no sign of gender mainstreaming in the policies concerned, decision-making, access to resources, procedures and practices, methodology, implementation, monitoring or evaluation. There is no monitoring body and, above all, no checks are provided for or carried out. The employment equality policy is not fully effective and coherent, as there is no general framework. It is disparate in nature and refers to negotiation at company level. It is also inconsistent. The various bodies are not provided with basic training in gender mainstreaming to enable them to implement internal plans or measures. Moreover, UWE refers to the CEDAW's conclusion pointing to the lack of information on the results achieved as well as the obstacles and challenges encountered in implementing the 2009-2015 gender equality program.

2. The respondent Government

175. The Government describes its effort in taking measures to address segregation and balance the representation of men and women through anti-discrimination policies, equal opportunities for men and women and policies on equal pay for equal work, aimed at eliminating gender inequality in employment. The vertical segregation (glass ceiling) proved to be more stable, while horizontal segregation decreases, though slowly. Significant progress is revealed by data on Bulgaria from the new edition of the Gender Equality Index of the European Institute for Gender Equality (EIGE) of 11 October 2017, which is based on 2015 statistics. In general, Bulgaria moved forward by 10 positions compared to the 2015 edition, thanks to the progress achieved in “Money”, “Empowerment”, “Knowledge” domains and ranked 16 out of the 28 EU countries.

176. Gender differences in pay do not result from non-effective legislation or lack of compliance but are due to structural peculiarities of the labour market in Bulgaria. Feminisation of certain sectors like healthcare, services and education are the real reasons for such inequality. The Government states that if UWE had carried out an analysis of several sectors of the labour market and compared the pay between men and women in the same positions in different sectors, segmented by gender, it would confirm compliance with the effective norms. Three groups of key factors lead to gender differences in pay:

- social and economic factors – horizontal and vertical gender segregation of the labour market;
- career development;
- traditions and stereotypes that affect the choice of education paths, particularly for girls who are referred to typically “female” professions.

177. A special national strategy for promotion of gender equality for the period 2016-2020 was also adopted. The Government further notes that on 7 March 2018 the Council of Ministers adopted the National Action Plan for Encouraging the Equality between Women and Men for 2018. Its aim is the implementation of a uniform policy of equality between women and men, improving awareness of the meaning of gender equality and overcoming of any related stereotypes. The activities are structured into five priority areas:

- Increase the participation of women in the labour market and equal degree of economic independence;
- Decrease of the gap in pay and incomes between the genders;
- Encourage gender equality in the decision-making processes;
- Fight against any violence based on gender and protection of and support to the victims; and
- Change in the gender stereotypes existing in society in various spheres of public life.

178. The National Action Plan for Encouraging the Equality between Women and Men for 2018 pays special attention to measures that provide for better balance between professional and personal life of parents with small children and provision of employment to unemployed persons by providing opportunities to take care of children. The measures that are particularly highlighted aim to make the retirement age of men and women equal and encourage employers to employ persons, single (or adoptive) parents and mothers with children aged up to 5.

B – Assessment of the Committee

a) *Key figures as regards equal pay in Bulgaria*

179. According to Eurostat, in 2017, women's gross hourly earnings were on average 16% below those of men in the European Union (EU-28). In Bulgaria, the hourly gender pay gap stood at 13.6%, below the EU average. It was 13% in 2010, 14.2% in 2014 and 14.4% in 2016. The Committee further notes that in specific sectors, such as in the field of health care and social work, the pay gap was over 30% in 2012 and 2013. The gender overall earnings gap in Bulgaria stood at 22.8% in 2014 (the average gender overall earnings gap in the EU at that time was 39.6%). The adjusted or “unexplained” gender pay gap is 18.4%, which is relatively high compared to an EU-28 average of 11.5% (2014 data, see the Eurostat study “A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data”, 2018).

b) *Collection of data on equal pay and measures to promote equal opportunities*

180. The Committee considers that in order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases are crucial. The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap. The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value. In addition, to the overall pay gap (unadjusted and adjusted, the Committee will also, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc.

181. The Committee considers that States are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it. The Committee here recalls its previous holding that the collection of data with a view to adopting adequate measures is essential to promote equal opportunities. Indeed, it has held that where it is known that a certain category of persons is, or might

be, discriminated against, it is the duty of the national authorities to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and to avoid abuse) is indispensable to the formulation of rational policy (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

182. The Committee further recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact (ICJ v. Portugal, Complaint No. 1/1998, op.cit., §32). Conformity with the Charter cannot be ensured solely by legislation and States Parties must take measures to actively promote equal opportunities. Besides the fact that legislation must not prevent the adoption of positive measures or positive action, the States are required to take specific steps aimed at removing *de facto* inequalities that affect women's and men's chances with regard to equal pay.

183. While the Committee acknowledges that the realisation of the obligation to take adequate measures to promote equal opportunities is complex, the States Parties must take measures that enable the achievement of the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources (International Association Autism-Europe (AIAE) v. France, Complaint No. 13/2002, op. cit., §53).

