

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX



14 November 2017

Case Document No. 5

University Women of Europe (UWE) v. Bulgaria
Complaint No. 125/2016

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 3 November 2017

**TO
MR GIUSEPPE PALMISANO
PRESIDENT OF ECSR**

DEAR MISTER PRESIDENT,

With reference to Collective Complaint No 125 of 24.08.2016 lodged against Bulgaria by the international non-governmental organization “University Women of Europe” (UWE) to the European Committee for Social Rights of the Council of Europe (CE) we hereby state the following position:

I. GENERAL NOTES.

The complaint is not motivated. It does not refer to sufficiently specific facts and circumstances evidencing the unequal position of working women in Bulgaria but is a blanket statement of literature thoughts.

On the grounds of art. 4 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints the complaint must “relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured satisfactory application of this provision”. In this case the organization which lodged the complaint submits general and unfounded allegations and does not specify exactly what the claimed violations are expressed in. The government cannot therefore provide specific explanations.

The organization which lodged the complaint refers to general international surveys and reports, which directly refer to Bulgaria. No specific facts and circumstances evidencing violations of the Bulgarian state are specified.

The complaint does not systematize but presents in a superficial and schematic way general problems on which the Bulgarian state, and probably other respondent states, are not able to express a specific attitude.

On the grounds of the above and the arguments stated herein below, the complaint is completely unfounded with respect to Bulgaria, and the allegations contained in it – unproven and it must be therefore rejected in its entirety.

II. ON THE ESSENCE OF SOME OF THE ISSUES RAISED IN THE COMPLAINT.

1. The effective Bulgarian legislation guarantees in a sufficiently effective way the equality of women on the labour market.

The complainant’s allegation that the Bulgarian legislation is obsolete and ineffective cannot be shared. It cannot be shared mostly because the efficiency of legal instruments is not determined by the time of their adoption. In fact, the European Social Charter is also adopted as early as in 1961.

First of all, art. 6, par. 2, sentence 2 of the Bulgarian Constitution of 1991 provides for that *“there shall be no restriction of rights or privileges on the grounds of ... sex”*. On the other hand, art. 48, par. 3 and 4 of the Constitution in particular about the right of labour sets forth the following:

„Art. 48.

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

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

....

The general Anti-Discrimination Act of 2003, last amended and supplemented in December 2016, whose aim according to art.2 is the provision of everyone’s right to equality before the law, equality in treatment and in the opportunities to take part in public life and effective protection against discrimination, includes explicitly among the prohibited discriminatory criteria, in the first place, gender. According to art. 4, par. 1 of the Anti-Discrimination Act *“any direct or indirect gender-based discrimination is prohibited, ...”*. Chapter two, section I of the Act explicitly provides for the protection from discrimination upon exercising of the right of labour.

The protection from discrimination upon exercising of the right of labour is explicitly set forth in the Labour Code, as according to art. 8, par. 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, ...*”. An analogical provision is contained in art. 2 of the Employment Promotion Act, according to which “*upon exercising of the rights and obligations under this Act there may be no direct or indirect discrimination, privileges or restrictions based on ... gender, sexual orientation, ...*”. Along with that, chapter XVI of the Labour Code “Special Protection of Certain Categories or Workers and Employees” contains a separate section II “Special Protection of Women”.

Special legal framework of the equality of the citizens is also contained in the Preschool and School Education Act, the Higher Education Act, the Academic Staff Development in the Republic of Bulgaria Act, the Civil Servant Act, the Social Security Code, the Health Insurance Act, the Social Assistance Act, the Ombudsman Act, etc.

In the presence of such rich framework in 2015 the Equality between Women and Men Act was also adopted, which, in addition to laying down the principle of equality, provides for also the specific rights and obligations of state authorities for its practical implementation.

On the grounds of the legal framework thus presented a special national strategy for promotion of gender equality for the period 2016–2020 was adopted (The equality between women and men is also subject of the Updated Employment Strategy 2013–2020).

2. The application of the legal framework thus presented is guaranteed through the functions of a number of specialized bodies and institutions.

Unjustified are the accusations that in Bulgaria there are no effective remedies for the labour rights of women.

As regards any violations of the labour legislation, including with respect to the equality of genders workers and employees, as well as their trade unions, can file a signal to the labour inspectorate. By virtue of art. 404 of the Labour Code when violations are found the inspectorate may issue mandatory prescriptions for the violation thereof as well as impose administrative-and-criminal liability under art. 413, par. 1 of the Labour Code. It is bound to keep secret the source of the signal for a violation (art. 403, par. 1, subparagraph 2 of the Labour Code).

Protection may be sought from the Commission for Protection from Discrimination, which comprises highly qualified lawyers. When violations are identified it may issue mandatory prescriptions to the employers and officials for remedial of violations of the discrimination prevention legislation, as well as stop the execution of unlawful decisions or orders of the employer, which result or may result in discrimination (art. 76, par. 1 of the Anti-Discrimination Act). The Commission may also impose administrative-and-criminal liability by virtue of art. 78—80 of the Anti-Discrimination Act).

