

DECISION ON ADMISSIBILITY

4 July 2017

University Women of Europe v. Croatia

Complaint No. 126/2016

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 293rd session in the following composition:

Giuseppe PALMISANO, President
Monika SCHLACHTER, Vice-President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
Birgitta NYSTRÖM
Petros STANGOS
József HAJDU
Raul CANOSA USERA
Marit FROGNER
François VANDAMME
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary,

Having regard to the complaint registered on 24 August 2016 as number 126/2016, lodged by University Women of Europe (“UWE”) and signed by Ms Anne Nègre, a lawyer appointed by the President of UWE, Ms Edith Lommerse, requesting the Committee to find that the situation in Croatia is not in conformity with Articles 1, 4, 4§3 and 20 of the Revised European Social Charter (“the Revised Charter”), read alone or in conjunction with Article E, as well as with the 1961 European Social Charter (“the 1961 Charter”) and Article 1 of the 1988 Additional Protocol; the complaint was notified to the Government of Croatia (“the Government”) on 27 September 2016;

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government on the admissibility of the complaint registered on 14 December 2016;

Having regard to the responses submitted by UWE to the Government's observations on 21 March 2017;

Having regard to the additional observations of the Government registered on 19 May 2017;

Having regard to Article 1 of the 1961 Charter and Article 1 of the 1988 Additional Protocol, which read as follows:

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

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

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.”

Article 1 of the Additional Protocol - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

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: “The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles:

1. 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:
 - access to employment, protection against dismissal and occupational resettlement;

- vocational guidance, training, retraining and rehabilitation;
- terms of employment and working conditions including remuneration;
- career development including promotion.

2. Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in paragraph 1 of this article.

3. Paragraph 1 of this article shall not prevent the adoption of specific measures aimed at removing *de facto* inequalities.

4. Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions.”

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and last revised on 6 July 2016 at its 286th session (“the Rules”);

Having deliberated on 4 July 2017;

Delivers the following decision, adopted on the above-mentioned date:

1. UWE alleges that the situation in Croatia constitutes a violation of Articles 1, 4, 4§3, 20 and E of the Revised Charter, as well as of the 1961 Charter and Article 1 of the 1988 Additional Protocol. UWE invokes the following grounds:

a) The first concerns the wage gap between men and women in Croatia, which still persists and is unfavourable to women. According to UWE, unequal pay is a reality, despite the international obligations entered into and the legislation in force in this area. In this respect, UWE also alleges that, in practice, the bodies which are responsible for monitoring effective compliance with employment law in relation to equal pay for men and women, have failed to fulfil their task, thus rendering existing legislation ineffective. UWE cites the work in particular of the Ombudsman and the labour inspectorate;

b) Secondly, UWE alleges that a very small number of women occupy decision-making positions within private companies.

2. In its observations, the Government objects to the admissibility of the complaint. It argues in particular that UWE has no specific competence in the field of labour rights and cannot therefore lodge a complaint on the issue of wage gap. Moreover, UWE’s statements concerning the violation of the 1961 Charter by Croatia are not clearly identified and shown. In any event, Croatia should not be considered responsible for violations of the Revised Charter, a text it has not ratified. Finally, the Government considers that, as complaints have been lodged against all States having accepted the complaints procedure, their wording is too general and not specific enough, being politically motivated.

3. In its response to the Government's objections, UWE states that it has competence to lodge a complaint on women's rights and on wage discrimination. UWE states that the fact that the complaint has been introduced against all 15 States having accepted the complaints procedure does not have any impact on the admissibility or the merits of the case. Moreover, UWE refers to national legislation, as well as reports prepared by international organisations on Croatia to substantiate its complaint. Finally, UWE states that the complaint alleges the violations of the 1961 Charter, as well as the 1988 Additional Protocol, texts ratified by Croatia.

4. In its additional observations, the Government states that UWE's Statutes do not grant it any particular competences in the field of labour legislation, status of women in the labour market or remuneration. Moreover, the Government maintains that UWE has not properly identified the provisions of national legislation or the national practices which would be contrary to the 1961 Charter.

THE LAW

5. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Croatia on 26 February 2003 and entered into force for this State on 1 April 2003, the complaint has been submitted in writing. The Committee further observes that UWE refers to the Revised Charter, a text not ratified by Croatia. However, the Committee notes that Croatia has ratified the 1961 Charter and accepted Article 1, but not Article 4. Croatia has also ratified the 1988 Additional Protocol on 26 February 2003, in force since 28 March 2003, including its Article 1. The Committee recalls that complaints must be based on provisions accepted by the defendant State (see in this sense *European Federation of Employees in Public Services (EUROFEDOP) v. Greece*, Complaint No. 3/1999, decision on admissibility of 13 October 1999). The Committee considers that only the accepted provisions of the 1961 Charter and the 1988 Additional Protocol are applicable.