184. Under Article 20.c of the Charter the obligation to take appropriate measures to promote equal opportunities entails gender mainstreaming which is the internationally recognised strategy towards realising gender equality. It involves the integration of a gender perspective into the preparation, design, implementation, monitoring and evaluation of policies, regulatory measures and spending programmes, with a view to promoting equality between women and men, and combating discrimination. The Committee considers that gender mainstreaming, as recommended in particular by the Committee of Ministers of the Council of Europe (Recommendation Rec(1998)14), should cover all aspects of the labour market, including pay, career development and occupational recognition, and extending to the education system (Conclusions XVII-2, Article 1 of the 1988 Additional Protocol, Greece).

185. States should assess the impact of the policy measures adopted in tackling vertical or horizontal occupational gender segregation in employment, improving women's participation in a wider range of jobs and occupations.

186. Among other measures that States could adopt to reduce the gender pay gap and which the Committee regards as relevant indicators for assessing compliance with the obligations laid down by the Charter the following are highlighted:

- adoption and implementation of national action plans for employment which effectively ensure equality between women and men, including pay;
- requiring individual undertakings to draw up enterprise or company plans to secure equal pay;
- encouraging employers and workers to deal with equality issues in collective agreements;
- raising awareness of the equal pay principle among employers, organisations and the public at large, including through the activities of equality bodies.

187. The European Commission 2018 factsheet on gender pay gap refers to some of the factors that contribute to the gender pay gap in Bulgaria. It includes the fact that women take charge of important unpaid tasks, such as household work; women also tend to spend periods off the labour market more often than men and these career interruptions not only influence hourly pay, but also impact future earnings and pensions; there is segregation in education and in the labour market and this means that, in some sectors and occupations, women tend to be overrepresented, such as in teaching or sales; finally, pay discrimination, while illegal, continues to contribute to the gender pay gap.

188. The Committee notes that the Government has adopted several measures to combat gender pay discrimination, such as the national strategy for promotion of gender equality for the period 2016-2020 and the National Action Plan for Encouraging the Equality between Women and Men for 2018. However, the Government has recognised that traditions and stereotypes, which affect the choice of education paths, particularly for women, are still very present. Bulgaria is characterised by a continuing pronounced vertical and horizontal occupational segregation and a persistent pay gap between women and men. There is a big gap between the formal recognition of the equal pay principle and its implementation in practice.

189. The Committee observes that the Government has collected and analysed data, provided statistics regarding the situation of women in the labour market and has also adopted gender strategies. However, the gender pay gap is a persistent problem and despite the measures adopted, the gap is either stagnant or it has increased in recent years. The Government has stated that the reasons behind this situation include strong segregation of the labour market, existing stereotypes in the society, and career development obstacles for women. No specific measures have been detailed in the Government submissions about how this is tackled. The Committee considers that the set of measures to promote equal opportunities of women in the labour market have been insufficient and have not been able to produce the results expected.

190. In the light of the above, the Committee holds that as regards measures to promote equal opportunities between women and men, there is a violation of Article 20.c of the Charter.

III. ALLEGED VIOLATION OF ARTICLE 20.D OF THE CHARTER AS REGARDS ENSURING BALANCED REPRESENTATION OF WOMEN IN DECISION-MAKING POSITIONS WITHIN PRIVATE COMPANIES

191. Article 20.d of the Charter reads as follows:

Article 20 – Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

Part I: “All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

Part II: “With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields: (...)

(...)

d. career development, including promotion.”

A – Arguments of the parties

1. The complainant organisation

192. UWE submits that there are no laws in Bulgaria that promote balanced access for women to company boards. As a result, according to a study of January 2016 by the European Union on “Gender balance in corporate boards”, the percentage of women on company boards is 22.7%. Additionally, the EU’s report of 2016 on Women on Boards for Bulgaria shows pronounced gender roles, discrimination and segmentation of the labour market. Bulgaria has very few women in decision-making positions. According to the figures submitted by the ETUC in 2016, the percentage of women represented in company boards is 17.9%.

193. The lack of a binding mechanism to foster representation of women on boards of the largest private companies explains the low figure. UWE states that the figure relates to the largest companies, so the number of women on boards of smaller companies is much lower.

2. The respondent Government

194. The Government states that UWE’s allegations about management positions held by women are unfounded. Bulgaria ranks in the top among European states in terms of highest share of women holding management positions. According to Eurostat data of 6 March 2017, Bulgaria is among the four countries in the EU with the lowest difference in pay between men and women holding management positions (15%). With regard to the number of women holding management positions, Bulgaria ranks as the second country in the entire European Union, just behind Latvia. This is indicated in the latest data of Eurostat prepared for International Women’s Day.