The powers of the ombudsman of the Republic and the ombudsmen at the local administrations also include protection of the gender equality. In this relation we firmly reject the complainant’s reproaches that the Ombudsman of the Republic, as well as the local ombudsmen, do not have special gender-equality qualification. Apart from the circumstance that there is no international act, incl. the European Social Charter, that lays down such requirements (and such could not be laid down anyway), we highlight that the Ombudsman of the Republic, Mrs Maya Manolova, has rich experience in the legislative process as a member of the Bulgarian parliament, and before that – long experience as an attorney-at-law too. The deputy-ombudsman in turn (also a woman) is an associate professor in international public law.

Efficient protection against violations of the principle of equality may be achieved before the court. Apart from the cases when the violation is declared a criminal offence, each and every labour dispute, including one concerning a violation of the principle of equality in labour falls within the jurisdiction of the civil court (art. 360 of the Labour Code). Court protection against discrimination is also provided for in art. 71 of the Anti-Discrimination Act, by virtue of which:

,Art. 71. (1) ... anyone whose rights under this or other laws governing equality in treatment are violated may bring a claim before the regional court, whereby he/she may claim:

1. that the violation is declared;

2. *that the respondent is ordered to cease the violation and reinstate the situation as it was before the violation, as well as to refrain in the future from further violations;*
3. *indemnification for damages.*

(2) *The trade unions and their divisions, as well as the non-profit legal entities performing activity for the public benefit may bring a claim on behalf of the persons whose rights are violated, on their request. ...”*

The proceedings under the specific cases are free for workers and employees.

3. We reject the accusations of virtually unequal treatment of women and men in labour in Bulgaria.

The Bulgarian government and the separate institutions are constantly taking measures to address segregation and balance 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.

Article 243, par. 1 of the Labour Code provides for that “*women and men have the right to equal pay for the same or equal work*”. According to the definition of the European Commission of the gap in pay by gender, data on Bulgaria¹ (14.7%) is below the EU average (16.4 %) based on the latest published data for 2012. Unfortunately, the complaint does not provide information about the definition used in the arguments against the Bulgarian State in this respect.

Also, a significant progress is revealed by data on Bulgaria from the new edition of the Gender Equality Index of the European Institute for Gender Equality of 11 October 2017, which is based on 2015 statistics. There is a significant improvement in the “Money” domain², which reflects differences in monthly income from work. 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 EU 28.

Gender differences in payment, if attorney An Negr refers to the definition quoted in footnote 3, do not result from non-compliance with the effective legislation but are due to structural peculiarities of the labour market in Bulgaria. Feminisation of certain sectors like healthcare, services and education are the true reasons for such inequality. Therefore the complainant should make a competent analysis of several sectors on the labour market and a comparison should be made between the pay of men and women on same positions in different sectors, segmented by gender, which will 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 – women face more impediments to labour market entry, they experience difficulties in combining work with family duties, as well as delayed career development due to interruption of labour life, glass ceiling;
- traditions and stereotypes which affect the choice of education paths, particularly for girls who are referred to typically “female” professions.

The country has good indicators in this respect. This is also due to the policy pursued by the Bulgarian government on combining professional and personal life, promotion of the development of flexible forms of employment, as well as services for raising children or dependants in the family.

According to the effective legislation in the country, a part of the paid (90% of the gross labour remuneration) leave for maternity and birth (the longest one in the world – 410 days) and the leaves for child rising may be used by fathers as well (art. 163-164b of the Labour Code). Equal labour (leaves) and social security (indemnification under the short-term social insurance, personal pension for taking

¹ http://ec.europa.eu/justice/gender-equality/gender-pay-gap/situation-europe/index_en.htm

² <http://eige.europa.eu/gender-equality-index/2015/domain/money/BG>

care of a disabled member of the family) rights related to the combining of the participation in the labour and the cares of dependent family members. This is particularly important for a balanced participation of men and women at work and for sharing family duties. Thanks to this a major step has been made to address gender stereotypes in Bulgaria.

Unfounded are also the complainant's allegations about the holding of management positions by women. Bulgaria ranks in the top among the European states in terms of highest share of women holding management positions. According the Eurostat data of 6 March 2017, Bulgaria is among the four countries in EU with the lowest difference in pay between men and women holding management positions (15%)³.

In our country the number of ladies holding a management positions is second in the entire European Union, only the Latvian women being ahead of the Bulgarian women. This is indicated by an inquiry into the latest data of Eurostat prepared for the International Women's Day.

The statements in the complaint that the annual Plans for Promotion of Gender Equality in Bulgaria are not reported are not true. The plans and reports since 2005 have been published on the website of the Ministry of Labour and Social Policy⁴.

In conclusion:

On the above-mentioned grounds, the government of the Republic of Bulgaria finds complaint No 125 of 24.08.2016 completely unfounded and requests the ECSR to dismiss it wholly.

We firmly object to the complainant's request for recovery of the costs for attorney's fee of attorney An Negr. ECSR does not have such a power. It is not a judicial body. Neither the European Social Charter nor the Additional Protocol to it contains such an obligation of the governments. If such exists, we would claim recovery of the costs of the Government for preparation of the opinions on the admissibility of the complaint and on the merits – in order to ensure equality of the parities in the process.

³ <http://ec.europa.eu/eurostat/documents/2995521/7896990/3-06032017-AP-EN.pdf/ba0b2ea3-f9ee-4561-8bb8-e6c803c24081>

⁴<https://www.mlsp.government.bg/index.php?section=POLICIESI&l=409>