6. The Government raises several objections concerning the grounds of the complaint, notably, that the complaint does not identify with sufficient precision the State responsibility in the wage discrimination and that it does not adequately address the specifics of the national situation (see §§2 and 4 above).

7. As regards the first ground, concerning the wage gap for equal, similar or comparable work, the Committee notes that UWE specifically alleges the violation by Croatia of Article 1 of 1988 Additional Protocol. This provision concerns matters of employment and occupation without discrimination on grounds of sex, including pay. According to UWE, statistical data and factual elements show that in Croatia unequal pay is a reality, despite the international obligations entered into and the legislation enacted by Croatia in this area. Concerning the practice of national bodies, UWE also alleges that the Ombudsman and the labour inspectorate are not able to fight efficiently against wage discrimination between men and women. These bodies have not removed existing obstacles to lodging complaints relating to discrimination on grounds of unequal pay for equal, similar or comparable work between men and woman.

8. As regards the second ground, concerning the representation of women in decision-making posts in private companies, UWE invokes the absence of legislation allowing for equal access of women to decision-making boards of private enterprises and, to show the results in practice, also refers to statistical data reported by European and/or international sources concerning the performance of Croatia in this area. The Committee recalls that the right to equal opportunities is guaranteed by Article 1 of the 1988 Additional Protocol.

9. Consequently, in light of the above, the Committee holds that the complaint relates to provisions of the 1961 Charter and of the 1988 Additional Protocol. The Committee further observes that UWE has indicated in what respect it considers that Croatia has not ensured the satisfactory application of these provisions. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility. The Committee further recalls that consideration of any alleged lack of substance in the complaint is a matter for the examination of the merits of the complaints, not its admissibility (see, among others, *European Federation of Employees in Public Services (EUROFEDOP) v. Italy*, Complaint No. 4/1999, decision on admissibility of 10 February 2000, §12). The Committee therefore rejects the objections of the Government on this issue.

10. The Committee also observes that, in accordance with Articles 1 b) and 3 of the Protocol, UWE is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international non-governmental organisations entitled to lodge complaints before the Committee.

11. As regards the particular competence of UWE in the area of the complaint, the Committee notes that, according to Article 2 of its Statute, the official objective of UWE is:

“(a) to promote action consistent with the purpose of IFUW [International Federation of University Women] by encouraging cooperation between its European members at various levels and to enable them to collaborate with European International Organisations as well as to promote in Europe the programme of IFUW,

(b) to participate in the progressive development of European Civil Society, by working to achieve the programmes of the Council of Europe and the European Women’s Lobby and other European governmental and non-governmental organisations as is deemed appropriate by the aims and programmes of UWE,

(c) to promote lifelong education, especially for women and girls.”

12. The Committee considers that these activities fall within the context of actions in favour of gender equality, one of the fundamental criteria of democracy (Recommendation No. R(98)14 of the Committee of Ministers to member States on gender mainstreaming, adopted on 7 October 1988 at the 643rd meeting of the Ministers’ Deputies). Wage equality for equal work is one of its pillars as well as a major societal challenge. Taking into account the broad scope of UWE’s activities, which are developed in the framework of equality of rights and non-discrimination, the Committee considers that the condition concerning the competence of UWE is fulfilled for the purpose of the instant complaint and rejects the objection of the Government on this point.

13. Finally, the complaint filed on behalf of UWE is signed by Ms Anne Nègre, a lawyer who, according to the mandate signed by Ms Edith Lommerse, President of UWE, and by Ms Roxana Elena Petrescu, General Secretary of UWE, is authorised to lodge a complaint against the 15 States Parties on behalf of UWE. The Committee considers, consequently, that the complaint complies with Rule 23 of its Rules.

14. For these reasons, on the basis of the report presented by Marit FROGNER, and without prejudice to its decision on the merits of the complaint, the Committee

DECLARES THE COMPLAINT ADMISSIBLE IN RESPECT OF ARTICLE 1 OF THE 1961 CHARTER AND ARTICLE 1 OF THE 1988 ADDITIONAL PROTOCOL

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 13 October 2017.

Invites UWE to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to make comments by 13 October 2017, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 13 October 2017.

Marit FROGNER
Rapporteur

Giuseppe PALMISANO
President

Henrik KRISTENSEN
Deputy Executive Secretary