195. In 2017, data of the National Statistical Institute shows that the number of employed persons stood at 3,150,300, of which 1,682,600, or 53.4%, were employed men, and 1,467,700, or 46.6%, were employed women. There is employment growth for both genders compared to the preceding year (2016). Employment among men has gone up by 4.7%, while for women the reported increase amounts to 4.2%. In 2017 the number of persons employed in management positions stood at 181,400, of which 110,300 were men and 71,100 were women. In 2017, there was a 2.7 % increase in the number of women holding management positions, rising from 69,300 to 71,100. The number of men for the same period has gone down by 2.8%, from 113,500 to 110,300. The relative share of men holding management positions for the period under review was 6.6% and the relative share of women was 4.8%. The difference between the relative shares of women and men holding management positions decreased from 2.9% in 2013 to 1.7% in 2017. For the period 2013 – 2017 the relative share of women went up from 36.5 % to 39.2%, while the men's share decreased from 63.5% to 60.8%.

B – Assessment of the Committee

196. The Committee considers that Article 20.d of the Charter imposes positive obligations on States to tackle vertical segregation in the labour market, by means of, inter alia, promoting the advancement of women in decision-making positions within private companies. This obligation may entail introduction of binding legislative measures to ensure equal access to management boards of companies. Measures designed to promote equal opportunities for women and men in the labour market must include promoting an effective parity in the representation of women and men in decision-making positions in both the public and private sectors (Conclusions 2016, Article 20, Portugal).

197. The Committee observes that according to the European Commission's 2019 Report on equality between women and men, the proportion of women on management boards of the largest publicly listed companies in countries with binding legislative measures has risen from an average of 9.8% in 2010 to 37.5% in 2018. In countries with non-binding measures, including positive action to promote gender balance, the corresponding percentages were 12.8% in 2010 and 25.6% in 2018, whereas in countries where no particular action (apart from self-regulation by companies) has been taken, the situation remained almost stagnant with 12.8% on average in 2010 and 14.3% in 2018. The overall EU-28 average was 26.7% in 2018. The Committee further observes that PACE Resolution 1715(2010) recommends that the proportion of women on management boards of companies should be at least 40%.

198. Finally, the Committee recalls that in respect of Article 20.d, as for Article 20.c, States must take measures that enable the achievement of the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.

199. The Committee notes that according to data provided by the European Institute for Gender Equality (EIGE) by April 2019, the proportion of women on management boards of Bulgaria's largest listed companies was 15.9%. It was 14.5% in 2018 and 12.8% in 2017. In 2010, women on management boards accounted for 11.2% of board members in the largest listed companies.

200. The Committee notes that there exists no statutory framework on representation of women in decision-making positions of private companies in Bulgaria. The National Action Plan on Equal Opportunities for Women and Men for 2012 sets out voluntary targets to ensure better representation of women in decision-making positions both in the public and private sectors, and to eliminate gender stereotypes. A total of 13 companies have agreed to abide by the targets of achieving 30% representation of women in decision-making positions by 2015, and 40% representation of women by 2020.

201. The data provided by EIGE show that there is a very low representation of women on management boards of the largest listed companies, well under the target of 30% established in 2015 and very far from the 40% foreseen by the most recent action plan and recommended by the PACE in its Resolution 1715(2010). The Committee considers that the Government has not taken appropriate and effective measures to meet its positive obligations to remedy the under-representation of women in decision-making positions within private companies.

202. Therefore, the Committee holds that there is a violation of Article 20.d of the Charter in this respect.

IV. REQUEST FOR COMPENSATION

203. The Committee decides not to make a recommendation to the Committee of Ministers as regards the complainant's request for a payment of €10,000 in compensation for legal costs incurred in connection with the proceedings. It refers in this respect to the stance taken by the Committee of Ministers in the past (see Resolution CM/ResChS(2016)4 in *European Roma Rights Centre (ERRC) v. Ireland*, Complaint No. 100/2013) and to the letter of the President of the Committee addressed to the Committee of Ministers dated 3 February 2017 in which the President announced that the Committee would for the time being refrain from making recommendations to the Committee of Ministers concerning the reimbursement of costs.

204. The Committee nevertheless maintains its view that reimbursement of costs is in principle justified and appropriate under certain circumstances and an important factor in enabling the complaints procedure to attain the objectives and the impact that led the member States of the Council of Europe to adopt it in the first place.

CONCLUSION

For these reasons, the Committee concludes:

- as regards recognition and enforcement of the right to equal pay for work of equal value,
 - unanimously, that there is no violation of Articles 4§3 and 20.c of the Charter as regards recognition of the right to equal pay in the legislation;
 - by 14 votes to 1, that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that access to effective remedies is not ensured;
 - unanimously, that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that pay transparency is not ensured and job comparisons are not enabled;
 - by 14 votes to 1, that there is a violation of Articles 4§3 and 20.c of the Charter on the ground that the obligation to maintain effective equality bodies in respect of equal pay is not satisfied;
- unanimously, that there is a violation of Article 20.c of the Charter on the ground that there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay;
- unanimously, that there is a violation of Article 20.d of the Charter on the ground that there has been insufficient progress in ensuring a balanced representation of women in decision-making positions within private companies.



Eliane CHEMLA
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary